



Victorian
Law Reform
Commission

Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries

CONSULTATION PAPER JUNE 2015



Published by the Victorian Law Reform Commission

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Preface

The Victorian Government has charged the Victorian Law Reform Commission with the task of reviewing the use of regulatory regimes to help prevent organised crime and criminal organisations infiltrating lawful occupations and industries.

Organised crime groups are often described as flexible and adaptive. As such, they present an ever-evolving challenge for law enforcement and regulatory agencies. The Commission welcomes the opportunity to consider how best to equip those agencies to meet that challenge through the use of regulatory tools such as licensing regimes.

The Commission has not been asked to conduct an examination of particular occupations and industries. The Commission will instead be considering the regulatory regimes that apply to a range of lawful occupations and industries in Victoria in order to develop an understanding of the range of tools available to regulators.

Through its consultation process, the Commission seeks a deeper understanding of the efficacy of those tools and the costs and benefits of their use for regulators, business operators and other stakeholders.

Based on its research and the fruits of its consultations, the Commission will develop a framework of principles for assessing the risks of organised crime infiltration of different occupations and industries and for developing suitable regulatory responses. The Commission will seek to develop principles of broad applicability, though it is recognised that every occupation and industry has its own idiosyncrasies which must be taken into account.

The regulation of occupations and industries affects a range of stakeholders; so too does the risk or actuality of infiltration by organised crime. I encourage anyone with an interest in the issues discussed in this paper to make a written submission to the Commission by 3 August 2015. The method of making a submission is described on pages v–vi of this paper.



The Hon. P. D. Cummins AM
Chair
Victorian Law Reform Commission
June 2015

Call for submissions

The Victorian Law Reform Commission invites your comments on this consultation paper.

What is a submission?

Submissions are your ideas or opinions about the law under review and how to improve it. This consultation paper contains a number of questions, listed on pages 72–74, that seek to guide submissions. You do not have to address all of the questions to make a submission.

Submissions can be anything from a personal story about how the law has affected you to a research paper complete with footnotes and bibliography. We want to hear from anyone who has experience with the law under review. Please note that the Commission does not provide legal advice.

What is my submission used for?

Submissions help us understand different views and experiences about the law we are researching. We use the information we receive in submissions, and from consultations, along with other research, to write our reports and develop recommendations.

How do I make a submission?

You can make a submission in writing, or verbally to one of the Commission staff if you need assistance. There is no required format for submissions, though we prefer them to be in writing and we encourage you to answer the questions on pages 72–74.

Submissions can be made by:

Completing the online form at www.lawreform.vic.gov.au

Email: law.reform@lawreform.vic.gov.au

Mail: GPO Box 4637, Melbourne Vic 3001

Fax: (03) 8608 7888

Phone: (03) 8608 7800, 1300 666 557 (TTY) or 1300 666 555 (cost of a local call)

Assistance

Please contact the Commission if you need an interpreter or other assistance to make a submission.

Publication of submissions

The Commission is committed to providing open access to information. We publish submissions on our website to encourage discussion and to keep the community informed about our projects.

We will not place on our website, or make available to the public, submissions that contain offensive or defamatory comments, or which are outside the scope of the reference. Before publication, we may remove personally identifying information from submissions that discuss specific cases or the personal circumstances and experiences of people other than the author. Personal addresses and contact details are removed from all submissions before they are published. The name of the submitter is published unless we are asked not to publish it.

The views expressed in the submissions are those of the individuals or organisations who submit them and their publication does not imply any acceptance of, or agreement with, those views by the Commission.

We keep submissions on the website for 12 months following the completion of a reference. A reference is complete on the date the Commission's report is tabled in Parliament. Hard copies of submissions will be archived and sent to the Public Record Office Victoria.

The Commission also accepts submissions made in confidence. Submissions may be confidential because they include personal experiences or other sensitive information. These submissions will not be published on the website or elsewhere. The Commission does not allow external access to confidential submissions. If, however, the Commission receives a request under the *Freedom of Information Act 1982 (Vic)*, the request will be determined in accordance with the Act. The Act has provisions designed to protect personal information and information given in confidence. Further information can be found at www.foi.vic.gov.au.

Confidential submissions

When you make a submission, you must decide whether you want your submission to be public or confidential.

Public submissions can be referred to in our reports, uploaded to our website and made available to the public to read in our offices. The names of submitters will be listed in the Commission's Report. Private addresses and contact details will be removed from submissions before they are made public, but the name of the submitter is published unless we are asked not to publish it.

Confidential submissions are not made available to the public. Confidential submissions are considered by the Commission but they are not referred to in our reports as a source of information or opinion other than in exceptional circumstances.

Please let us know your preference when you make your submission. If you do not tell us that you want your submission to be treated as confidential, we will treat it as public.

Anonymous submissions

If you do not put your name or an organisation's name on your submission, it will be difficult for us to make use of the information you have provided. If you have concerns about your identity being made public, please consider making your submission confidential rather than submitting it anonymously.

More information about the submission process and this reference is available on our website: www.lawreform.vic.gov.au

Submission deadline: 3 August 2015

Terms of reference

[Referral to the Commission pursuant to section 5(1)(a) of the *Victorian Law Reform Commission Act 2000* (Vic) on 29 October 2014.]

The Commission is asked to review and report on the use of regulatory regimes to help prevent organised crime and criminal organisations entering into or operating through lawful occupations and industries.

Regulatory regimes include the use of laws, regulations, policies and instruments to regulate a given occupation or industry, including licensing regimes and occupational registration requirements.

In particular, the Commission should consider:

1. the experience of Victoria and other jurisdictions in using occupational and industry regulation to help prevent organised crime infiltration of lawful occupations or industries
2. whether, to what extent and in what circumstances regulatory regimes may be effective in helping to prevent organised crime infiltration of lawful occupations or industries
3. the implications for the overall efficiency and effectiveness of regulatory regimes of using such regimes to help prevent organised crime infiltration of lawful industries or occupations
4. the costs and benefits of regulatory options to assist in preventing organised crime infiltration of lawful industries or occupations
5. how best to structure any regulatory regime to ensure its effectiveness in helping to prevent the infiltration of organised crime without imposing unreasonable regulatory burdens, including consideration of regulatory options such as:
 - licensing (including negative licensing)
 - registration
 - notification
 - statutory exclusions
 - discretionary exclusions
 - fit and proper person tests
 - criminal offences
 - the level of sanctions
6. whether a framework of principles can be established for assessing the risks of organised crime infiltration of different lawful occupations or industries and for developing suitable regulatory responses.

The Commission is to report by 29 February 2016.

Glossary

Australian Crime Commission (ACC)	The national criminal intelligence and investigation agency. The ACC seeks to combat serious and organised crime.
Agency	In this paper, unless the context indicates otherwise, agency is a generic term referring to various types of government bodies, including government departments, police forces, and independent statutory authorities.
Australian Institute of Criminology (AIC)	A national centre that conducts research into crime and criminal justice issues.
Australian Transaction Reports and Analysis Centre (AUSTRAC)	The national anti-money laundering and counter-terrorism financing regulator and financial intelligence unit.
Money laundering	Dealing with assets (for example, money or property) obtained through the commission of crime in a way which masks ownership of those assets and makes them appear to have come from legitimate sources. ¹
Outlaw motorcycle gang (OMG)	A term commonly used by law enforcement agencies to describe motorcycle clubs that may be engaged in, or whose members may be engaged in, criminal activity. An outlaw motorcycle gang is distinct from a law-abiding, recreational motorcycle club.
Regulator	An agency that regulates an occupation or industry. A regulator may, for example, consider applications for licences to operate in an occupation or industry, and monitor compliance with the legislation that governs an occupation or industry.
Regulatory regime	The laws, regulations, policies and instruments that govern the entry of people into, the conduct of people within, and the exit of people from an occupation or industry.
Regulatory tool	A component of a regulatory regime (for example, a licensing scheme that regulates the entry of people into an occupation or industry).

Background

2 Referral to the Commission

2 The Commission's approach

1. Background

Referral to the Commission

- 1.1 On 29 October 2014, the then Attorney-General, the Hon. Robert Clark, MP, asked the Victorian Law Reform Commission, under section 5(1)(a) of the *Victorian Law Reform Commission Act 2000* (Vic), to review and report on the use of regulatory regimes to help prevent organised crime and criminal organisations entering into or operating through lawful occupations and industries.
- 1.2 Lawful occupations and industries may be used to enable or facilitate organised crime and to conceal or launder the proceeds of crime. In 2014, the Parliament of Victoria Law Reform, Drugs and Crime Prevention Committee recommended that the Victorian Government investigate the appropriateness of using administrative regulatory measures to reduce the opportunities available to organised crime groups for engaging in illegal activities in Victoria.¹
- 1.3 Regulatory regimes are the laws, regulations, policies and instruments that regulate particular occupations and industries; for example, laws that provide that only fit and proper people can obtain licences to operate in particular occupations or industries. Regulatory regimes may assist in preventing the infiltration of organised crime groups into lawful occupations and industries.
- 1.4 There are other legal responses to organised crime under Victorian and Commonwealth law which are, in general, not focused on specific occupations or industries. These include anti-association laws, anti-fortification laws, tools for the investigation and prosecution of criminal offences committed by organised crime groups, anti-money laundering laws, laws allowing for the forfeiture or confiscation of the proceeds of crime, and 'unexplained wealth' laws.

The Commission's approach

Scope of the review

- 1.5 The Commission's review is determined by the terms of reference. The terms of reference ask the Commission whether a framework of principles can be established for:
 - assessing the risks of organised crime infiltration of different lawful occupations or industries
 - developing suitable regulatory responses.

- 1.6 The Commission's report will present recommendations for these two sets of principles. In establishing these principles, the Commission has been asked to consider, among other matters:
- the experience of Victoria and other jurisdictions in using occupational and industry regulation to help prevent organised crime infiltration of lawful occupations or industries
 - the implications for the overall efficiency and effectiveness of regulatory regimes of using such regimes to help prevent organised crime infiltration of lawful occupations or industries
 - the costs and benefits of regulatory options to assist in preventing organised crime infiltration of lawful occupations or industries.
- 1.7 The full terms of reference are set out at page vii.

The terms of reference

- 1.8 The terms of reference are concerned with the use of regulatory regimes to prevent the infiltration of organised crime into lawful occupations and industries.
- 1.9 There are five key elements of the terms of reference.

Prevention

- 1.10 The reference is directed to preventative measures, not the punishment of organised crime activity. Accordingly, the reference does not deal with laws relating to the investigation, prosecution or sentencing of organised crime offenders in the criminal justice system.
- 1.11 However, there is some limited overlap between the criminal justice system and regulatory regimes. A regulatory regime may create criminal offences and criminal sanctions for the purpose of preventing organised crime infiltration of lawful occupations and industries, as stated by the terms of reference.

Organised crime and criminal organisations

- 1.12 The reference is directed to organised crime and criminal organisations. The meanings of organised crime and criminal organisations are considered at [2.2]–[2.14]. Organised crime involves serious, group-based offending for financial or other gain, on a planned and often ongoing basis. Organised crime is distinct from immediate or opportunistic offending.

Infiltration

- 1.13 'Infiltration' denotes incursion by organised crime groups into lawful occupations and industries. The concept of infiltration does not denote organised criminality within an occupation or industry by otherwise legitimate occupation or industry participants; rather, the source of the criminality is external to the occupation or industry.
- 1.14 Infiltration involves both the entry of organised crime groups into an occupation or industry, and the operation of organised crime groups through an occupation or industry. 'Operating through' an occupation or industry includes the use of professional facilitators and specialist service providers. The term 'infiltration', as used in this paper, denotes both entry into an occupation or industry and operating through an occupation or industry.

Lawful occupations and industries

- 1.15 The review is about regulatory systems and is not an investigation of any particular occupation or industry. The terms of reference relate to occupations and industries that are lawful. Accordingly, the occupations and industries referred to in this paper are themselves lawful, but are said to have been infiltrated by organised crime groups or to be vulnerable to infiltration, in material on the public record. The Commission has reviewed this material in order to identify possible risk factors for infiltration of general applicability and relevant regulatory regimes for examination. The list of occupations and industries referred to in this paper is not exhaustive.

Regulatory regimes

- 1.16 As stated in the terms of reference, regulatory regimes include laws, regulations, policies and instruments that are used to regulate a given occupation or industry, including licensing regimes and occupational registration requirements.
- 1.17 The terms of reference ask the Commission to establish principles for assessing the risks of infiltration of lawful occupations and industries, and for developing suitable regulatory responses to those risks. The terms of reference do not ask the Commission to make recommendations for legislative reform. However, any principles recommended by the Commission and accepted by the Victorian Government may ultimately lead to legislative reform.

Advisory committee

- 1.18 The Commission has established an advisory committee comprising individuals with expertise in areas relevant to the reference. The role of the advisory committee is to provide technical advice about the issues raised by the reference. The members of the advisory committee are:
- Ms Julie Ayling, Research Fellow, Regulatory Institutions Network, Australian National University
 - Professor John Braithwaite, Distinguished Professor and ARC Federation Fellow, Regulatory Institutions Network, Australian National University
 - Dr Matthew Butlin, Chair, Victorian Competition and Efficiency Commission
 - Assistant Commissioner Stephen Fontana, Victoria Police
 - Emeritus Professor Arie Freiberg, Faculty of Law, Monash University
 - Dr Elizabeth Lanyon, Director, Regulation and Policy, Consumer Affairs Victoria
 - Ms Gail Owen, Deputy Chair, Victorian Commission for Gambling and Liquor Regulation
 - Dr Russell Smith, Principal Criminologist and Manager, Transnational, Organised and Cyber Crime Program, Australian Institute of Criminology.
- 1.19 The advisory committee met for the first time on 16 March 2015 and will meet again after the close of submissions and the completion of formal consultations.

Division

- 1.20 The Chair of the Commission has exercised his powers under section 13(1)(b) of the *Victorian Law Reform Commission Act 2000* (Vic) to constitute a Division to guide and oversee the conduct of the reference.
- 1.21 Joining the Chair on the Division are Commissioners Liana Buchanan, Helen Fatouros, Bruce Gardner PSM, Dr Ian Hardingham QC, His Honour David Jones AM, Eamonn Moran PSM QC, Alison O'Brien, and the Hon. Frank Vincent AO QC.

Structure of the consultation paper

- 1.22 This paper is based on the preliminary research conducted by Commission staff and consultation with members of the advisory committee.
- 1.23 The paper is structured as follows:
- Chapter 2 examines the meanings of 'organised crime' and 'criminal organisations' and outlines the main types of criminal activity allegedly engaged in by organised crime groups in Australia.
 - Chapter 3 provides an overview of the lawful occupations and industries that are said to have been infiltrated, or to be vulnerable to infiltration, by organised crime groups, suggests key forms and purposes of infiltration, and presents a draft model for assessing the risk of infiltration.
 - Chapter 4 examines key features of Victorian regulatory regimes that are designed to prevent, or may be useful in preventing, the infiltration of organised crime groups into lawful occupations and industries.
- 1.24 Chapters 3 and 4 contain questions for the purpose of formal consultation. The complete list of questions is provided at pages 72–74.

Formal consultation process

- 1.25 The next stage of the reference will involve consulting with relevant organisations and individuals to test the draft model for assessing the risk of infiltration, to gather information about current regulatory regimes, and to identify any additional issues.
- 1.26 The formal consultation process has two parts:
- face-to-face meetings between Commission staff and representatives of law enforcement agencies, regulators, industries and occupations, and other key stakeholders
 - written submissions to the Commission in response to the questions set out in this paper, by **3 August 2015**. Information about how to make a submission is set out at pages v–vi.

Report

- 1.27 The information that the Commission receives from its formal consultations, combined with additional research, will inform the principles developed for recommendation to the Attorney-General. A report setting out these principles will be provided to the Attorney-General by the reporting date of 29 February 2016.

The nature of organised crime

- 8** Defining 'organised crime'
- 9** Defining 'criminal organisations'
- 11** Organised crime activities

2. The nature of organised crime

- 2.1 This chapter examines the meanings of ‘organised crime’ and ‘criminal organisations’, and outlines the main types of criminal activity allegedly engaged in by organised crime groups in Australia.

Defining ‘organised crime’

- 2.2 There is no settled definition of ‘organised crime’—definitions vary among jurisdictions, law enforcement agencies, and research bodies. At a high level, definitions of organised crime commonly require that:
- the criminal activities are undertaken for financial or other gain
 - the offences are serious
 - the groups involve no less than two or three people, and
 - the offending is planned and often ongoing, and is distinct from the offending of groups that are formed for the immediate or opportunistic commission of an offence.¹
- 2.3 Some of these features are embodied in the key definitions of organised crime in Victorian and Commonwealth legislation.
- 2.4 The *Major Crime (Investigative Powers) Act 2004* (Vic) (MCIPA) contains the main definition of organised crime in Victorian legislation.² The MCIPA provides powers to Victoria Police to investigate and prosecute ‘organised crime offences’. Under section 3AA of the MCIPA, an ‘organised crime offence’ is an indictable offence against the law of Victoria that is punishable by level 5 imprisonment (10 years maximum) or more, involves two or more offenders and:
- involves substantial planning and organisation, forms part of systemic and continuing criminal activity, and has a purpose of obtaining profit, gain, power or influence or of sexual gratification where the victim is a child, or
 - two or more of the offenders involved in the offence are, at any time, either declared individuals or declared organisation members.³

1 See, eg, *United Nations Convention against Transnational Organized Crime*, opened for signature 12–15 December 2000, 2225 UNTS 209 (entered into force 29 September 2003) art 2 (definitions of ‘organized criminal group’ and ‘structured group’); Shona Morrison, ‘Approaching Organised Crime: Where Are We Now and Where Are We Going?’ *Trends & Issues in Crime and Criminal Justice* no. 231 (Australian Institute of Criminology, 2002).

2 *Major Crime (Investigative Powers) Act 2004* (Vic) s 3AA. The MCIPA definition appears in the same or similar form in other Victorian Acts such as the *Summary Offences Act 1966* (Vic) s 49F (consorting with a person found guilty of, or reasonably suspected of having committed, an organised crime offence) and the *Sex Work Act 1994* (Vic) s 26(ab)(iii) (referral of allegations and information about organised crime offences to Victoria Police).

3 ‘Declared individual’ and ‘declared organisation member’ have the same meaning as they have in s 3 of the *Criminal Organisations Control Act 2012* (Vic): *Major Crime (Investigative Powers) Act 2004* (Vic) s 3. A declared organisation member means a member, former member or prospective member of a declared organisation. The Supreme Court may make a declaration that an organisation is a declared organisation for a range of reasons, including that the organisation has engaged in or supported serious criminal activity or that any two or more members, former members or prospective members of the organisation have used the organisation for a criminal purpose. An individual may be declared by the Court to be a declared individual if, for example, the Court is satisfied that the individual is a member of an organisation, that the individual and another member of the organisation are using that organisation for a criminal purpose, and their activities pose a serious threat to public safety and order: *Criminal Organisations Control Act 2012* (Vic) ss 3(1), 19.

- 2.5 The *Australian Crime Commission Act 2002* (Cth) (ACC Act) establishes the Australian Crime Commission (ACC), including its powers to investigate and gather intelligence in relation to 'serious and organised crime'. Section 4(1) of the ACC Act defines a 'serious and organised crime' as an offence that:
- involves two or more offenders and substantial planning and organisation
 - involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques
 - is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind
 - is a 'serious offence',⁴ an offence involving the use of postal or carriage services for sexual activity with a person under 16 years of age or the distribution of child pornography or child abuse material, an offence of a kind prescribed by the regulations, or an offence involving any of the things specified in section 4(1) of the ACC Act,⁵ and
 - is punishable by imprisonment for a period of three years or more or is a 'serious offence' as defined by the *Proceeds of Crime Act 2002* (Cth).

Defining 'criminal organisations'

- 2.6 'Criminal organisations' is not expressly defined in Victorian or Commonwealth legislation. The Commission understands this concept to mean a group, body or association, whether incorporated or unincorporated, which is involved in serious criminal activity, and may include individuals who are related to one another.⁶ The terms 'organised crime group' and 'criminal organisation' are used interchangeably throughout this paper.
- 2.7 Contrary to early conceptions of organised crime, criminal organisations/organised crime groups do not necessarily have stable organisational structures with well-defined member roles and fixed group identities based on common interests or activities, place of origin (such as prisons), or familial relationships and ethnicity. Instead, 'a shift has been detected away from strongly hierarchical crime groups based on ethnicity, place, or activity toward more flexible, entrepreneurial groups that are open to instrumental associations across ethnicities and that operate in multiple criminal markets and across jurisdictions'.⁷
- 2.8 By its nature, the supply of illicit goods and services 'tends to prevent the consolidation of large-scale, durable criminal enterprises' due to the threat of disruption by law enforcement agencies or rival organised crime groups. A more flexible organisational model, characterised by 'loose associations', allows group members to be added or discarded according to organisational needs.⁸
- 2.9 Organised crime groups may operate across several jurisdictions, domestically and/or internationally.⁹ However, not all forms of organised crime have national or transnational dimensions.

4 In this context, a serious offence has the meaning given by the *Proceeds of Crime Act 2002* (Cth): *Australian Crime Commission Act 2002* (Cth) s 4(1) (definition of 'serious offence').

5 The definition of serious and organised crime in section 4(1) of the *Australian Crime Commission Act 2002* (Cth) refers to offences involving any of the following: theft; fraud; tax evasion; money laundering; currency violations; illegal drug dealings; illegal gambling; obtaining financial benefit by vice engaged in by others; extortion; violence; bribery or corruption of, or by, a Commonwealth, state or territory officer; perverting the course of justice; bankruptcy and company violations; harbouring of criminals; forging of passports; firearms; armament dealings; illegal importation or exportation of fauna into or out of Australia; cybercrime; and 'matters of the same general nature as one or more of the matters listed above'.

6 Adapted from the *Criminal Organisations Control Act 2012* (Vic) ss 1, 7, 19.

7 Julie Ayling and Roderic Broadhurst, 'Organized Crime Control in Australia and New Zealand' in Letizia Paoli (ed), *The Oxford Handbook of Organized Crime* (Oxford University Press, 2013) 612, 615. See also Victoria Police, *Organised Crime Strategy 2005–2009* (2005) 22.

8 Letizia Paoli, 'The Paradoxes of Organized Crime' (2002) 37 *Crime, Law & Social Change* 51, 63, 67. See also Australian Crime Commission, *Organised Crime Groups* (2013).

9 Australian Crime Commission, above n 8.

- 2.10 In Victoria, certain types of organised crime groups have been a particular focus for law enforcement agencies. During the mid- to late 2000s, the activities of gangland organisations were a major concern for Victoria Police. This resulted in several high-profile prosecutions of murder and major drug trafficking offences.¹⁰
- 2.11 In more recent years, the alleged criminal activities of certain motorcycle clubs have received particular attention from Victoria Police, and from law enforcement agencies in other states and territories.¹¹
- 2.12 A distinction should be drawn between, on the one hand, socially oriented, recreational motorcycle clubs and, on the other hand, economically oriented motorcycle clubs that may be involved in criminal activity. The latter group is often referred to as ‘outlaw motorcycle gangs’ (OMGs) by law enforcement agencies.¹² However, criminal activity is not synonymous with membership of an OMG, and any criminal activity by an OMG may be restricted to a limited number of current or former group members, and may extend to people outside the group.¹³
- 2.13 During 2013–14, the Victoria Police Echo Taskforce conducted operations targeting the Hells Angels, Comanchero and Rebels motorcycle clubs. Among other things, these operations investigated the alleged trafficking of illicit drugs by national crime syndicates linked to OMGs and the alleged trafficking of firearms by OMGs in Victoria and interstate.¹⁴
- 2.14 In its 2014 inquiry into the supply and use of methamphetamine, the Parliament of Victoria Law Reform, Drugs and Crime Prevention Committee examined the involvement of organised crime groups (including OMGs) in the Victorian methamphetamine market. The Committee received anecdotal evidence indicating the involvement of OMG members in ‘all aspects of the ATS [amphetamine-type substances] market’, including ‘the importation of precursors, robbery of pharmacies to procure pseudoephedrine, manufacture of ATS in clandestine laboratories, infiltration of the security industry to facilitate distribution and sales, and recruitment of drug users to settle debts.’¹⁵ However, the Committee received limited specific evidence of the involvement of organised crime groups (including OMGs) in methamphetamine supply, and recommended further investigation of the matter.¹⁶

10 See: Chris Corns, ‘Combating Organised Crime in Victoria: Old Problems and New Solutions’ (2005) 29 *Criminal Law Journal* 154, 154–5; Victoria Police, above n 7, 5; *Barbaro v The Queen* (2014) 305 ALR 323; *R v Mokbel* [2012] VSC 255 (3 July 2012); *R v Williams* [2007] VSC 131 (7 May 2007).

11 See, eg, Julie Ayling, ‘Pre-emptive Strike: How Australia is Tackling Outlaw Motorcycle Gangs’ (2011) 36(3) *American Journal of Criminal Justice* 250.

12 Australian Crime Commission, above n 8.

13 Julie Ayling, above n 11, 260–1; Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the Supply and Use of Methamphetamines, Particularly Ice, in Victoria, Final Report* (2014) 358–9.

14 Victoria Police, *Annual Report 2013–14* (2014) 35.

15 Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, above n 13, 360–1.

16 *Ibid* 363.

Organised crime activities

- 2.15 Organised crime can include a wide range of criminal activity, given the broad legislative definitions of organised crime set out in the MCIPA and the ACC Act.
- 2.16 While ‘organised crime groups have a presence across many sectors and crime types’,¹⁷ the ACC has identified four main types of criminal activity committed by organised crime groups in Australia:
- illicit ‘enabling activities’ such as money laundering, which enable or facilitate other criminal activity but are not an end in themselves
 - trafficking in illicit commodities, particularly illicit drugs, firearms, and wildlife
 - crimes in the mainstream economy, including securities and investment fraud and mortgage and loan fraud
 - crimes against the person, particularly human trafficking, maritime people smuggling, and child sex offences.¹⁸
- 2.17 The illicit drug market reportedly remains the principal source of profit for organised crime groups in Australia.¹⁹
- 2.18 The broad variety of organised crime activity reflects the adaptive and flexible nature of modern organised crime groups, which may seek to engage in criminal activity across numerous illicit markets in order to maximise profits and diversify their interests.²⁰
- 2.19 A similar observation was made by the Parliament of Victoria Law Reform, Drugs and Crime Prevention Committee in its 2014 report on the supply and use of methamphetamine in Victoria, which referred to the National Criminal Target List compiled by the ACC. The Committee noted that the majority of Victorian targets involved in the methamphetamine market were identified as being involved in multiple criminal activities, including multiple illicit drug markets.²¹

17 Australian Crime Commission, above n 8. See also Australian Crime Commission, *Organised Crime in Australia 2013* (2013) 7.

18 Australian Crime Commission, *Organised Crime in Australia 2013* (2013). This report is the public version of the classified Organised Crime Threat Assessment.

19 Australian Crime Commission, *Organised Crime in Australia 2011* (2011) 54.

20 Australian Crime Commission, above n 18, 7; Attorney-General’s Department, *Commonwealth Organised Crime Strategic Framework: Overview* (2009) 7; Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, above n 13, 356–7.

21 Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, above n 13, 357.

The infiltration of organised crime groups into lawful occupations and industries

- 14** The existence and extent of infiltration
- 15** The harms of infiltration
- 16** Forms and purposes of infiltration
- 32** Draft model for assessing the risk of infiltration

3. The infiltration of organised crime groups into lawful occupations and industries

- 3.1 This chapter examines issues relating to the establishment of a framework of principles for assessing the risk of infiltration. In order to formally consult on this topic, information is presented about the following:
- the existence and extent of infiltration
 - the harms of infiltration
 - forms and purposes of infiltration
 - a draft model for assessing the risk of infiltration.

The existence and extent of infiltration

- 3.2 The infiltration of lawful occupations and industries appears to be a key strategy of organised crime groups in Australia. Cumulatively, the reports of government inquiries, law enforcement agencies, and research bodies indicate that organised crime groups use this strategy in order to enable or facilitate criminal conduct and to conceal or launder the proceeds of crime.¹ However, there are some difficulties in identifying the nature and extent of infiltration, including which particular occupations and industries are subject to, or susceptible to, infiltration. Organised crime activity is inherently clandestine, and relevant law enforcement intelligence may be protected. Insofar as information is publicly available, claims of infiltration or suspected infiltration come from a range of sources, including anecdotal evidence, non-protected law enforcement intelligence, criminological research, and (less commonly) legal judgments.
- 3.3 The extent of infiltration is unquantified, both among and within occupations and industries. In the view of law enforcement agencies, infiltration is a substantial problem. For example, the Commonwealth Organised Crime Strategic Framework identifies six challenges in addressing organised crime, one of which is the infiltration of organised crime groups into legitimate sectors of the economy. Another challenge is the ‘flexible, dynamic, innovative and resilient’ nature of organised criminal networks: ‘Criminal networks are sensitive to the tactics employed by law enforcement and regulatory agencies and are knowledgeable of legitimate industry practices, demonstrating a high degree of resilience to traditional organised crime interventions.’²
- 3.4 The Australian Crime Commission (ACC) similarly reports that two key tactics of high-threat organised crime groups are the intermingling of legitimate and criminal enterprises to enable the commission of crime or concealment of the proceeds of crime, and the use of specialist advisors and professional facilitators in order to conduct criminal activities.³

1 See [3.10]–[3.59].

2 Attorney-General’s Department, *Commonwealth Organised Crime Strategic Framework: Overview* (2009) 7.

3 Australian Crime Commission, *Organised Crime Groups* (2013).

- 3.5 Victoria Police states that organised crime groups have infiltrated a range of lawful occupations and industries, including the private security, debt collection, and trucking and heavy haulage industries.⁴ While some of these statements have been made in the context of recent investigations into outlaw motorcycle gang (OMG) activity in Victoria, police concerns about the infiltration of legitimate business predate the recent focus on OMGs. In Victoria Police’s organised crime strategy for 2005–2009 (developed at the time of the so-called ‘gangland wars’), one of the six strategic areas identified by Victoria Police was the improvement of regulatory regimes—particularly via the sharing of information and intelligence—in order to reduce the opportunities for organised crime group infiltration of legitimate business.⁵
- 3.6 The infiltration of organised crime into lawful occupations and industries is not unique to Australia. It has also been identified in the United States and Europe.⁶

The harms of infiltration

- 3.7 The harms of infiltration will vary in nature and extent, depending upon the form and purpose of infiltration and the particular occupation or industry in issue. Broadly speaking, infiltration by organised crime groups may cause the following types of harms.

Social harms

- 3.8 The social harms of infiltration include:
- the enabling or facilitation of criminal conduct (for example, the infiltration of a legitimate business may enable an organised crime group to efficiently distribute illicit goods to a large market)
 - general unlawful conduct—having entered an occupation or industry for other illegitimate purposes, an organised crime group may have a propensity for more general unlawful conduct when operating a legitimate business, including in relation to tax, occupational health and safety, and workplace relations laws; in turn, the competitive advantages of non-compliance may encourage other occupation or industry participants to behave in a similar way
 - threats to public safety through the use of unlawful tactics to achieve commercial results (for example, the use of intimidation or violence in debt collection services)
 - damage to the integrity of an occupation or industry where infiltration by organised crime groups attracts and shelters disreputable participants and repels reputable participants or entrants.

⁴ See [3.15]–[3.20].

⁵ Victoria Police, *Organised Crime Strategy 2005–2009* (2005) 19.

⁶ Adam Edwards and Michael Levi, ‘Researching the Organization of Serious Crimes’ (2008) 8(4) *Criminology & Criminal Justice* 363; Jay S Albanese, ‘Where Organized and White Collar Crime Meet: Predicting the Infiltration of Legitimate Business’ in Jay S Albanese (ed), *Contemporary Issues in Organized Crime* (Willow Tree Press, 1995) 35; Tom Vander Beken, ‘Risky Business: A Risk-based Methodology to Measure Organized Crime’ (2004) 41 *Crime, Law & Social Change* 471, 506–7.

Economic harms

- 3.9 The economic harms of infiltration include:
- increased barriers to entry for lawful occupation or industry participants, including regulatory requirements such as licensing and the potential for increased insurance and financing costs if the risk profile of an occupation or industry is substantially impaired by the infiltration of organised crime groups
 - other anti-competitive effects, including the ‘crowding-out’ of legitimate businesses where organised crime groups are able to exercise unfair competitive advantages such as the use of no- or low-cost inputs (for example, stolen property), the use of unlawful tactics to impair or remove competitors (for example, the use of intimidation, extortion or assault), and the ability to operate at a loss where the business is primarily used as a vehicle for criminal conduct and/or concealment or laundering of the proceeds of crime, rather than as a source of revenue⁷
 - less efficient transactions in affected occupations and industries (for example, consumers of private security services, including government consumers, may need to spend additional resources finding out whether a security firm has any links to organised crime groups before transacting)
 - loss of tax revenue insofar as criminal activities (assuming no tax is paid on them) result in fewer legitimate business activities.

Forms and purposes of infiltration

- 3.10 This section draws on public information to consider systemic forms and purposes of infiltration. The review is cross-sectional and does not claim to be exhaustive. On the basis of this review, it appears that there are two key forms of organised crime group infiltration of lawful occupations and industries:
- the entry of organised crime groups into an occupation or industry, including through ownership or operation of a business, an employment relationship with a business owner, or a significant connection with a business through a partnership or financing arrangement
 - the use of trusted industry insiders and professional facilitators by organised crime groups (the distinction between entry into, and operating through, an occupation or industry is recognised by the terms of reference, as noted at [1.14]).
- 3.11 Each of these forms of infiltration is considered below. At the end of each section there is a table that sets out the possible purposes of infiltration in each occupation or industry.
- 3.12 The final section of the chapter draws on this overview of the purposes of infiltration, and the literature on risk factors for infiltration, to propose a draft model for assessing the risk of infiltration.
- 3.13 The occupations and industries referred to in this paper are themselves lawful, but are said to have been infiltrated by organised crime groups or to be vulnerable to infiltration, in material on the public record. As is appropriate, the Commission has reviewed that material for the purpose of this paper.

Entry into a lawful occupation or industry

- 3.14 The following lawful occupations and industries are said to have been entered, or to be vulnerable to entry, by organised crime groups: private security, debt collection, trucking and heavy haulage, lawful sex work, commercial fishing, labour hire, gaming, waste management, tattooing, and professional sports and fitness.

Private security

- 3.15 The private security industry includes security guards, bodyguards, crowd controllers, investigators, private security trainers, security equipment installers, and security advisers. Following an investigation of the industry between 2007 and 2009, the ACC reported that organised crime groups may enter the private security industry by owning security firms and having group members employed by security firms. In addition, organised crime groups may use trusted insiders by bribing or corrupting security firms or employees. The ACC stated that within the industry it found ‘a number of examples of criminal influence and organised crime across all states and territories, including by members of outlaw motorcycle gangs’.⁸ OMGs have allegedly infiltrated the private security industry in order to facilitate distribution and sales of amphetamine-type substances.⁹

Debt collection

- 3.16 Debt collection involves the recovery of debts owed to another person, or repossession of goods on behalf of another person, for remuneration or reward.¹⁰ Organised crime groups, including OMGs, are said to have entered the lawful debt collection industry in order to recover debts on behalf of legitimate businesses.¹¹
- 3.17 Building and construction industry debts may be a particular focus for organised crime groups, partly due to the extent of insolvency and bad debt in the industry. In 2012–13, 24 per cent of external administration reports lodged with the Australian Securities and Investments Commission related to companies in the construction sector (a marginal increase from 23 per cent in 2010–11). In 2010–11, creditors in the construction industry collectively lost an estimated \$2.4 billion in bad debts.¹² On the basis of these data and evidence from law enforcement agencies, the Australian Senate Education and Employment References Committee concluded in a 2014 inquiry: ‘The huge sum of money lost underpins an extensive debt collection industry that, as the evidence from policing authorities shows, attracts organised criminality.’¹³

8 Australian Crime Commission, *Criminal Infiltration in the Private Security Industry* (2013); see also Tim Prenzler and Alastair Milroy, ‘Recent Inquiries into the Private Security Industry in Australia: Implications for Regulation’ (2012) 25(4) *Security Journal* 342, 343–8.

9 Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the Supply and Use of Methamphetamines, Particularly Ice, in Victoria, Final Report* (2014) 359–361.

10 Australian Consumer Law and Fair Trading Act 2012 (Vic) s 3(1) (definition of ‘engage in debt collection’).

11 Senate Education and Employment References Committee, Parliament of the Commonwealth of Australia, *Government’s Approach to Re-establishing the Australian Building and Construction Commission* (2014) 60–1; evidence to Education and Employment References Committee, Parliament of the Commonwealth of Australia, Canberra, 17 March 2014, 11 (Deputy Commissioner Graham Ashton, Victoria Police).

12 Senate Education and Employment References Committee, Parliament of the Commonwealth of Australia, *Government’s Approach to Re-establishing the Australian Building and Construction Commission* (2014) 60–1.

13 Ibid 61.

Trucking and heavy haulage

3.18 Victoria Police has stated that the trucking and heavy haulage industry is a relatively recent target of infiltration.¹⁴ Infiltration is said to have occurred through organised crime groups' ownership of trucking/haulage firms and associations with industry participants, consistent with experience in the United Kingdom and Europe.¹⁵ Victoria Police has stated that:

Many members of [OMGs] are known to own, have involvements in (including silent partners/financiers) or exploit their relationship with associates who own or who are involved with trucking and towing (heavy haulage) companies. Involvement in the transport industry allows for ready access to both inter and intra state distribution routes and networks.¹⁶

3.19 Infiltration of the trucking and heavy haulage industry may allow organised crime groups to distribute illicit drugs.¹⁷

3.20 In relation to the transport sector more generally, the ACC has reported that organised crime groups have infiltrated the airport and maritime sectors in order to distribute illicit goods.¹⁸

Lawful sex work

3.21 Sex work means the provision of sexual services in return for payment or reward. In Victoria, sex work is lawful where it occurs through licensed brothels or escort agencies, or in small, owner-operated brothels or escort agencies that are exempt from the requirement to hold a licence; street-based sex work is unlawful.¹⁹

3.22 Consistent with the terms of reference, this paper is concerned with organised crime infiltration of the lawful sex work industry (and not the unlawful sex work industry). The nature and extent of such infiltration is unclear. Some of the main investigations of this issue occurred in the context of inquiries into prostitution laws in Victoria, Queensland and New South Wales during the 1980s and early 1990s, and inquiries into corruption during the same period.²⁰

14 Ibid 59.

15 Tom Vander Beken, Karen Verpoest, Annemie Bucquoye and Melanie Defruyter, 'The Vulnerability of Economic Sectors to (Organised) Crime: The Case of the European Road Freight Transport Sector' in Petrus C van Duyne, Klaus von Lampe, Maarten van Dijck and James L Newell (eds), *The Organised Crime Economy: Managing Crime Markets in Europe* (Wolf Legal Publishers, 2005) 19; UK Home Office, 'Rogue Haulage Firms Targeted in Regional Crackdown' (News story, 21 November 2012) <<https://www.gov.uk/government/news/rogue-haulage-firms-targeted-in-regional-crackdown>>.

16 Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, above n 9, 359–60. See also Australian Crime Commission, *Outlaw Motorcycle Gangs* (2013).

17 Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, above n 9, 359–60 (citing the submission of Victoria Police).

18 Parliamentary Joint Committee on Law Enforcement, Parliament of the Commonwealth of Australia, *Inquiry into the Adequacy of Aviation and Maritime Security Measures to Combat Serious and Organised Crime* (2011) ch 2.

19 Sex Work Act 1994 (Vic) ss 3(1) (definition of 'sex work'), 13, 22, 23.

20 State of Victoria, *Inquiry into Prostitution, Final Report* (1985) 59–60: to the extent permitted by the terms of reference, the inquiry was unable to find evidence of organised crime group control of prostitution in Victoria; Criminal Justice Commission, *Regulating Morality? An Inquiry into Prostitution in Queensland* (1991); Select Committee of the Legislative Assembly upon Prostitution, Parliament of New South Wales, *Report of the Select Committee of the Legislative Assembly upon Prostitution* (1986) 229–33: the inquiry found limited and declining involvement of organised crime groups in prostitution in New South Wales. The Queensland Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (the 'Fitzgerald Inquiry') found links between prostitution, organised crime and police corruption in Queensland: see Crime and Misconduct Commission, *Regulating Prostitution: An Evaluation of the Prostitution Act 1999 (Qld)* (2004) ch 1.

- 3.23 Several agencies have suggested, in broad terms, that organised crime groups have some involvement in the sex work industry. Victoria Police has stated that organised crime activity is present in the lawful and unlawful sex work industries.²¹ The Queensland Crime and Misconduct Commission has referred to anecdotal evidence of organised crime group involvement in lawful and unlawful prostitution in Victoria.²² According to the ACC, some OMGs are involved in prostitution, ostensibly in several states and territories.²³ In 2011 the *Sex Work Act 1994 (Vic)* was amended partly to support the goal of removing ‘criminal elements’ from the industry.²⁴
- 3.24 A specific form of infiltration appears to be human trafficking, slavery and servitude offending in licensed brothels.²⁵ This offending may involve both existing industry participants such as brothel licensees, managers and other employees, and people external to the industry. In Australia, small-scale organised crime groups—rather than large, sophisticated syndicates—tend to be involved in trafficking offending. Small business operators and couples are common types of offenders (such behaviour would meet the definition of ‘organised crime’ under section 3AA of the *Major Crime (Investigative Powers) Act 2004 (Vic)*). Small groups have been found to use family or business contacts overseas to facilitate recruitment, movement into Australia, and visa fraud.²⁶

Commercial fishing

- 3.25 The Australian Institute of Criminology (AIC) has reported that organised crime groups are involved in commercial fishing in several states and territories (including Victoria) and may participate in activities such as:
- the harvesting, processing and distribution of high-value, restricted fish stocks in contravention of catch limits or prohibitions (in 2005, abalone was most vulnerable to organised crime activity in Victoria; other vulnerable species were rock lobster, eel, native fish, and live seahorses)
 - unlawful conduct unrelated to fishing, such as the manufacturing of drugs at aquaculture facilities and the distribution of drugs
 - money laundering, enabled by the vertical integration of fishing businesses (that is, control of harvesting, processing and distribution of fish stocks by a single business).²⁷
- 3.26 The AIC also received anecdotal evidence of OMG involvement in the industry in some states and territories.²⁸
- 3.27 Illegal fish stock is sold on domestic and/or export markets, depending on the species in question. The export of illegal fish stock may require cooperation between organised crime groups within and outside Australia.²⁹

21 Senate Education and Employment References Committee, Parliament of the Commonwealth of Australia, *Government's Approach to Re-establishing the Australian Building and Construction Commission* (2014) 59; evidence to Education and Employment References Committee, Parliament of the Commonwealth of Australia, Canberra, 17 March 2014, 11 (Deputy Commissioner Graham Ashton, Victoria Police): the transcript of evidence indicates that Victoria Police's evidence concerned organised crime activity, not criminal activity more generally.

22 Crime and Misconduct Commission, above n 20, 47–8, 51.

23 Australian Crime Commission, above n 16: the ACC does not specify whether OMGs are involved in lawful or unlawful prostitution or both.

24 Parliament of Victoria, *Parliamentary Debates*, Legislative Assembly, 12 October 2011 (Michael O'Brien, Minister for Consumer Affairs) 3672.

25 Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work, Final Report* (2010) 43 (citing the submission of Project Respect), 133; Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of the Commonwealth of Australia, *Trading Lives: Modern Day Human Trafficking—Inquiry of the Human Rights Sub-Committee* (2013) 23–4; Frances Simmons, Brynn O'Brien, Fiona David and Laura Beacroft, 'Human Trafficking and Slavery Offenders in Australia' *Trends & Issues in Crime and Criminal Justice* no. 464 (Australian Institute of Criminology, 2013) 9–12; *R v Wei Tang* (2009) 23 VR 332; *Ho v The Queen* (2011) 219 A Crim R 74.

26 Drugs and Crime Prevention Committee, Parliament of Victoria, above n 25, 42–3; Fiona David, 'Organised Crime and Trafficking in Persons' *Trends & Issues in Crime and Criminal Justice* no. 436 (Australian Institute of Criminology, 2012) 5–6.

27 Judy Putt and Diana Nelson, 'Crime in the Australian Fishing Industry' *Trends & Issues in Crime and Criminal Justice* no. 366 (Australian Institute of Criminology, 2008); Judy Putt and Katherine Anderson, *A National Study of Crime in the Australian Fishing Industry*, Research and Public Policy Series no. 76 (Australian Institute of Criminology, 2007) 28–39.

28 Judy Putt and Diana Nelson, above n 27.

29 *Ibid* 2.

Labour hire

- 3.28 Labour hire agencies arrange placements for employees, independent contractors, trainees, and apprentices in return for commission from client firms.³⁰ Labour hire agencies in the building and construction industry may be one particular target of infiltration. In evidence to the Royal Commission into Trade Union Governance and Corruption, a senior officer of Victoria Police stated that Victoria Police has intelligence indicating that people with links to organised crime groups may be involved in labour hire agencies in the building and construction industry, and that a fit and proper person test should be introduced for businesses in the building and construction industry.³¹
- 3.29 More broadly, the labour hire industry may provide a site for organised labour trafficking and labour exploitation. Low- or semi-skilled workers on short-term visas, international students, and migrant workers in the agricultural, domestic services, and maritime sectors may be particularly vulnerable to labour exploitation.³²
- 3.30 To the extent that organised crime groups have infiltrated the labour hire industry, entry into the industry may provide an opportunity for the maximisation of profits through non-compliance with (or the exploitation of ambiguities in) workplace relations and occupational health and safety laws.³³

Gaming

- 3.31 Gaming is a subset of the broader gambling industry, and refers to the use of gaming machines (otherwise known as poker machines or 'pokies') in venues such as hotels and clubs.³⁴ Gaming and other gambling businesses may be susceptible to infiltration by organised crime groups,³⁵ including through the possible granting of operator licences to people with links to organised crime groups. In 1999, the Productivity Commission reported that while organised crime 'has little opportunity to get a foothold in Australia's casinos' due to probity controls, '[t]he potential is greater in parts of the hotel gaming sector, but the [Productivity] Commission was provided no evidence of it happening.'³⁶
- 3.32 Consistent with these observations, the main objectives of the *Gambling Regulation Act 2003* (Vic) include to ensure that the management of gaming equipment and other forms of gambling is free from criminal influence and exploitation.³⁷
- 3.33 In addition to, or instead of, the entry of organised crime groups as venue operators,³⁸ a venue operator may perform a similar function to a professional facilitator of organised crime, either complicitly or non-complicitly. First, gaming and other forms of gambling are said to be money laundering sites.³⁹ The ACC has observed that alongside gaming services, gaming venues may offer ancillary services that are 'similar to those of financial institutions, including accounts, foreign exchange, electronic funds transfers, cheque issuing and safety deposit boxes' which may be exploited for the purpose of money laundering.⁴⁰

30 Economic Development Committee, Parliament of Victoria, *Inquiry into Labour Hire Employment in Victoria, Final Report* (2005) xiii. Evidence to Royal Commission into Trade Union Governance and Corruption, Melbourne, 18 September 2014, 214–16 (Assistant Commissioner Stephen Fontana, Victoria Police); statement to Royal Commission into Trade Union Governance and Corruption,

31 12 September 2014 (Assistant Commissioner Stephen Fontana, Victoria Police) [54]–[60].

32 Australian Crime Commission, above n 7, 61–2; Rochelle Ball, Laura Beacroft and Jade Lindley, 'Australia's Pacific Seasonal Worker Pilot Scheme: Managing Vulnerabilities to Exploitation' *Trends & Issues in Crime and Criminal Justice* no. 432 (Australian Institute of Criminology, 2011) 6.

33 As to unscrupulous labour hire practices generally (that do not necessarily entail organised crime), see Economic Development Committee, Parliament of Victoria, above n 30, 36–7, ch 4.

34 *Gambling Regulation Act 2003* (Vic) ch 3.

35 Susan Pinto and Paul Wilson, 'Gambling in Australia' *Trends & Issues in Crime and Criminal Justice* no. 24 (Australian Institute of Criminology, 1990).

36 Productivity Commission, *Australia's Gambling Industries: Inquiry Report*, Report no. 10, Volume 1 (Parts A–C) (1999) 29–30.

37 *Gambling Regulation Act 2003* (Vic) ss 1.1(2)(c)–(d).

38 Operators of gaming machines, other than the casino operators, are known as venue operators.

39 Australian Crime Commission, above n 7, 15; Australian Transaction Reports and Analysis Centre, *Money Laundering in Australia 2011* (2011) 21–2.

40 Australian Crime Commission, above n 7, 15.

- 3.34 Second, gaming venues may provide organised crime groups with access to potential victims or new recruits for criminal conduct. The incidence of ‘loan sharking’ by unlawful lending organisations at gaming venues—with or without the knowledge of venue operators—is acknowledged as a significant issue.⁴¹ In turn, debtors may be recruited for criminal conduct, such as cannabis cultivation, in order to repay debts.⁴²

Waste management

- 3.35 The waste management industry—particularly hazardous waste disposal—is said to be vulnerable to infiltration by organised crime groups, consistent with experience in Europe and the United States.⁴³ The AIC has stated that ‘Australia has not seen a concerted influence of organised crime on the waste disposal business. However, present economic restraints and evidence of the formation of alliances between players operating on the boundaries of legality suggest that greater collusion is inevitable and incidents of illegal waste disposal likely to escalate.’⁴⁴
- 3.36 International experience suggests that organised crime groups may seek to participate in activities such as the illegal dumping of both hazardous and non-hazardous waste and the illegal export of waste.⁴⁵ These activities may allow the maximisation of profits by avoiding the costs of lawful waste transportation and disposal.⁴⁶

Tattooing

- 3.37 Victoria Police has stated that OMGs are involved in the tattoo industry in order to distribute amphetamine-type substances to a wide market.⁴⁷ The New South Wales and Queensland parliaments have introduced licensing regimes for tattooists and tattoo business operators in order to address the perceived connections between organised crime groups and the tattoo industry.⁴⁸

41 Sarah Wheeler, David K Round and John K Wilson (for the Department of Justice, Victoria), *The Relationship between Crime and Gaming Expenditure in Victoria, Final Report* (2010) 24; Productivity Commission, above n 36, 29. Loan sharking involves the lending of money at an exorbitant rate of interest. Such lending is likely to be unlawful where the lender is engaging in ‘credit activities’ without the relevant licence: *National Consumer Credit Protection Act 2009* (Cth) s 29.

42 Sentencing Advisory Council, *Major Drug Offences: Current Sentencing Practices* (2015) 21. The Sentencing Advisory Council found that 20% of offenders convicted of cultivating a commercial quantity of narcotic plants had gambling problems. The report stated that: ‘Where gambling problems existed, the offender was often described as having been recruited into a cultivation operation in order to repay gambling debts. The recruitment would often occur at gambling venues. Consequently, it is reasonable to suggest that problem gambling may constitute a pathway to offending, which is being exploited by principals/proprietors of cultivation operations in a targeted manner.’ See also Roslyn Le and Michael Gilding, ‘Gambling and Drugs: The Role of Gambling among Vietnamese Women Incarcerated for Drug Crimes in Australia’ (9 December 2014) *Australian & New Zealand Journal of Criminology*.

43 Rob White and Diane Heckenberg, ‘Key Vulnerabilities and Limitations in the Management of Hazardous Waste and its Disposal: A Checklist Assessment Tool’ (2011) 2 *Journal of Environmental Protection* 1257; Nicholas Dorn, Stijn Van Daele and Tom Vander Beken, ‘Reducing Vulnerabilities to Crime of the European Waste Management Industry: The Research Base and the Prospects for Policy’ (2007) 15(1) *European Journal of Crime, Criminal Law and Criminal Justice* 23.

44 Samantha Bricknell, *Environmental Crime in Australia*, Research and Public Policy Series no. 109 (Australian Institute of Criminology, 2010) 48. The ‘economic restraints’ referred to in this quote appear to be a reference to the economic conditions produced by the global financial crisis, given that the report was published in 2010.

45 Nicholas Dorn, Stijn Van Daele and Tom Vander Beken, above n 43.

46 Rob White and Diane Heckenberg, above n 43; Samantha Bricknell, above n 44.

47 Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, above n 9, 359.

48 *Tattoo Parlours Act 2012* (NSW); Parliament of New South Wales, *Parliamentary Debates*, Legislative Assembly, 3 May 2012, 11132 (Anthony Roberts, Minister for Fair Trading); *Tattoo Parlours Act 2013* (Qld); Parliament of Queensland, *Parliamentary Debates*, Legislative Assembly, 15 October 2013, 3155 (Jarrod Bleijie, Attorney-General and Minister for Justice).

Professional sports and fitness

- 3.38 The ACC has reported that '[t]he presence of organised criminal identities and groups in the PIEDs [performance and image enhancing drugs] market presents a threat to the integrity of Australian professional sport as a direct consequence of the increased likelihood of criminal identities and groups interacting with professional athletes and the potential exploitation of these relationships for criminal purposes.⁴⁹ Organised crime groups are said to use several strategies to infiltrate professional sports, including:
- the establishment of 'research' bodies in order to acquire peptides and hormones
 - the distribution of peptides and hormones to athletes through complicit anti-ageing clinics, medical specialists, and/or sports scientists
 - the cultivation of business and personal relationships with athletes in order to supply illicit drugs and exploit resulting vulnerabilities for the purpose of criminal conduct; for example, match-fixing and the acquisition of inside information for gambling purposes
 - investment in and sponsorship of sporting clubs, which is allegedly enabled by deficiencies in due diligence requirements across the industry.⁵⁰
- 3.39 Victoria Police has stated that OMGs have involvements in gyms in order to distribute amphetamine-type substances to a wide market.⁵¹
- 3.40 In a 2008 report on integrity assurance in the Victorian racing industry, His Honour Judge Lewis described links between the racing industry and organised crime, including suspicions of the proceeds of organised crime being laundered through the thoroughbred racing industry.⁵² The AIC has referred to 'claims of organised crime involvement [in the New South Wales greyhound racing industry], notably by outlaw motorcycle gangs, who were engaged in the breeding and selling of dogs, and the deliberate fixing of races by putting in dogs who were known not to be good performers'.⁵³

The possible purposes of entry into an occupation or industry

- 3.41 Table 1 lists the possible purposes of infiltration in respect of each occupation or industry discussed above. In some cases, the Commission has identified the purposes of infiltration by drawing on existing analysis; in other cases, it has suggested possible purposes of infiltration as a basis for consultation. The Commission will consult about the accuracy and completeness of Table 1 in its formal consultations.

49 Australian Crime Commission, *Organised Crime and Drugs in Sport: New Generation Performance and Image Enhancing Drugs and Organised Crime Involvement in their Use in Professional Sport* (2013) 31.
50 Ibid 31–3. See also Samantha Bricknell, 'Corruption in Australian Sport' *Trends & Issues in Crime and Criminal Justice* no. 490 (Australian Institute of Criminology, 2015).
51 Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, above n 9, 359.
52 Judge G D Lewis, *A Report on Integrity Assurance in the Victorian Racing Industry* (2008) 18–20.
53 Samantha Bricknell, above n 50, 3.

Table 1: Possible purposes of organised crime group entry into lawful occupations and industries

Occupation or industry	Possible purpose of infiltration (high-level)	Possible purpose of infiltration (specific)
Private security ⁵⁴	Access to inputs for the commission of crime.	Access to restricted firearms. Access to property and confidential information (for example, information relating to security systems and routines) for the purpose of organised theft. Defrauding and extortion of clients.
	Distribution of illicit goods and services.	Access to border sites (ports and airports) in order to import illicit drugs. Access to customers of illicit drugs at licensed premises.
	Exploitation of competitive advantage.	Intimidation and extortion of competitors in order to increase market share.
	Concealment or laundering of the proceeds of crime.	Intermingling of lawful and unlawful revenue, including through the receipt of cash payments for security services.
Debt collection	Obfuscation of criminal conduct.	Intermingling of unlawful debt collection practices (for example, assault, intimidation or extortion of debtors) and lawful debt collection practices. Intermingling of debt collection for unlawful purchases (for example, illicit drugs) and lawful purchases.
	Exploitation of competitive advantage.	Use of intimidation to recover debts through self-presentation (for example, use of motorcycle club insignias) or reputation for criminal conduct. Willingness and capacity to recover debts through unlawful means.
	Concealment or laundering of the proceeds of crime.	Intermingling of lawful and unlawful revenue, including through the receipt of debt payments and recovery fees in cash (untraceable transactions obscure unlawful debt collection practices and the recovery of debts for unlawful purchases).

Occupation or industry	Possible purpose of infiltration (high-level)	Possible purpose of infiltration (specific)
Trucking and heavy haulage	Distribution of illicit goods and services.	Access to commercial intra- and interstate distribution networks (wide-scale, regular and efficient). Division of unlawful goods among a wide range of distributors in order to spread the risk of detection and the risk of product loss (as opposed to concentrating risk in a single distributor).
	Obfuscation of criminal conduct.	Intermingling of lawful and unlawful transported goods.
Lawful sex work	Infiltration related to trafficking/servitude offending	
	Distribution of illicit goods and services.	Access to the established business infrastructure and client bases of licensed brothels for the supply of trafficked women/victims of servitude.
	Obfuscation of criminal conduct.	Intermingling of voluntary sex workers with trafficked women/victims of servitude. Use of a licensed brothel under the pretence of providing lawful sex work services.
	Exploitation of competitive advantage.	For licensed brothel owners: minimisation of labour costs. High-volume servicing of clients by exploitation of trafficked women/victims of servitude.
	Concealment or laundering of the proceeds of crime.	Intermingling of lawful and unlawful revenue (that is, revenue earned from legitimate sex work services and revenue earned from unlawful activity).
	Infiltration unrelated to trafficking/servitude offending	
	Access to inputs for the commission of crime.	Recruitment of new organised crime group members. ⁵⁵
Concealment or laundering of the proceeds of crime.	Intermingling of lawful and unlawful revenue (that is, revenue earned from legitimate sex work services and revenue earned from unlawful activity unrelated to trafficking/servitude offending).	

Occupation or industry	Possible purpose of infiltration (high-level)	Possible purpose of infiltration (specific)
Commercial fishing ⁵⁶	Access to inputs for the commission of crime.	Access to restricted fish stock (in contravention of quotas or prohibitions on fishing).
	Distribution of illicit goods and services.	Distribution of illegal fish stock to end-buyers. Distribution of illicit drugs.
	Obfuscation of criminal conduct.	Intermingling of legal and illegal catches.
	Exploitation of competitive advantage.	Unlawful harvesting of high-value, scarce resources to the detriment of competitors. Superior capacity to withstand seasonal fluctuations in business by raising revenue from other unlawful activity (for example, drug manufacturing and distribution).
	Concealment or laundering of the proceeds of crime.	Retailing of fish on cash or barter basis.
Labour hire	Obfuscation of criminal conduct.	Intermingling of unlawful labour hire practices (for example, intimidation of clients) and lawful labour hire practices.
	Exploitation of competitive advantage.	Any non-compliance with workplace relations and occupational health and safety laws may provide a competitive advantage over compliant businesses. ⁵⁷
Gaming	Access to inputs for the commission of crime.	For operators: <ul style="list-style-type: none"> manipulation or corruption of gaming equipment capital-raising for organised crime activity. For groups who use gaming venues as 'professional facilitators': <ul style="list-style-type: none"> access to gamblers for unlawful lending⁵⁸ recruitment of new organised crime group members (for example, cannabis 'crop-sitters').⁵⁹
	Concealment or laundering of the proceeds of crime.	Money laundering in gaming venues (for example, paying cash to a player who has accumulated credits on a gaming machine and then requesting a cheque from the gaming venue for the credits). ⁶⁰

56 Judy Putt and Diana Nelson, above n 27; Judy Putt and Katherine Anderson, above n 27, 22–3, 28–39.

57 See Economic Development Committee, Parliament of Victoria, above n 30, 36–7, ch 4.

58 Sarah Wheeler, David K Round and John K Wilson (for the Department of Justice, Victoria), above n 41; Productivity Commission, above n 36, 29.

59 Sentencing Advisory Council, above n 42; Roslyn Le and Michael Gilding, above n 42.

60 Australian Transaction Reports and Analysis Centre, above n 39, 22.

Occupation or industry	Possible purpose of infiltration (high-level)	Possible purpose of infiltration (specific)
Waste management ⁶¹	Access to inputs for the commission of crime.	Access to regulated waste for illegal disposal.
	Obfuscation of criminal conduct.	Intermingling of lawful and unlawful waste disposal services (for example, illegal dumping of hazardous waste with non-hazardous waste). Cash-based transacting at waste transfer and waste disposal facilities (in order to conceal the identity of the waste disposer and the waste product).
	Exploitation of competitive advantage.	Avoidance of regulatory costs attached to the lawful disposal of waste (for example, by dumping hazardous waste at inappropriate sites).
Tattooing ⁶²	Distribution of illicit goods and services.	Access to customers of illicit drugs.
	Obfuscation of criminal conduct.	Intermingling of lawful and unlawful services.
	Concealment or laundering of the proceeds of crime.	Intermingling of lawful and unlawful revenue.
Professional sports and fitness ⁶³	Access to inputs for the commission of crime.	Access to athletes for the purpose of criminal conduct such as match-fixing and the acquisition of inside information for gambling purposes. Access to greyhounds for the purpose of race-fixing. Recruitment of new organised crime group members at gyms. ⁶⁴
	Distribution of illicit goods and services.	Access to customers of illicit drugs (including PIEDs).
	Concealment or laundering of the proceeds of crime.	Laundering the proceeds of crime through the racing industry.

61 Rob White and Diane Heckenberg, above n 43; Nicholas Dorn, Stijn Van Daele and Tom Vander Beken, above n 43.

62 Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, above n 9, 359.

63 As to professional sports generally, see Australian Crime Commission, above n 49, 31–3; as to racing, see Judge G D Lewis, above n 52.

64 Russell G Smith, above n 55.

Use of trusted insiders and professional facilitators

- 3.42 The second key form of organised crime group infiltration of lawful occupations and industries is the use of trusted industry insiders and professional facilitators by organised crime groups. This entails organised crime groups using the services of people who would otherwise be considered lawful participants in an occupation or industry. Those otherwise lawful participants may assist organised crime groups either wittingly or unwittingly. A trusted industry insider could be an employee of a pharmaceutical or chemical distributor. A professional facilitator could be a lawyer, accountant or financial adviser.
- 3.43 According to the ACC, the use of lawful specialists and professional facilitators is one of the key characteristics of organised crime in Australia. Professional facilitators may be engaged by organised crime groups in order to provide specialist skills, knowledge or access to particular areas (for example, the financial sector) or to distance organised crime groups from criminal activity and provide a pretence of legitimacy. Professional facilitators may be voluntary enablers of organised crime activity, coerced into providing services through extortion or intimidation, or unwittingly provide services that facilitate organised crime activity.⁶⁵
- 3.44 Organised crime groups are said to use the services of the following trusted insiders or professional facilitators: pharmaceutical and chemical manufacturers and distributors, hydroponic equipment suppliers, licensed firearm dealers, motor vehicle wreckers/recyclers and scrap metal dealers, second-hand dealers and pawnbrokers, lawyers, accountants and financial advisers, and real estate agents.

Pharmaceutical and chemical manufacturers and distributors

- 3.45 The illicit drug market is reportedly the primary illicit market for organised crime groups.⁶⁶ The production of illicit drugs—particularly amphetamine-type substances—may require access to precursor chemicals.
- 3.46 Precursor chemicals may be imported into Australia or sourced from legitimate domestic industries—namely, pharmaceutical and chemical manufacturers, third-party distributors of pharmaceutical and chemical products, and retail pharmacies. Precursor chemicals may be sourced by diverting supply from both witting and unwitting industry participants. The proportion of precursors sourced through imports or legitimate domestic industries is not known.⁶⁷

⁶⁵ Australian Crime Commission, *Professional Facilitators of Crime* (2013).

⁶⁶ Australian Crime Commission, above n 7, 7.

⁶⁷ Australian Crime Commission, *The Australian Methylamphetamine Market: The National Picture* (2015) 13–14; Australian Crime Commission, above n 7, 32; Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, above n 9, xii; Andreas Schloenhardt, *The Market for Amphetamine-type Stimulants and their Precursors in Oceania*, Research and Public Policy Series no. 81 (Australian Institute of Criminology, 2007) 24–30.

Hydroponic equipment suppliers

- 3.47 The cannabis market is reportedly 'attractive to organised criminal groups seeking to diversify their profit base and minimise their level of risk. The reliable income stream may provide a financial base for a broad range of other criminal activities.'⁶⁸ Hydroponic equipment is a key input for commercial-scale cannabis production—producers generally rely on hydroponic methods to achieve faster growth rates and higher yields than those available through 'bush' cultivation. It is estimated that 70 per cent of domestic cannabis is produced through hydroponic cultivation, with the remaining 30 per cent produced through bush cultivation.⁶⁹
- 3.48 Some legitimate hydroponic equipment suppliers are said to facilitate cannabis cultivation, on either a witting or unwitting basis.⁷⁰ Victoria Police has suggested that the size of the hydroponic equipment industry in Victoria is disproportionate to the licit market for hydroponic products.⁷¹ In the early 2000s, South Australia Police estimated that 75 per cent of hydroponic retailers in that state were associated with the cannabis trade.⁷²

Firearm dealers

- 3.49 Corrupt licensed firearm dealers have been identified as one source of supply to the illicit firearm market.⁷³ The illicit firearm market comprises firearms that are illegally imported into Australia, illegally manufactured in Australia, or diverted from either the licit market (registered firearms held by licensed owners) or the grey market (firearms that should have been registered or surrendered under the schemes arising from the 1996 National Firearms Agreement).⁷⁴
- 3.50 Illicit firearm trafficking is reported to be 'dominated by a collection of criminal gangs (OMCGs are frequently nominated) in which illicit firearm trafficking is run as a side business to the primary criminal venture (eg the drugs market) and small networks or individual operators, such as corrupt licensed dealers, who move illicit firearms around by word of mouth.'⁷⁵ Corrupt licensed dealers have been described as 'well placed to divert firearms—they have access to large firearm collections, and their familiarity with legislation and processes around the importation, sale and distribution of firearms will have revealed where vulnerabilities exist and can best be exploited.'⁷⁶

Motor vehicle wreckers/recyclers and scrap metal dealers

- 3.51 A proportion of Victorian motor vehicle wreckers/recyclers and scrap metal dealers are said to facilitate organised profit-motivated vehicle theft. An investigation of the industry between 2013 and 2014 identified two key forms of facilitation: the acquisition of stolen vehicles from organised crime groups, and the retailing of stolen vehicle parts and wrecking by-products on domestic and export markets. Businesses involved in these activities may be operating without the requisite authorisation (that is, a licence or registration), or may be failing to comply with certain conditions of their licence or registration (for example, record-keeping requirements).⁷⁷

68 Crime and Misconduct Commission, *Illicit Drug Markets in Queensland: A Strategic Assessment*, Crime Bulletin Series no. 12 (2010) 5.
69 Australian Bureau of Statistics, *Information Paper: The Non-Observed Economy and Australia's GDP, 2012*, 5204.0.55.008 (2013); Government of South Australia, *Proposal to Licence Hydroponic Equipment Retailers, Report of the Review Panel* (2002) 15–16; Crime and Misconduct Commission, above n 68.

70 Government of South Australia, above n 69; Crime and Misconduct Commission, above n 68. In relation to Canada, see Martin Bouchard and Claude B Dion, 'Growers and Facilitators: Probing the Role of Entrepreneurs in the Development of the Cannabis Cultivation Industry' (2009) 22(1) *Journal of Small Business and Entrepreneurship* 25.

71 Meeting with advisory committee, 16 March 2015.

72 Government of South Australia, above n 69, 16.

73 Samantha Bricknell, *Firearm Trafficking and Serious and Organised Crime Gangs*, Research and Public Policy Series no. 116 (Australian Institute of Criminology, 2012) 23–6, 28, 32.

74 *Ibid* 23.

75 *Ibid* 26. See also Australian Crime Commission, above n 7, 45–6.

76 Samantha Bricknell, above n 73, 25.

77 Victoria Police, *Task Force Discover—Addressing Profit-Motivated Vehicle Theft in Victoria's Separated Parts and Scrap Metal Industries* (2014) 3–7, 13–21.

- 3.52 Due to the greater value of vehicle parts in comparison with whole vehicles⁷⁸ and the improved regulation of written-off vehicles,⁷⁹ the re-birthing of vehicles (that is, the re-identification and sale of whole stolen vehicles) is in decline. Profit-motivated vehicle theft is now focused on the sale of stolen vehicle parts and scrap metal, and the repair or upgrading of lawfully owned vehicles with stolen parts.⁸⁰

Second-hand dealers and pawnbrokers

- 3.53 While most instances of property theft are defined as opportunistic, a small class of organised property theft has been identified, separate to organised vehicle theft.⁸¹ Stolen goods may be distributed through second-hand dealers and pawnbrokers; however, organised crime groups may use this method on a relatively small scale.⁸²
- 3.54 Any facilitating role played by second-hand dealers and pawnbrokers may be in decline for several reasons, including offender dissatisfaction with low wholesale prices, and evidence of a growing preference for the theft of cash rather than consumer items, which avoids the need for a professional distributor/retailer (but may raise laundering requirements).⁸³ In addition, other legitimate businesses and online sales sites may offer alternative distribution methods.⁸⁴

Lawyers, accountants, and financial advisers

- 3.55 While the nature and regulation of each of these professions differs, lawyers, accountants, and financial advisers are examined together here because certain members of each profession are said to perform broadly similar enabling tasks for organised crime groups, including:
- advising on and implementing complex business structures in order to conceal real ownership of businesses used for criminal activity and/or to launder the proceeds of crime (including the establishment of overseas entities)
 - advising on the circumvention of anti-money laundering legislation
 - managing investments, including intermingling the proceeds of crime with legitimately acquired funds in investments such as securities, legitimate businesses and real estate
 - advising on fraudulent tax arrangements (including tax evasion measures and the fraudulent claiming of tax concessions)
 - advising on the operation of fraudulent, high-yield investment schemes by organised crime groups and/or referring clients into such schemes. Fraud and financial crime is an increasingly common form of activity by organised crime groups.⁸⁵

78 Ibid 17.

79 The regulation of written-off vehicles includes a national written-off vehicle register and identity and safety inspections of vehicles on the register that are presented for re-registration: *ibid* 13.

80 *Ibid* 13, 17.

81 Crime and Misconduct Commission, *Organised Property Crime in Queensland* (2012); Crime and Misconduct Commission, *Organised Property Crime Markets in Queensland: A Strategic Assessment*, Crime Bulletin Series no. 9 (2009) 3–4, ch 4, 28–9.

82 Crime and Misconduct Commission, *Organised Property Crime Markets in Queensland: A Strategic Assessment*, Crime Bulletin Series no. 9 (2009) 19–20.

83 Crime and Misconduct Commission, *Property Crime in Queensland: A Strategic Assessment*, Crime Bulletin Series no. 7 (2005) 9; Rick Brown, 'Explaining the Property Crime Drop: The Offender Perspective' *Trends & Issues in Crime and Criminal Justice* no. 495 (Australian Institute of Criminology, 2015) 5.

84 Crime and Misconduct Commission, *ibid* n 82, 20, 26.

85 Australian Transaction Reports and Analysis Centre, *ibid* n 39, 28–30; Australian Crime Commission, *ibid* n 65; Australian Crime Commission, *Money Laundering* (2013); Australian Crime Commission, *ibid* n 7, 24–5, 52–60; Attorney-General's Department, *ibid* n 2; Russell G Smith, 'Anti-money Laundering: The Accounting and Legal Professions' in David Chaikin (ed.), *Financial Crime Risks, Globalisation and the Professions* (Australian Scholarly Publishing, 2013) 28. In relation to the United Kingdom, see David J Middleton and Michael Levi, 'The Role of Solicitors in Facilitating "Organized Crime": Situational Crime Opportunities and their Regulation' (2004) 42 *Crime, Law & Social Change* 123.

- 3.56 Certain features of the legal and accounting professions may be attractive to organised crime groups. For example, legal professional privilege may be perceived as creating a protected environment in which to seek professional guidance about criminal activity.⁸⁶ In addition, lawyers and accountants are generally not subject to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act), unlike financial institutions and other services regulated under that Act. The Australian government is currently examining whether the AML/CTF Act should have explicit application to lawyers and accountants, among other professions.⁸⁷

Real estate agents

- 3.57 According to the Australian Transaction Reports and Analysis Centre (AUSTRAC), real estate transactions are used to conceal or launder the proceeds of crime. Real estate agents may wittingly or unwittingly play a role in such transactions.⁸⁸ A study by the AIC estimated that real estate was the most common destination for laundered funds in Australia in 2004 (23 per cent of an estimated \$2.8 billion in laundered proceeds of crime).⁸⁹ Concealment or laundering may be effected by methods such as:
- investing previously laundered funds in real estate
 - using a mixture of legitimate and illegitimate funds to purchase real estate
 - using loans to integrate illegitimate funds into real estate (the property becomes a laundering vehicle as loan repayments are made using unlawfully obtained cash)
 - purchasing property in family, associate or false names.⁹⁰
- 3.58 As with lawyers and accountants, real estate agents are generally not subject to the AML/CTF Act, but this is currently under review.⁹¹

The possible purposes of use of trusted insiders and professional facilitators

- 3.59 Table 2 lists the possible purposes of the use of trusted insiders and professional facilitators in respect of each occupation or industry discussed above. In some cases, the Commission has identified these purposes by drawing on existing analysis; in other cases, it has suggested possible purposes of the use of trusted insiders and professional facilitators as a basis for consultation. The Commission will consult about the accuracy and completeness of Table 2 in its formal consultations.

86 David J Middleton and Michael Levi, above n 85. But see *R v Cox and Railton* (1884) 14 QBD 153: legal professional privilege does not apply to communications in furtherance of fraud or other criminal activity.

87 Australian Transaction Reports and Analysis Centre and Attorney-General's Department, *Review of the AML/CTF Regime*, Issues Paper (2013) 18–19; *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 6.

88 Australian Transaction Reports and Analysis Centre, above n 39, 9, 13, 25, 28.

89 John Stamp and John Walker, 'Money Laundering in and through Australia, 2004' *Trends & Issues in Crime and Criminal Justice* no. 342 (Australian Institute of Criminology, 2007) 3.

90 Australian Transaction Reports and Analysis Centre, above n 39, 13, 25.

91 Australian Transaction Reports and Analysis Centre and Attorney-General's Department, above n 87.

Table 2: Possible purposes of organised crime group use of trusted insiders and professional facilitators

Occupation or industry	Possible purpose of infiltration (high-level)	Possible purpose of infiltration (specific)
Pharmaceutical and chemical manufacturers and distributors	Access to inputs for the commission of crime.	Access to restricted precursor substances for illicit drug manufacturing.
Hydroponic equipment suppliers	Access to inputs for the commission of crime.	Access to hydroponic equipment for cannabis cultivation. ⁹²
	Obfuscation of criminal conduct.	Intermingling of supply for lawful and unlawful purposes (which frustrates the detection of illegitimate customers).
Firearm dealers ⁹³	Access to inputs for the commission of crime.	Access to restricted firearms for firearm trafficking.
Motor vehicle wreckers/ recyclers and scrap metal dealers ⁹⁴	Distribution of illicit goods and services.	Distribution of stolen vehicles and vehicle parts.
	Obfuscation of criminal conduct.	Intermingling of stolen and lawfully acquired vehicles and vehicle parts (which frustrates the detection of suppliers of stolen vehicles and retailers of stolen vehicle parts).
	Concealment or laundering of the proceeds of crime.	Cash-based transactions for the acquisition and supply of stolen goods. Intermingling of cash obtained through the sale of lawfully acquired and stolen vehicle parts (untraceable transactions obscure the chain of vehicle acquisition and disposal).
Second-hand dealers and pawnbrokers	Distribution of illicit goods and services.	Distribution of stolen property.
	Obfuscation of criminal conduct.	Intermingling of stolen and lawfully acquired property (which frustrates the detection of suppliers of stolen property and retailers of stolen property).
	Concealment or laundering of the proceeds of crime.	Cash-based transactions for the acquisition and supply of stolen goods. Intermingling of cash obtained through the sale of lawfully acquired and stolen property (untraceable transactions obscure the chain of property acquisition and disposal).

92 See Government of South Australia, above n 69; Crime and Misconduct Commission, above n 68.

93 Samantha Bricknell, above n 73.

94 See Victoria Police, above n 77.

Occupation or industry	Possible purpose of infiltration (high-level)	Possible purpose of infiltration (specific)
Lawyers, accountants, and financial advisers ⁹⁵	Distribution of illicit goods and services.	Channelling of clients into fraudulent investment schemes on behalf of organised crime groups.
	Obfuscation of criminal conduct.	Receipt of advice and services in relation to the concealment of criminal conduct under the pretence of legitimacy and potentially protected by confidentiality/legal professional privilege.
	Concealment or laundering of the proceeds of crime.	Receipt of advice and services in relation to the concealment or laundering of the proceeds of crime under the pretence of legitimacy and potentially protected by confidentiality/legal professional privilege.
Real estate agents ⁹⁶	Concealment or laundering of the proceeds of crime.	Receipt of advice and services in relation to the concealment or laundering of the proceeds of crime under the pretence of legitimacy.

Draft model for assessing the risk of infiltration

- 3.60 A traditional response to organised crime largely relies on law enforcement tools to investigate and prosecute organised crime offences after the event. However, recent commentary suggests that organised crime is more likely to be reduced through addressing the factors that create opportunities for organised crime activity.⁹⁷ In this respect, risk assessments may be used to identify the characteristics of lawful occupations and industries that may attract organised crime groups.
- 3.61 The risk of infiltration may be assessed through the development and application of a scanning mechanism, which seeks to identify the elements of a particular occupation or industry that are conducive to organised crime activity. This approach is informed by a criminological theory known as situational crime prevention (SCP), which examines the opportunities for crime in certain environments, rather than the motivations of criminal groups or their individual members. The study of organised crime from an SCP perspective has particularly sought to highlight how the legal environment—rather than the criminal environment—creates opportunities for crime.⁹⁸
- 3.62 SCP theory tends to be based on the assumption that organised crime group members make rational decisions to achieve financial or other gain. That assumption has been criticised for minimising the influence of other motivators of criminal behaviour.⁹⁹ Nonetheless, an SCP analysis may provide useful insights.

95 See Australian Transaction Reports and Analysis Centre, above n 39, 28–30; Australian Crime Commission, above n 65; Australian Crime Commission, *Money Laundering* (2013); Australian Crime Commission, above n 7, 24–5, 52–60.

96 See Australian Transaction Reports and Analysis Centre, above n 39, 9, 13, 25, 28.

97 Michael Levi and Mike Maguire, 'Reducing and Preventing Organised Crime: An Evidence-based Critique' (2004) 41 *Crime, Law & Social Change* 397, 413–6, 456; Australian Crime Commission, above n 7, 11–12; Adam Edwards and Michael Levi, above n 6, 374–8.

98 Tom Vander Beken and Stijn Van Daele, 'Legitimate Businesses and Crime Vulnerabilities' (2008) 35(10) *International Journal of Social Economics* 739; Jay S Albanese, 'Risk Assessment in Organized Crime: Developing a Market and Product-Based Model to Determine Threat Levels' (2008) 24(3) *Journal of Contemporary Criminal Justice* 263, 267–8; Karen Bullock, Ronald V Clarke and Nick Tilley, 'Introduction' in Karen Bullock, Ronald V Clarke and Nick Tilley (eds), *Situational Prevention of Organised Crimes* (Willan Publishing, 2010) 1.

99 Adam Crawford, 'Crime Prevention and Community Safety' in Mike Maguire, Rod Morgan and Robert Reiner (eds), *The Oxford Handbook of Criminology* (4th ed, Oxford University Press, 2007) 866, 881–2; Tom Vander Beken, above n 6, 505.

- 3.63 Using an SCP approach, a risk assessment may be conducted by examining the following areas:
- the elements of the business process in the occupation or industry, including the nature of the goods and services produced, and the manner in which goods and services are distributed¹⁰⁰
 - the characteristics of the market in which the occupation or industry is situated, including factors of supply, demand, barriers to entry, regulatory oversight, and existing competitors.¹⁰¹
- 3.64 These frameworks, and the suggested purposes of infiltration set out in Tables 1 and 2, have been drawn upon to prepare the following draft model for assessing the risk of organised crime group infiltration of lawful occupations and industries. The draft model is structured around the five high-level purposes of infiltration suggested in Tables 1 and 2:
- access to inputs for the commission of crime
 - distribution of illicit goods and services
 - obfuscation of criminal conduct
 - exploitation of competitive advantage
 - concealment or laundering of the proceeds of crime.

The nature of the draft model

- 3.65 The model identifies key characteristics of an occupation or industry that, if present, may increase the risk of infiltration by organised crime groups. Following each key characteristic are questions that could be asked of the occupation or industry under examination, in order to determine whether a risk of infiltration is present. For clarity, the Commission is not seeking answers to the questions in the draft model as part of its consultation process. However, the Commission would like to receive feedback on the draft model (see questions 2 and 3 on page 38) including feedback on whether the questions in the draft model are useful and/or need improvement.

Access to inputs for the commission of crime

Key characteristic: the occupation or industry offers inputs for the commission of crime

- 3.66 Does the occupation or industry offer goods, services or people (inputs) that may be useful to organised crime groups? Inputs may include:
- chemicals and equipment used in illicit drug manufacturing (for example, precursor chemicals and hydroponic equipment)
 - firearms
 - new recruits for criminal conduct (for example, recruitment may occur at gyms operated by or connected with organised crime groups).

Key characteristic: the occupation or industry offers superior inputs

- 3.67 Does the occupation or industry offer inputs that are superior to those available from other sources? This may be due to factors such as:
- the greater range and choice of inputs (for example, entry into the private security industry or the use of corrupt licensed firearm dealers likely offers a wider selection of restricted firearms than is available through ad hoc thefts)¹⁰²
 - the quality of inputs (for example, precursor chemicals diverted from the legitimate pharmaceutical and chemical industries may be superior in quality to illicitly manufactured precursor chemicals)
 - consistency and reliability in the sourcing of inputs (for example, for firearm traffickers, a corrupt licensed firearm dealer likely provides a more consistent and reliable source of restricted firearms than ad hoc thefts).

Key characteristic: the occupation or industry offers lower-risk inputs

- 3.68 Does the occupation or industry offer lower-risk inputs than other sources? This may be due to factors such as:
- the mode of access (for example, accessing precursor chemicals through the legitimate domestic pharmaceutical and chemical industries may be less risky than importation or self-manufacturing in clandestine laboratories)
 - the transparency and proximity of the supplier—does the occupation or industry allow organised crime groups to better establish the credentials of a potential supplier, enforce non-compliance with the terms of supply, and seek ‘after sales service’ for inputs (for example, accessing restricted firearms through a corrupt licensed firearm dealer may offer a better opportunity to establish the reliability of the supplier, and deal with any problems in supply, than alternatives such as informal, clandestine sales or importation).

Distribution of illicit goods and services

Key characteristic: the occupation or industry offers a superior customer base

- 3.69 Does the occupation or industry offer a customer base that is superior to other distribution sites? This may be due to factors such as:
- the size of the customer base (for example, entry into the private security industry offers access to a wide network of licensed venues for illicit drug distribution; entry into the debt collection industry may offer access to a large number of creditors and high-value debts)
 - the ability to command premium prices from the customer base (for example, premium prices may be commanded for illicit drugs from professional sportspeople, given the demand for drugs for professional purposes and the threat of revelation of drug use)
 - the established nature of the customer base (for example, a partnership with a licensed brothel owner allows human traffickers to access an established client base rather than having to generate a new client base).

Key characteristic: the occupation or industry offers a superior distribution method

- 3.70 Does the occupation or industry offer a distribution method that is superior to other forms of distribution? This may be due to factors such as:
- the regularity of distribution (for example, the regular runs of trucking/heavy haulage firms)
 - the breadth of the distribution network (for example, the intra- and interstate distribution networks of trucking/heavy haulage firms)
 - transparency in distribution—given that illicit goods and services cannot be marketed like legal products, does the distribution method allow the potential buyer to better assess the quality of the product and the reliability of the supplier (for example, illicit drug customers may be better able to make these assessments in a perceived safe location such as a licensed venue)?

Key characteristic: the occupation or industry offers a lower-risk distribution method

- 3.71 Does the occupation or industry offer a lower-risk distribution method than other forms of distribution? This may be due to factors such as:
- the ability to exercise control over critical points in the supply chain (for example, entry into the private security industry may allow organised crime groups to access highly restricted border sites for the importation of illicit drugs, rather than seeking to rely on third parties to intercept drugs at the border)
 - the ability to disperse illicit goods and services among a wide range of distributors—this may spread the risk of product loss due to theft by rivals or seizure by police, and may reduce illicit drug quantities below major trafficking offence thresholds (for example, entry into the trucking/heavy haulage industry may allow organised crime groups to disperse illicit drugs among a large fleet of witting or unwitting distributors).

Obfuscation of criminal conduct

Key characteristic: the occupation or industry allows the intermingling of lawful and unlawful goods and services

- 3.72 Does the occupation or industry allow lawful and unlawful goods and services to be intermingled (for example, the intermingling of lawful second-hand goods and stolen property, lawful and unlawful trucked goods, and sex work services by voluntary sex workers and trafficked women/victims of servitude)?

Key characteristic: the occupation or industry allows intermediation between the organised crime group and other actors

- 3.73 Does the occupation or industry allow criminal conduct to occur at arm's length from the organised crime group with a pretence of legitimacy (for example, a partnership between human traffickers and a licensed brothel operator for the supply of trafficked women into a lawful brothel)?

Key characteristic: the occupation or industry is cash-intensive

- 3.74 Does the occupation or industry rely on cash-based transactions that obscure the chain of product acquisition and supply/disposal (for example, the extensive use of cash-based transactions for the acquisition and disposal of second-hand vehicles; the use of cash-based transactions at waste transfer and disposal facilities in order to conceal the identity of the waste disposer and the waste product)?

Exploitation of competitive advantage

Key characteristic: the occupation or industry has low barriers to entry

- 3.75 Does the occupation or industry have low barriers to entry that may be particularly vulnerable to exploitation by organised crime groups? This may be due to factors such as:
- the presence of numerous small firms rather than a concentration of large firms, with high turnover and limited continuity—these ‘high noise’ factors may assist in concealing the use of lawful occupations and industries for criminal conduct
 - a high proportion of low-skilled or non-professional workers—this factor enables organised crime groups to avoid a significant investment of time and resources in training when entering an occupation or industry
 - low sunk costs—this factor may be particularly important for organised crime groups as their businesses are at greater risk of termination by authorities than those of competitors, and organised crime groups may not be able to liquidate stock as easily as competitors in the event of business failure. (There is likely to be a smaller market for tainted business stock and organised crime groups may not wish to reveal commercial assets and income as willingly as competitors.)

Key characteristic: the occupation or industry is under-regulated

- 3.76 Is the occupation or industry under-regulated in a way that may be particularly vulnerable to exploitation by organised crime groups? This may be due to factors such as:
- the under-resourcing of the regulator due to insufficient funding or growth in the regulated occupation or industry (for example, the growth in demand for private security services from the public and private sectors)¹⁰³
 - limited or deficient regulatory frameworks (for example, the limited applicability of the AML/CTF Act to lawyers and real estate agents, currently under review)¹⁰⁴
 - limited private sector oversight (for example, the alleged deficiencies in due diligence requirements in relation to investment in or sponsorship of professional sports).¹⁰⁵

103 Tim Prenzler and Alastair Milroy, above n 8, 342.

104 Australian Transaction Reports and Analysis Centre and Attorney-General's Department, above n 87.

105 Australian Crime Commission, above n 49, 33.

Key characteristic: the occupation or industry is highly or efficiently regulated

- 3.77 Is the occupation or industry highly or efficiently regulated, such that large profits may be enjoyed by organised crime groups that are willing to operate contrary to regulatory requirements? This may be due to factors such as:
- artificial restrictions on supply¹⁰⁶ (for example, restrictions on the harvesting of certain fish species and the resulting scarcity of supply may be exploited by organised crime groups through illegal fishing and the distribution of high-demand stock on domestic and export markets)
 - increases in the cost of lawful goods and services due to regulatory requirements¹⁰⁷ (for example, organised crime groups may seek to dispose of hazardous waste illegally without the attendant costs of legal disposal; improvements in wages and conditions for sex workers may create a commercial incentive to lower business costs through the supply of trafficked women into licensed brothels)
 - the prohibition of certain practices in the occupation or industry (for example, organised crime groups may be willing to use unlawful means including intimidation and violence in the recovery of debts, which may give them a competitive advantage over debt recovery firms that only use lawful practices).

Concealment or laundering of the proceeds of crime

Key characteristic: the occupation or industry allows the intermingling of lawful and unlawful revenue

- 3.78 Does the occupation or industry allow the intermingling of lawful and unlawful revenue, including through the use of cash-based transactions?

Key characteristic: the occupation or industry provides access to specialist services

- 3.79 Does the occupation or industry provide organised crime groups with specialist services that group members may not be able to perform themselves nor obtain from other, illicit sources (for example, while an organised crime group involved in illicit drug manufacturing may be able to access drug production services 'in-house', it may have to rely on external service providers such as lawyers, accountants and financial advisors to conceal or launder the proceeds of crime)?

Key characteristic: the occupation or industry is protected/perceived as protected from regulation

- 3.80 Does the occupation or industry provide organised crime groups with a means of concealing or laundering the proceeds of crime through a professional facilitator who is protected from certain forms of regulation, or perceived as such (for example, communications with lawyers may be protected by legal professional privilege, or be perceived to be protected in this manner)?

106

See Russell Morgan and Ronald V Clarke, 'Legislation and Unintended Consequences for Crime' (2006) 12 *European Journal of Criminal Policy Research* 189.

107

Ibid.

Questions

- 1 What changes or additions would you make to the information presented in Table 1 (pages 23–26) and Table 2 (pages 31–32) regarding the purposes of infiltration? You may wish to comment on occupations or industries that are not listed in Tables 1 or 2.
- 2 Is the draft model for assessing the risk of infiltration (pages 32–37) a helpful way to assess the risk of organised crime group infiltration of lawful occupations and industries?
- 3 What changes or additions would you make to the draft model for assessing the risk of infiltration (pages 32–37)?
- 4 Having regard to the regulatory tools described in Chapter 4, which regulatory tools are, or might be, useful in addressing each of the risks identified in the draft model for assessing the risk of infiltration (pages 32–37)?

The use of regulatory regimes to prevent the infiltration of organised crime groups into lawful occupations and industries

- 41** Choice of regulator
- 42** Regulatory purposes and objects
- 43** Regulating entry into an occupation or industry
- 53** Monitoring an occupation or industry
- 62** Regulating exit from an occupation or industry
- 63** Information sharing for the purpose of regulation
- 64** Protections for people affected by decisions of the regulator
- 66** Other legal responses

4. The use of regulatory regimes to prevent the infiltration of organised crime groups into lawful occupations and industries

- 4.1 This chapter examines issues relating to the establishment of a framework of principles for developing suitable regulatory responses to the risk of organised crime group infiltration of lawful occupations and industries.
- 4.2 In establishing these principles, the terms of reference ask the Commission to consider:
- the experience of Victoria and other jurisdictions in using occupational and industry regulation to help prevent organised crime infiltration of lawful occupations or industries
 - whether, to what extent, and in what circumstances regulatory regimes may be effective in helping to prevent organised crime infiltration of lawful occupations or industries
 - the implications for the overall efficiency and effectiveness of regulatory regimes of using such regimes to help prevent organised crime infiltration of lawful occupations or industries
 - the costs and benefits of regulatory options to assist in preventing organised crime infiltration of lawful occupations or industries
 - how best to structure any regulatory regime to ensure its effectiveness in helping to prevent the infiltration of organised crime without imposing unreasonable regulatory burdens, including consideration of regulatory options such as: licensing (including negative licensing), registration, notification, statutory exclusions, discretionary exclusions, fit and proper person tests, criminal offences, and the level of sanctions.
- 4.3 This chapter presents information about the key tools found in current Victorian regulatory regimes that may be used to prevent organised crime group infiltration of lawful occupations and industries. While some of the regulatory tools presented may not have the prevention of infiltration by organised crime groups as their primary purpose, they may nonetheless be useful for that purpose.
- 4.4 The regulatory tools examined in this chapter relate to some of the lawful occupations and industries that are said to have been infiltrated, or to be vulnerable to infiltration, by organised crime groups (as identified in Chapter 3). In conducting its review, the Commission has not sought to examine the regulatory regime of any particular occupation or industry in its entirety, nor has the Commission sought to examine every possibly relevant regulatory regime.
- 4.5 For the most part, regulatory tools in other jurisdictions have not been examined for the purpose of this paper.

4.6 This chapter contains information in relation to the following:

- choice of regulator
- regulatory purposes and objects
- tools for regulating entry into an occupation or industry
- tools for monitoring an occupation or industry
- tools for regulating exit from an occupation or industry
- information sharing for the purpose of regulation
- protections for people affected by decisions of the regulator.

Choice of regulator

4.7 The regulatory tools examined for this paper are administered by:

- traditional regulators that are independent of policing/law enforcement agencies, including the Business Licensing Authority division of Consumer Affairs Victoria (the Business Licensing Authority regulates occupations and industries such as the sex work industry, second-hand dealers and pawnbrokers, and real estate agents) and independent statutory authorities such as the Victorian Commission for Gambling and Liquor Regulation (VCGLR)
- Victoria Police—for example, Victoria Police regulates the private security industry by licensing and registering industry participants and monitoring behaviour in the industry. Victoria Police’s regulatory role is distinct from its role in enforcing the criminal law. Regulation by Victoria Police is less common than regulation by traditional regulators such as the Business Licensing Authority and the VCGLR.

4.8 There may be certain costs and benefits attached to each model in seeking to prevent organised crime group infiltration of lawful occupations and industries.

4.9 On the one hand, regulation by a traditional (non-police) regulator may allow a wide range of regulatory purposes and objects to be addressed, including, but not limited to, the prevention of criminal conduct and infiltration of the occupation or industry for criminal purposes. By addressing numerous regulatory objects, the regulator may be able to acquire a more comprehensive understanding of the nature of the occupation or industry, its regulatory requirements, and effective regulatory measures.

4.10 A traditional regulator may also be better placed to balance possibly competing policy priorities, such as preventing the infiltration of organised crime groups and reducing regulatory burdens on participants in the occupation or industry.

4.11 On the other hand, regulation by Victoria Police may concentrate the regulatory focus on the prevention of criminal conduct and infiltration of the occupation or industry for criminal purposes. Victoria Police may be particularly well placed to address this regulatory object. Further, to the extent that regulation of the occupation or industry relies on the provision of information that is held by Victoria Police, there will be no, or fewer, barriers to the sharing of this information between regulators and investigators. In order to realise these benefits, however, resources may need to be diverted from traditional policing functions.

4.12 Under some of the regimes examined for this paper, regulatory roles are shared between traditional regulators and Victoria Police (for example, the lawful sex work industry is regulated in this manner). A possible advantage of this approach may be the ability to allocate regulatory roles to the agency best suited to carry them out. For example, inspecting licensed premises for criminal conduct may be best done by police, whereas monitoring compliance with occupational health and safety requirements may be more appropriately done by a traditional regulator.

- 4.13 Even if Victoria Police has no regulatory role in relation to a particular occupation or industry, it retains its primary role as an investigator of suspected criminal conduct. When structuring regulatory regimes, it may therefore be important to define the roles of the regulator and Victoria Police clearly. This may be particularly so where the regulator also has investigative powers. Overlapping or poorly defined roles may lead to duplication or confusion with regards to agency responsibilities.
- 4.14 Finally, it is noted that local councils may play a role in some aspects of the regulation of occupations and industries. For example, a local council may need to approve the use of land for certain businesses, such as licensed brothels.¹

Question

- 5 For the purpose of preventing organised crime group infiltration of lawful occupations and industries, what are the advantages and disadvantages of regulation by:
- (a) a traditional occupation or industry regulator such as the Business Licensing Authority
 - (b) Victoria Police
 - (c) both a traditional regulator and Victoria Police?

Regulatory purposes and objects

- 4.15 Regulatory purposes and objects will guide a regulator in determining how it should perform its duties and functions.
- 4.16 Any regulatory object aimed at preventing the infiltration of organised crime groups will likely coexist with other objects.
- 4.17 For example, the *Sex Work Act 1994* (Vic), which regulates the sex work industry in Victoria, has multiple objects, including to seek to ensure that criminals are not involved in the sex work industry. Additional objects include:
- to seek to protect children from sexual exploitation
 - to maximise the protection of sex workers from violence and exploitation
 - to promote the welfare and occupational health and safety of sex workers.²
- 4.18 To take another example, the objects of the *Gambling Regulation Act 2003* (Vic) include to ensure that the management of gambling is free from criminal influence and exploitation and to promote tourism, employment and economic development generally in Victoria.³
- 4.19 There may be a conflict between an object aimed at preventing the infiltration of organised crime groups, and other objects; for example, an object aimed at reducing barriers to entry ('cutting red tape').
- 4.20 Alternatively, an object aimed at preventing the infiltration of organised crime groups may complement other objects, such as consumer protection, the protection of employees, or the promotion of efficiency and competition (in that organised crime groups may exercise unlawful competitive advantages if they infiltrate an occupation or industry).

1 *Sex Work Act 1994* (Vic) pt 4.
2 *Ibid* s 4.
3 *Gambling Regulation Act 2003* (Vic) s 1.1(2).

- 4.21 Consequently, the use of regulatory tools to prevent the infiltration of organised crime groups into lawful occupations and industries may affect the pursuit of other regulatory purposes and objects, and, therefore, the overall efficiency and effectiveness of a regulatory regime.

Question

- 6 If a regulator is required to prevent the infiltration of organised crime groups into an occupation or industry, how does this affect, or how might this affect, the pursuit of its other regulatory purposes and objects (whether positively or negatively)?

Regulating entry into an occupation or industry

- 4.22 This section examines six means of regulating entry into an occupation or industry:
- positive licensing regimes
 - negative licensing regimes
 - registration schemes
 - rules relating to the effective control of a business
 - rules relating to who may be employed in a business
 - rules relating to re-entry.
- 4.23 More than one of these measures may be used to regulate an occupation or industry.

Positive licensing regimes

- 4.24 Entry into an occupation or industry is often regulated by a positive licensing regime (referred to below as a 'licensing regime'). A licence is an authorisation to engage in particular conduct or offer a particular service.
- 4.25 By scrutinising prospective entrants, a licensing regime may prevent the corruption or destabilisation of an occupation or industry by organised crime groups. Further, an effective licensing regime may reduce regulatory burdens in the monitoring of occupations and industries if there is confidence in the probity of new entrants.
- 4.26 Conversely, licensing regimes are a barrier to entry. As stated in the final report of the 2014/2015 Competition Policy Review:
- Licensing that restricts who can provide services in the marketplace can prevent new and innovative businesses from entering the market. It can also limit the scope of existing businesses to evolve and innovate. As a result, service providers can become less responsive to consumer demand.⁴
- 4.27 Licensing regimes have broadly similar structures though their details may vary. Some of the key components of a licensing regime relate to: proof of identity, licence preconditions, scrutiny of associates, group-based licence exclusions, the investigation of licence applications, requirements to inform the public, and licence conditions.

Proof of identity

- 4.28 A key part of most licensing regimes is a requirement that applicants prove their identity. This requirement is relevant to members of organised crime groups, who may seek to use a fraudulent identity in order to gain entry into an occupation or industry.
- 4.29 Proof of identity requirements may include fingerprinting and referee verification of identity.⁵
- 4.30 The nature and rigour of the method of proof varies among regulatory regimes. Where there is a high risk of infiltration by organised crime groups, a more rigorous method of verifying an applicant's identity may be justified; however, greater rigour may cause additional costs and delays for regulators and applicants.
- 4.31 A regulatory regime may either prescribe the method by which an applicant's identity is to be proved, or the method may be within the regulator's discretion.⁶ A discretion may enable the regulator to determine how to best allocate its resources.

Licence preconditions

- 4.32 A key aspect of a licensing regime is the use of preconditions to ensure that unqualified or unsuitable people are not granted licences. For example, a precondition may be that licences are only granted to 'fit and proper' people or people with appropriate qualifications.
- 4.33 A range of approaches is taken to the formulation of preconditions, including in relation to:
- whether the granting or refusal of a licence is mandatory or discretionary if the preconditions are found to exist
 - whether the preconditions are subjective or objective, and the nature of those preconditions.
- 4.34 The exercise of a discretion as to whether to grant a licence, and the exercise of judgment as to subjective preconditions, may be constrained by judicial or legislative guidance.⁷

Mandatory or discretionary granting of a licence

- 4.35 The granting or refusal of a licence will be mandatory where the legislation provides that the regulator must or must not grant a licence if certain preconditions exist.⁸
- 4.36 Alternatively, the granting of a licence may be discretionary, even if the preconditions exist.

Subjective preconditions

- 4.37 Subjective preconditions require the regulator to exercise judgment about whether a particular precondition exists, and typically involve a consideration of whether an applicant is a suitable person to be licensed to operate in an occupation or industry. For example, legislation may require that a licence not be granted if the regulator:
- is satisfied that the granting of the licence is not in the public interest⁹
 - is satisfied that the applicant is not a suitable or 'fit and proper' person to hold a licence or to carry on a relevant business due to, for example, the applicant's (or their associates') offending history or character¹⁰

5 See, eg, *Private Security Act 2004* (Vic) s 17(2)(a)(i).

6 See, eg, *Gambling Regulation Act 2003* (Vic) ss 10.4.3(1), 10.4.3(2); *Estate Agents Act 1980* (Vic) s 92B.

7 See, eg, *Sex Work Act 1994* (Vic) s 38.

8 See, eg, *Estate Agents Act 1980* (Vic) ss 21(4), 21(4B).

9 *Private Security Act 2004* (Vic) s 26(1)(a).

10 See, eg, *Sex Work Act 1994* (Vic) s 37(1)(a); *Gambling Regulation Act 2003* (Vic) s 3.4.11(1)(b); *Estate Agents Act 1980* (Vic) s 21; *Private Security Act 2004* (Vic) s 26.

- is not satisfied that the applicant can carry on the business without being a danger to public safety or peace.¹¹
- 4.38 Some of these preconditions encompass very broad and flexible concepts, particularly notions of the public interest and a fit and proper person.
- 4.39 In exercising judgment about whether a subjective precondition exists, the regulator may be obliged to make enquiries (for example, the regulator may be required to seek out information about whether the applicant is a fit and proper person).¹² Alternatively, the regulator may not be obliged to make enquiries. It may be sufficient for the regulator to grant a licence if it has not been made aware of particular information (for example, information indicating that an applicant is not a fit and proper person).¹³

Objective preconditions

- 4.40 Objective preconditions do not require the regulator to exercise judgment about whether a particular precondition exists. Instead, the regulator may only be required to determine whether something has or has not occurred. For example, the regulator may need to be satisfied that the licence applicant:
- has not been charged with, or convicted of, disqualifying offences¹⁴
 - has not been declared bankrupt and is not insolvent under administration¹⁵
 - has provided relevant references from a prescribed class of persons¹⁶
 - has met prescribed competency requirements, for example, the completion of a particular course of study.¹⁷

Costs and benefits

- 4.41 The benefits of licence preconditions may include:
- the ability to tailor preconditions to prevent the infiltration of organised crime groups into lawful occupations or industries
 - the creation of barriers to the use of industry insiders and professional facilitators by organised crime groups—for example, competency requirements may assist in preventing the corruption of specialist service providers if those service providers, having undergone lengthy training, have much to lose in the event of disqualification.
- 4.42 The costs of licence preconditions may include:
- financial costs and delays for applicants in having to provide information
 - the risk that suitable applicants will be denied entry if preconditions are too restrictive
 - burdens on the resources of regulators, particularly if the preconditions require subjective assessments to be made or additional enquiries by regulators.

Scrutiny of associates

- 4.43 Some of the licensing regimes examined for this paper require an assessment of whether an applicant's associates (or 'close associates') are fit and proper, suitable or of good repute. The assessment may result in the refusal of a licence.

11 *Firearms Act 1996* (Vic) s 61(1)(c)(i)(B).

12 See, eg, *Private Security Act 2004* (Vic) s 26.

13 *Estate Agents Act 1980* (Vic) s 21(4): under this Act, the regulator still has to be satisfied that the applicant is eligible to hold the licence and is of good character.

14 See, eg, *Private Security Act 2004* (Vic) s 26.

15 *Ibid.*

16 *Private Security Act 2004* (Vic) s 17(2)(a); *Private Security Regulations 2005* (Vic) reg 58.

17 See, eg, *Estate Agents Act 1980* (Vic) s 14(1)(a)(i).

- 4.44 Associates may be natural persons or corporations. There are varying definitions of ‘associates’ and ‘close associates’. The broader the definition, the more likely it is that applicants will be refused a licence because of the reputation or previous conduct of people or entities with whom they associate.
- 4.45 The factors that may make a person an associate or close associate of a licence applicant include that the person:
- is a relative of the applicant (for example, a spouse, domestic partner, parent, sibling or child). A relative may be excluded from the definition of associate or close associate if they have not been and will not be involved in any relevant business of the applicant;¹⁸ alternatively, a relative may be captured by the definition of associate or close associate regardless of whether or not they have a relevant business connection with the applicant¹⁹
 - is a business partner of the applicant²⁰
 - has entered into a business arrangement or relationship or a lease with the applicant in respect of a relevant business²¹
 - is or will be an executive officer of a relevant business of the applicant²²
 - is able to exercise a significant influence over or with respect to the conduct of the business carried on under the licence.²³
- 4.46 For the most part, these categories only capture people with some connection to the business of the applicant. In some cases the net is cast more broadly, perhaps due to the level of risk in the occupation or industry. For example, the definition of ‘associate’ in the Gambling Regulation Act encompasses relatives who do not have a business connection with the applicant.²⁴
- 4.47 Once a licence is granted, the licence holder may be obliged to notify the regulator of new associate relationships, or seek the approval of the regulator for a person to become an associate of the licence holder (see [4.127]).

Costs and benefits

- 4.48 The scrutiny of associates may allow regulators to detect organised crime group members and other unsuitable occupation or industry participants who seek to remain at arm’s length from a licensed business through the use of intermediaries. Regulators may then prevent these intermediaries from obtaining a licence.
- 4.49 However, in some cases, the scrutiny of associates may unreasonably result in licence applicants being considered ‘guilty by association’.

Group-based licence exclusions

- 4.50 Among the Victorian licensing regimes examined for this paper, group-based licence exclusions are generally not used. While an applicant may be denied a licence because of the prior conduct, character or general unsuitability of the applicant or an associate of the applicant, merely being a member of a particular group is not generally used as a ground for the refusal of a licence.

18 *Sex Work Act 1994* (Vic) ss 3(1) (definitions of ‘relative’ and ‘uninvolved relative’), 37(2)(a).

19 *Gambling Regulation Act 2003* (Vic) s 1.4.

20 *Sex Work Act 1994* (Vic) s 37(2)(b).

21 *Ibid* s 37(2)(c).

22 *Gambling Regulation Act 2003* (Vic) s 1.4(1)(b).

23 *Private Security Act 2004* (Vic) s 3 (definition of ‘close associate’).

24 *Gambling Regulation Act 2003* (Vic) s 1.4.

Exclusions arising from anti-association laws

- 4.51 In recent years, a number of laws have been passed at the Commonwealth, state and territory levels that aim to combat organised crime by regulating people's associations with certain groups and organisations.²⁵ These anti-association laws are often referred to as 'anti-bikie laws' and have become linked in the media with efforts to combat possible or actual criminal behaviour by outlaw motorcycle gangs (OMGs). However, these laws may have broader application. Some of these laws prohibit members of criminal organisations from participation in a range of occupations and industries.
- 4.52 The *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* (Qld) amended the licensing requirements (or other authorisation requirements) applicable to a number of industries.²⁶ The amendments mean that any person who is an 'identified participant in a criminal organisation' is prohibited from holding a range of authorisations that they need to work legally in those industries.²⁷
- 4.53 Similarly, in New South Wales, a 'controlled member of a declared organisation' is prohibited from applying for any authorisation (such as a licence) to carry on a prescribed activity so long as she or he is subject to an interim control order or control order.²⁸
- 4.54 The definition of 'prescribed activity' encompasses a range of occupations such as carrying on a security activity within the meaning of the *Security Industry Act 1997* (NSW), carrying on the business of a pawnbroker within the meaning of the *Pawnbrokers and Second-hand Dealers Act 1996* (NSW), operating a tow truck within the meaning of the *Tow Truck Industry Act 1998* (NSW), and carrying on business as a motor dealer, motor vehicle repairer or motor vehicle recycler within the meaning of the *Motor Dealers and Repairers Act 2013* (NSW).²⁹
- 4.55 In Victoria, the *Criminal Organisations Control Act 2012* (Vic) does not appear to directly prohibit declared organisations or declared individuals from participating in lawful occupations and industries.³⁰ However, other legislation may contain such a prohibition. For example, under the *Firearms Act 1996* (Vic), Victoria Police must not issue a firearm dealer's licence to an applicant unless Victoria Police is satisfied that the applicant, all officers of a relevant body corporate named in the application, and all people the applicant is proposing to employ in the business are fit and proper people. If any of those people is a 'declared organisation member', she or he is presumed not to be a fit and proper person.³¹ That presumption may be rebutted.³²
- 4.56 Furthermore, Victoria Police must not issue a firearm dealer's licence if the applicant, any close associate of the applicant, any responsible person in relation to the application or any person the applicant is proposing to employ in the business is a 'declared individual'.³³

25 See, eg: *Criminal Organisation Act 2009* (Qld); *Vicious Lawless Association Disestablishment Act 2013* (Qld); *Crimes (Criminal Organisations Control) Act 2012* (NSW).

26 See, eg: *Electrical Safety Act 2002* (Qld); *Liquor Act 1992* (Qld); *Racing Act 2002* (Qld).

27 An identified participant in a criminal organisation is a person who is identified by the Commissioner of the Police Service as a participant in the organisation within the meaning of s 60A(3) of the Criminal Code.

28 *Crimes (Criminal Organisations Control) Act 2012* (NSW) s 27(4). A declared organisation is an organisation subject to a current declaration by the Supreme Court of New South Wales that the organisation is a criminal organisation for the purposes of the *Crimes (Criminal Organisations Control) Act 2012* (NSW): *Crimes (Criminal Organisations Control) Act 2012* (NSW) s 3(1).

29 *Crimes (Criminal Organisations Control) Act 2012* (NSW) s 27(6).

30 A declared organisation member means a member, former member or prospective member of a declared organisation. The Supreme Court may make a declaration that an organisation is a declared organisation for a range of reasons, including that the organisation has engaged in or supported serious criminal activity or that any two or more members, former members or prospective members of the organisation have used the organisation for a criminal purpose. An individual may be declared by the Court to be a declared individual if, for example, the Court is satisfied that the individual is a member of an organisation, that the individual and another member of the organisation are using that organisation for a criminal purpose, and their activities pose a serious threat to public safety and order: *Criminal Organisations Control Act 2012* (Vic) ss 3(1) (definitions of 'declared individual' and 'declared organisation'), 19.

31 *Firearms Act 1996* (Vic) s 61.

32 *Ibid* s 61(3).

33 *Ibid* ss 3(1) (definition of 'prohibited person'), 61(1)(a).

Costs and benefits

- 4.57 One possible benefit of group-based licence exclusions is some reduction in costs and burdens on regulators. A person will be automatically excluded from one or several occupations or industries without the need for the regulator to examine other, perhaps more resource-intensive, licensing criteria.
- 4.58 Against this benefit, group-based exclusions may create a considerable barrier to employment for people subject to anti-association laws.

Investigation of licence applications

- 4.59 A typical component of the licensing regimes examined for this paper is the power or obligation of the regulator, when considering a licence application, to conduct any investigation or make any inquiry that it thinks fit.³⁴
- 4.60 Victoria Police may also inquire into licence applications in some occupations and industries.³⁵ In these circumstances, it is likely that a regulatory regime will further specify whether:
- the type of information to be provided to Victoria Police is determined by the regulator or Victoria Police³⁶
 - the nature of the inquiry is determined by the regulator or Victoria Police³⁷
 - any recommendations of Victoria Police will be binding on the regulator.³⁸

Costs and benefits

- 4.61 A rigorous investigation of licence applications—by the regulator itself and/or Victoria Police—may be beneficial where the applicant is adept at concealing information about its identity, prior conduct or associates; for example, an organised crime group may use a complex business structure that conceals the true owners/controllers of corporate licence applicants.
- 4.62 However, an investigation of licence applications may:
- cause delay for the licence applicant under investigation
 - divert resources from other activities of the regulator or Victoria Police
 - generate additional costs for regulators that may be passed on to all licence applicants through increased licence fees.

Informing the public

- 4.63 Another common component of a licensing regime is a requirement for an applicant to inform the public by placing a notice in a newspaper circulating generally in Victoria, setting out that the application has been made and that any person may object to the granting of a licence.³⁹ This provides another method by which information about the suitability of an applicant may be brought to the attention of the regulator. When this tool is used, the regulator will be required, when determining the application, to consider any relevant objections.⁴⁰

34 See, eg, *Sex Work Act 1994* (Vic) s 36A(2)(a).

35 See, eg: *ibid* s 36; *Estate Agents Act 1980* (Vic) s 20.

36 See, eg: *Estate Agents Act 1980* (Vic) s 20; *Gambling Regulation Act 2003* (Vic) s 10.4.4(1)(c).

37 See, eg: *Gambling Regulation Act 2003* (Vic) s 10.4.4(2); *Estate Agents Act 1980* (Vic) s 20(2); *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 69OA(3)(a), 69OA(3)(b).

38 See, eg, *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 69OA(3), 69OA(4).

39 See, eg, *Private Security Act 2004* (Vic) s 18.

40 See, eg, *ibid* s 18(3).

Licence conditions

- 4.64 Under the licensing regimes examined for this paper, regulators often have a broad discretion to attach licence conditions with which the licence holder must comply.⁴¹ In addition, the legislation may stipulate certain licence conditions.⁴²
- 4.65 The licensing regime may also allow the regulator to vary or revoke a condition of a licence or impose a new condition at any time, either on its own initiative, on the application of the licence holder, or on the application of another relevant person such as an authorised police officer.⁴³

Negative licensing regimes

- 4.66 Negative licensing is an alternative to a positive licensing regime. Under a negative licensing regime, no licence is required to enter an occupation or industry but certain classes of people may be excluded from the occupation or industry unless they obtain the permission of the regulator. This exclusion may take place at the time of entry or post-entry.
- 4.67 Negative licensing regimes are relatively uncommon, in both the regulatory regimes examined for this paper and in other areas of regulation.⁴⁴

Negative licensing in the debt collection industry

- 4.68 Entry into the Victorian debt collection industry is regulated by a negative licensing regime. The former positive licensing regime was replaced in July 2011 by a requirement for prohibited persons to obtain permission from the Business Licensing Authority to engage in debt collection.⁴⁵ People who are not prohibited persons do not require a licence or any other form of authorisation to engage in debt collection. A natural or corporate person may be prohibited from engaging in debt collection for a number of reasons, including that the person has in the previous five years:
- held a private security licence or a private security registration under the *Private Security Act 2004* (Vic) that was cancelled or suspended
 - been found guilty or convicted of an offence involving fraud, dishonesty, drug trafficking or violence punishable by imprisonment of three months or more (natural persons only)
 - been found to have been involved in the use of physical force, undue harassment or coercion in contravention of the *Australian Consumer Law and Fair Trading Act 2012* (Vic), among other laws⁴⁶
 - been found guilty or convicted of the offence of engaging in prohibited debt collection practices.⁴⁷
- 4.69 The Business Licensing Authority may permit a prohibited person to engage in debt collection if it is satisfied that it is not contrary to the public interest to do so.⁴⁸ It is an offence for a prohibited person to engage in debt collection without the permission of the Business Licensing Authority.⁴⁹

41 See, eg: *Gambling Regulation Act 2003* (Vic) s 3.4.12; *Firearms Act 1996* (Vic) s 68.

42 See, eg: *Gambling Regulation Act 2003* (Vic) ss 3.4.12A, 3.4.12B.

43 See, eg, *Sex Work Act 1994* (Vic) s 52AA.

44 Arie Freiberg, *The Tools of Regulation* (Federation Press, 2010) 149.

45 *Australian Consumer Law and Fair Trading Act 2012* (Vic) ss 47, 48(1).

46 Those laws are s 12D) of the *Australian Securities and Investments Commission Act 2001* (Cth) or an equivalent provision in a Commonwealth or state or territory Act: *Australian Consumer Law and Fair Trading Act 2012* (Vic) ss 47(1)(a)(vii), 47(1)(b)(vii).

47 *Australian Consumer Law and Fair Trading Act 2012* (Vic) s 47(1).

48 *Ibid* s 49.

49 *Ibid* s 47(2).

Costs and benefits

4.70 The benefits of a negative licensing regime may include:

- the exclusion of unsuitable participants from the occupation or industry with relatively little administrative burden, in that exclusion may be automatic once a particular event occurs⁵⁰
- a reduction in costs for regulators, due to the removal of costs associated with a positive licensing regime⁵¹
- a lowering of barriers to entry for non-prohibited persons, which may benefit competition in the occupation or industry.⁵²

4.71 The costs of a negative licensing regime may include:

- greater opportunity for the entry of organised crime groups or other unsuitable people due to the lowering of barriers to entry
- the inadvertent sheltering of unsuitable occupation or industry participants under a reactive rather than proactive regulatory regime—that is, a negative event needs to be discovered before an unsuitable person is excluded⁵³
- a greater need for the monitoring of occupation or industry participants, since less is known about entrants than under a positive licensing regime⁵⁴
- a greater reliance on flushing out unsuitable people post-entry, which may be difficult to enforce in relation to organised crime groups because it relies on consumers and occupation/industry participants to report prohibited practices.

Registration schemes

4.72 Generally, a registration scheme is one of the least intensive ways of regulating entry into an occupation or industry. A registration scheme requires an individual or corporation to list their name and other information in an official register if they wish to participate in a particular occupation or industry.

4.73 The information contained in a register may be open to all people, restricted to certain people, and/or only available for inspection for certain purposes.⁵⁵

4.74 Registration schemes may be an appropriate, cost-effective regulatory tool for occupations and industries that are at low risk of infiltration by organised crime groups.

4.75 A registration scheme may operate in lieu of a licensing regime.⁵⁶ Alternatively, a more complex registration scheme may operate in a very similar way to a licensing regime. For example, under the Private Security Act, registration (rather than licensing) is required for certain types of private security businesses (security equipment installers and security advisers).⁵⁷ The requirements for registration applications are similar to the requirements for licence applications under the Private Security Act.⁵⁸

Costs and benefits

4.76 The benefits of a registration scheme may include:

- low-cost barriers to the entry of organised crime groups into lawful occupations and industries—group members may not be prepared to have their details entered on a register

50 Consumer Affairs Victoria, *Private Agents Act Options Paper—Modernising Victoria's Consumer Policy Framework* (2008) 23.

51 Arie Freiberg, above n 44, 150.

52 Consumer Affairs Victoria, above n 50, 22–3.

53 Arie Freiberg, above n 44, 150.

54 Ibid.

55 See, eg, *Sex Work Act 1994* (Vic) s 24.

56 See, eg, *ibid* ss 23, 24.

57 *Private Security Act 2004* (Vic) ss 9, 71.

58 *Ibid* ss 17, 18, 26, 74, 75, 83.

- the creation of a business environment that is less conducive to the entry of organised crime groups, by making information about business operators easily available to the public (for example, a prospective purchaser of private security services may wish to check the registered details of a private security business before proceeding with the purchase).
- 4.77 The costs of a registration scheme may include reduced probity in the occupation or industry if a registration scheme is used entirely in lieu of a licensing regime, which may be conducive to the entry of organised crime groups.

Rules relating to the effective control of a business

- 4.78 Some of the regulatory regimes examined for this paper require the licensee⁵⁹ to be in effective control of the relevant business.
- 4.79 For example, under the Sex Work Act, the licensee of a brothel must be regularly and usually in charge at the brothel and must give regular and substantial attendance at the brothel.⁶⁰
- 4.80 Effective control requirements aim to ensure that the licensee is the person who actually conducts, controls and obtains the financial benefit from the business. In the absence of such requirements, organised crime groups may attempt to obtain a licence under the cover of an intermediary or proxy, and then exercise effective control over the business once the licence has been granted.

Rules relating to who may be employed in a business

- 4.81 Regulatory regimes may impose restrictions on who may be employed in a business. Employee restrictions may be useful in preventing organised crime group members from entering lawful occupations and industries as employees. An employee position may be perceived as less visible and scrutinised than the position of a business owner/operator. Further, where an organised crime group member does have some involvement in the ownership or operation of a business, employee restrictions may prevent that owner/operator from running a business comprised wholly or in part of other group members.
- 4.82 Employee restrictions may operate at the time a person applies for a licence. For example, the relevant legislation may require that a licence not be issued unless the regulator is satisfied that the people the applicant is proposing to employ in the relevant business are fit and proper.⁶¹
- 4.83 Employee restrictions may also (or alternatively) operate during the period of any licence.

The scope of employee restrictions

- 4.84 A licensing regime may prohibit a licensee from employing, in connection with her or his business, any person:
- who is disqualified from holding a licence
 - whose application for a licence has been refused by the regulator
 - who, because of her or his conduct or reputation, is not a fit and proper person to be employed in a business conducted under such a licence.⁶²

59 From this point on, this chapter will generally refer to licences (and licensees etc) as they appear to be the most common form of authorisation for entry into an occupation or industry. However, many of the comments could apply equally to occupations and industries regulated in another way, such as by a negative licensing regime or a registration scheme.

60 *Sex Work Act 1994* (Vic) s 42.

61 See, eg, *Firearms Act 1996* (Vic) s 61(1)(c)(i)(A).

62 *Estate Agents Act 1980* (Vic) s 44(1).

- 4.85 Further, the licensing regime may provide that any person prohibited from being employed in the business conducted under the licence must not participate or be in any way concerned in the business.⁶³
- 4.86 Some employee restrictions only apply to people who seek to perform certain roles, such as management positions or other roles requiring probity.
- 4.87 For example, under the Sex Work Act, a person cannot manage a brothel unless they have received approval to do so from the Business Licensing Authority.⁶⁴ The grounds on which the Business Licensing Authority must not grant its approval are similar to the grounds on which it must not grant a licence to operate the business (for example, where the person is not of good repute or has been found guilty of a disqualifying offence).⁶⁵
- 4.88 Under the Gambling Regulation Act, a gaming industry employee's licence is required if the prospective employee will be performing specified functions (such as functions that pose an inherent risk to the integrity of gaming).⁶⁶ Employers are prohibited from employing or using the services of an unlicensed person to perform any of the specified functions.⁶⁷ Further, prospective employees must satisfy the licensing criteria and are ineligible to apply for a licence if they belong to a prescribed class of persons.⁶⁸

Costs and benefits

- 4.89 The benefits of employee restrictions may include:
- increased scrutiny of a business's employees, to the detriment of organised crime groups who may otherwise exploit a lack of such scrutiny
 - a reduction in regulatory burdens where there is a flexible and targeted approach to the restriction of employees that still seeks to protect the integrity of the occupation or industry
 - thorough and cost-effective probity checks for employers (that is, a background check carried out by a regulator may be less costly than a background check carried out by the employer or a private agency, and regulators may have access to more information about prospective employees).
- 4.90 The costs of employee restrictions may include:
- reductions in the pool of prospective employees
 - increased regulatory costs if the employee restrictions are overly broad or restrictive and require the vetting of a substantial number of prospective employees.

Rules relating to re-entry

- 4.91 Rules around re-entry into an occupation or industry may be relevant to preventing infiltration by organised crime groups.
- 4.92 Legislation may provide that if a person has had a licence cancelled, or has had a previous licence application refused, she or he may not re-apply for a minimum period unless the regulator otherwise permits.⁶⁹
- 4.93 This type of requirement may be important in restricting the entry or re-entry of organised crime groups, and may also be reasonable in order to reduce the regulator's workload. On the other hand, it may be unreasonable to deny an applicant entry to an occupation or industry once the reasons for refusal or cancellation have been addressed.

63 Ibid s 44(2).

64 *Sex Work Act 1994* (Vic) ss 49, 50.

65 Ibid s 51.

66 *Gambling Regulation Act 2003* (Vic) ss 9A.1.2, 9A.1.3(1).

67 Ibid s 9A.1.3(2).

68 Ibid s 9A.1.4(2). To date, the class of persons has not been prescribed.

69 *Estate Agents Act 1980* (Vic) s 24C.

Questions

- 7 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate entry into an occupation or industry (for example, by requiring would-be entrants to obtain a licence)?
- 8 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of any of the following:
- positive licensing regimes
 - negative licensing regimes
 - registration schemes
 - rules relating to the effective control of a business
 - rules relating to who may be employed in a business
 - rules relating to re-entry
 - other entry-regulation tools that you would like to comment on?
- Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.
- 9 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of group-based licence exclusions?

Monitoring an occupation or industry

- 4.94 The regulatory regimes examined for this paper include a number of tools for the monitoring of an occupation or industry. An effective monitoring regime may discourage organised crime groups from entering lawful occupations and industries, or may discourage or detect organised crime activity within an occupation or industry, should the regulation of entry fail to exclude organised crime groups, or where entry is unregulated.
- 4.95 This section examines:
- the relevance of licence duration and renewal requirements to the monitoring process
 - models of compliance monitoring
 - investigative powers
 - prohibited practices
 - record-keeping obligations
 - continuous disclosure obligations
 - the detection of unauthorised participants
 - enforcement measures.

The relevance of licence duration and renewal requirements

- 4.96 The duration of licences and requirements for the renewal of licences may affect the degree to which occupation or industry participants are monitored.
- 4.97 Once issued, a licence generally continues in force for a specified period, which may be up to a maximum period allowed under the relevant legislation unless the licence is suspended or cancelled.⁷⁰
- 4.98 The legislation may provide that before the expiration of a licence, the licensee may apply to the regulator for renewal of the licence.⁷¹ The requirements relating to an application for renewal, and the bases for granting or refusing that application, may be similar to those that applied to the original application for a licence.⁷²
- 4.99 Relatively long licence periods may create additional monitoring requirements, since there will be fewer opportunities to scrutinise incumbents through licence renewal or re-application processes.
- 4.100 By contrast, relatively short licence periods may reduce monitoring requirements, since incumbents will be scrutinised on a regular basis through licence renewal or re-application processes, provided those processes are sufficiently stringent. In these circumstances, however, the regulatory burden (and the attendant costs) may merely shift to the stage of entry/re-entry into an occupation or industry. Regular licence renewals may also increase costs for legitimate incumbents.

Models of compliance monitoring

- 4.101 In monitoring an occupation or industry for compliance with the law, regulators may rely on a complaints-based model, an inspection-based model, or both.

Complaints-based model

- 4.102 The Private Security Act provides an example of a complaints-based model. A person who is affected by the conduct of a holder of a private security business licence that is carried on under the licence may make a complaint to Victoria Police.⁷³ Victoria Police must investigate any complaint.⁷⁴ The investigation may result in a disciplinary inquiry, following which a range of options will be open to Victoria Police, from taking no action to cancelling the licence and ordering that the licensee not be entitled to apply for a licence for up to five years.⁷⁵

Inspection-based model

- 4.103 The regulatory regime for the gaming industry includes an inspection-based model. Victorian Commission for Gambling and Liquor Regulation (VCGLR) inspectors routinely inspect premises used in connection with any activity regulated by a gaming Act, examine machinery and equipment used and records kept in those premises, and monitor the operation and management of any such activity, for the purpose of determining compliance with any gaming Act and gaming regulations.⁷⁶ Inspectors report to the VCGLR as required.⁷⁷
- 4.104 VCGLR inspectors must also investigate complaints related to activities regulated by a gaming Act.⁷⁸

70 See, eg, *Private Security Act 2004* (Vic) s 34.

71 See, eg, *Firearms Act 1996* (Vic) s 72(1).

72 See, eg, *ibid* ss 61, 63, 64, 65, 72, 73.

73 *Private Security Act 2004* (Vic) s 48(1).

74 *Ibid* s 49.

75 *Ibid* s 56.

76 *Gambling Regulation Act 2003* (Vic) s 10.5.7(1).

77 *Ibid*.

78 *Ibid* s 10.5.11(1).

Costs and benefits

- 4.105 On the one hand, a complaints-based model may place fewer demands on the resources of a regulator than an inspection-based model. A complaints-based model also limits disruption to compliant businesses.
- 4.106 On the other hand, a complaints-based model is reactive rather than proactive, and relies on other occupation or industry participants, consumers or other people making a complaint. There may be particular barriers to the making of complaints where an organised crime group is responsible, or appears to be responsible, for non-compliant behaviour (for example, complainants may fear reprisal from organised crime groups).
- 4.107 An inspection-based model may be difficult to implement where a body other than a policing/law enforcement agency seeks to investigate any infiltration by organised crime groups. These bodies may not necessarily feel equipped to investigate possible organised crime activity. For example, in a study of organised crime in the commercial fishing industry, the Australian Institute of Criminology found that 71 per cent of the fisheries officers interviewed for the study rated personal safety as the most important issue in seeking to deter organised crime activity in the industry.⁷⁹

Investigative powers

- 4.108 Where a regulator is able to conduct investigations of an occupation or industry, the regulatory regime may provide powers to obtain information that is relevant to the activities conducted under a licence. The investigative powers of a regulator are distinct from the investigative powers of Victoria Police in relation to suspected criminal conduct.
- 4.109 There are various investigative powers among the regulatory regimes examined for this paper, including powers to:
- require a licensee or any person who has possession, custody or control of documents relating to the licensed business to answer questions, supply information and provide documents related to the licensed business⁸⁰
 - require an employee of a licensee to answer questions or provide information with respect to any activity regulated by the legislation⁸¹
 - require a public body and other specified people (such as a financial institution) to answer questions and supply information relating to a licensed business⁸²
 - enter and search premises and seize items.⁸³

Costs and benefits

- 4.110 One advantage of a regulator having investigative powers is that it may be uniquely well placed to use those powers effectively—a regulator will be able to exercise investigative powers according to its regulatory priorities, and is likely to have a comprehensive understanding of the occupation or industry under regulation.
- 4.111 However, if a regulator has investigative powers, any overlap with the investigative powers of Victoria Police may lead to duplication or confusion with regard to their respective responsibilities. Further, regulators may lack the skills or confidence to use their investigative powers properly, particularly in relation to suspected organised crime activity. This may lead to delays in matters being investigated if, for example, the regulator expects Victoria Police to take the lead while Victoria Police may believe that the regulator should exercise its own investigative powers.

79 Judy Putt and Diana Nelson, 'Crime in the Australian Fishing Industry' *Trends & Issues in Crime and Criminal Justice* no. 366 (Australian Institute of Criminology, 2008).

80 *Sex Work Act 1994* (Vic) ss 61D(1), 61E.

81 *Gambling Regulation Act 2003* (Vic) s 10.5.9(1)(d).

82 *Sex Work Act 1994* (Vic) ss 61F, 61G.

83 *Ibid* ss 61J, 61K, 61L.

Prohibited practices

- 4.112 It may be advantageous to identify the anticipated behaviour of organised crime groups within a lawful occupation or industry and focus on preventing or detecting that behaviour. The prohibition of certain practices may assist in this respect. For example, under the regulatory regime for debt collectors, a debt collector must not engage in a prohibited debt collection practice, including:
- using physical force, undue harassment or coercion
 - doing or threatening to do any act that may intimidate a person or a member of that person's family.⁸⁴
- 4.113 The maximum penalty for engaging in a prohibited debt collection practice is a fine of 240 penalty units (or \$35,426) for a natural person, or 1200 penalty units (or \$177,132) for a corporation.⁸⁵ If a person uses physical force, undue harassment or coercion in debt collection, that person may then be prohibited from engaging in debt collection.⁸⁶
- 4.114 In practice, the prohibition of certain conduct is likely to be of little use unless it is backed by robust enforcement. Enforcement may be difficult against organised crime group members—in particular, witnesses may be reluctant to report prohibited practices to regulators for fear of reprisal.

Record-keeping obligations

- 4.115 Record-keeping obligations—and the strict enforcement of these obligations—may be an important tool in preventing or hindering the supply of goods and services to or from organised crime groups.
- 4.116 Deficient or non-existent record keeping may facilitate and conceal criminal conduct. For example, an investigation of Victorian motor vehicle wreckers/recyclers and scrap metal dealers between 2013 and 2014 found that widespread non-compliance with record-keeping obligations had both wittingly and unwittingly facilitated the disposal of stolen vehicles, because the details of vehicle suppliers and other identifying information were frequently not recorded.⁸⁷
- 4.117 Record-keeping obligations may interact with the investigative powers described at [4.108]–[4.109], and may also include requirements for:
- a licensee or former licensee to keep documents relating to the licensed business for a specified period of time, available for inspection in a form that can be immediately and easily inspected⁸⁸
 - specific transactions to be recorded in a register that must be available for inspection by a police officer at any reasonable time.⁸⁹
- 4.118 The precursor control legislation provides an apparently successful example of record-keeping obligations. The *Drugs, Poisons and Controlled Substances Act 1981* (Vic) regulates, among other things, the supply of precursor chemicals (that is, chemicals that can be used to make other chemicals such as illicit drugs). The Act requires a supplier to not supply a category 1 precursor chemical to another person ('the receiver') unless the receiver:
- provides sufficient proof of her or his identity to the supplier (for example, a driver's licence or a passport)
 - has an account with the supplier

84 *Australian Consumer Law and Fair Trading Act 2012* (Vic) s 45.

85 *Ibid* s 45(1). The maximum fine amounts are based on the penalty unit value for 2014–15.

86 *Ibid* s 47(1)(a).

87 Victoria Police, *Task Force Discover—Addressing Profit-Motivated Vehicle Theft in Victoria's Separated Parts and Scrap Metal Industries* (2014) 3–5.

88 *Sex Work Act 1994* (Vic) s 61C.

89 *Firearms Act 1996* (Vic) s 87.

- gives the supplier an end-user declaration including the receiver's name and address, the name and quantity of the chemical to be supplied, the proposed date of supply and the intended use of the chemical.⁹⁰
- 4.119 The supplier must keep:
- each end-user declaration for at least five years after the date of supply of the chemicals
 - a record of the supply, including the date of supply and the name and quantity of the chemical supplied, for at least five years from the date of supply
 - written authorisations for access to category 1 precursor chemicals for at least two years after expiry of the authorisation.⁹¹
- 4.120 A police officer may, without warrant, enter a supplier's premises during business hours and require the supplier to produce for inspection any of the records described above.⁹²
- 4.121 The record-keeping obligations under precursor control laws have apparently been successful in reducing organised crime groups' use of legitimate pharmaceutical/chemical manufacturers and distributors for precursor supply. Recent seizure data suggest that producers of methamphetamine may be gradually relying less upon the precursors ephedrine and pseudoephedrine and more upon phenyl-2-propanone (a precursor chemical that may be self-manufactured by drug producers), which is said to be a response to the regulation of ephedrine and pseudoephedrine supply by legitimate industries.⁹³

Costs and benefits

- 4.122 Record keeping assists in revealing the chain of supply of goods and services, including supply to or from organised crime groups, which may in turn compromise the ability of organised crime groups to:
- use professional facilitators and industry insiders for the supply of goods and services (for example, precursor supply by complicit members of the pharmaceutical/chemical manufacturing and distribution industries)
 - intermingle lawful and unlawful business activities (for example, the intermingling of stolen and lawfully acquired property and the freighting of lawful and unlawful goods).
- 4.123 Where a record-keeping obligation operates, deficient or non-existent record keeping may be a 'red flag' to regulators that wider defects may exist in the conduct of the business and in the ownership/operation of the business (including criminal activity).
- 4.124 Record-keeping obligations must be strictly enforced in order for these benefits to be realised. The keeping and inspection of records may be resource-intensive for businesses and regulators, and may require the employment of specialist regulatory staff to detect irregularities in record keeping.

90 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 4(1) (definitions of 'end-user declaration' and 'sufficient proof of identity of receiver'), 80J(1); *Drugs, Poisons and Controlled Substances (Precursor Supply) Regulations 2010* (Vic) reg 8(1).

91 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 80K, 80N(1), 80O.

92 *Ibid* s 80R.

93 Australian Crime Commission, *Illicit Drug Data Report 2012–13* (2014) 35; Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the Supply and Use of Methamphetamines, Particularly Ice, in Victoria, Final Report* (2014) 445.

Continuous disclosure obligations

- 4.125 The monitoring of occupations and industries may be assisted by continuous disclosure obligations that require licensees and other authorised persons to report new events to regulators.
- 4.126 Continuous disclosure obligations may assist in circumstances where organised crime groups seek to associate with an existing authorised person in a lawful occupation or industry and use this person as an intermediary in criminal or other conduct (for example, human traffickers may partner with licensed brothel operators to supply trafficked women to licensed brothels).
- 4.127 Some of the regulatory regimes examined for this paper require licence holders to disclose new associate relationships. For example, under the Private Security Act, a licence holder is required to immediately notify Victoria Police if a person becomes or ceases to be an associate of the licence holder.⁹⁴
- 4.128 The Gambling Regulation Act contains particularly extensive provisions relating to the monitoring of associates. Among other requirements, a gambling industry participant must ensure that a person does not become an associate of that participant (other than a relative) except with the prior approval of the VCGLR.⁹⁵ The VCGLR must not grant its approval unless it is satisfied that the person is suitable to be concerned in or associated with the gambling business of the gambling industry participant.⁹⁶

Costs and benefits

- 4.129 Continuous disclosure obligations may reduce regulatory burdens by placing the onus on licence holders to report events to regulators that may impair the suitability of the person to operate in a particular occupation or industry. However, there may nonetheless be a burden on the regulator to ensure that continuous disclosure obligations are complied with.
- 4.130 Insofar as continuous disclosure requirements regulate associate relationships, similar costs and benefits may apply to these requirements as apply to the scrutiny of associates at the time of entry into an occupation or industry (see [4.48]–[4.49]).

94 *Private Security Act 2004* (Vic) s 174.

95 *Gambling Regulation Act 2003* (Vic) s 10.4A.7(1).

96 *Ibid* s 10.4A.7(2).

Questions

- 10 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to monitor an occupation or industry?
- 11 When monitoring an occupation or industry in order to prevent or detect the infiltration of organised crime groups, what are the costs and benefits of any of the following:
- short licence periods/regular licence renewals
 - a complaints-based model versus an inspection-based model
 - investigative powers (or particular investigative powers)
 - prohibited practices
 - record-keeping obligations
 - continuous disclosure obligations
 - other monitoring tools that you would like to comment on?

Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.

Detection of unauthorised participants

- 4.131 Many of the regulatory tools described above relate to the monitoring of authorised occupation or industry participants. Monitoring regimes may also seek to prevent organised crime groups from operating without authorisation in a particular occupation or industry.
- 4.132 Regulators may be provided with extensive investigative powers for the purpose of detecting people who are operating without a necessary licence, including powers that relate to the inspection of premises and the obtaining of documents and information, similar to those described at [4.109].⁹⁷
- 4.133 Further regulatory tools that may discourage people from operating without the necessary licence or other form of authorisation include:
- empowering a police officer or an authorised person to require a licence holder to produce their licence document for inspection⁹⁸
 - requiring a licence holder to produce their licence document for inspection by customers⁹⁹
 - declaring that a person is not entitled to retain or recover monies obtained or earned through unlicensed activity¹⁰⁰
 - empowering courts to freeze the bank accounts of unauthorised occupation or industry participants (for example, people who are prohibited from engaging in debt collection and operate as debt collectors without the permission of the Business Licensing Authority)¹⁰¹

97 *Sex Work Act 1994* (Vic) ss 61DA, 61E, 61F, 61G, 64.

98 *Private Security Act 2004* (Vic) s 128.

99 *Ibid* s 128(4).

100 *Ibid* s 127.

101 *Australian Consumer Law and Fair Trading Act 2012* (Vic) s 212.

- empowering a court to declare premises to be ‘proscribed premises’ if it is satisfied that those premises are being or have been used for the conduct of unlicensed activities for which a licence is required¹⁰²
- making it an offence for a person to be found in unlicensed or proscribed premises without lawful excuse.¹⁰³

Question

12 What are the most useful ways of detecting people (particularly organised crime groups) who are operating in a lawful occupation or industry without the required authorisation (such as a licence)?

Enforcement measures

4.134 Any regulatory regime will include enforcement measures for non-compliant conduct. In approximate order of the least to the most severe measures, a regulatory regime may contain some or all of the following measures:

- warnings, cautions, and improvement and prohibition notices
- enforceable undertakings
- infringement notices
- administrative monetary penalties
- publicity and banning orders and injunctions
- licence suspension or cancellation
- civil sanctions
- criminal sanctions.¹⁰⁴

4.135 Under a model of ‘responsive regulation’ (which is one proposed model of enforcement), coercive enforcement measures ‘should only be used when less interventionist measures have failed to produce compliance’.¹⁰⁵

Licence suspension or cancellation

4.136 Licence suspension or cancellation is a common enforcement measure in the regulatory regimes examined for this paper.¹⁰⁶ For example, licence suspension or cancellation may be used as an enforcement measure in relation to:

- any offending¹⁰⁷ or particular types of offending¹⁰⁸ by the licensee either during or prior to the licence period
- the regulator becoming aware that the licensee, or a close associate of the licensee, is a prohibited person under the regulatory regime, or does not meet the probity requirements under the regulatory regime¹⁰⁹
- the regulator or other body (such as a court or tribunal) becoming aware that a licensee is not of good character or otherwise a fit and proper person to hold a licence.¹¹⁰

102 *Sex Work Act 1994* (Vic) s 80.

103 *Ibid* ss 15, 82.

104 Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992) 35.

105 Arie Freiberg, above n 44, 97.

106 See, eg: *Sex Work Act 1994* (Vic) ss 47, 48A(g); *Estate Agents Act 1980* (Vic) s 28A.

107 See, eg, *Private Security Act 2004* (Vic) s 61.

108 See, eg, *Estate Agents Act 1980* (Vic) s 22(2): cancellation of the licence is required under this section.

109 See, eg, *Private Security Act 2004* (Vic) s 47: cancellation of the licence is required under this section.

110 See, eg, *Estate Agents Act 1980* (Vic) ss 25(1), 28A.

Civil sanctions

4.137 Civil penalties are sanctions imposed by a court for contravention of a legislative requirement or prohibition. Civil penalties include court-imposed monetary penalties, compensation orders, and disqualifications (such as a disqualification from being a director). A civil penalty regime may offer a less onerous route of enforcement than criminal prosecution.¹¹¹

Criminal sanctions

4.138 Criminal offences appear to be a common form of enforcement in the regulatory regimes examined for this paper. Fines and imprisonment are typical criminal sanctions, and may be imposed for conduct such as carrying on a business without the appropriate licence¹¹² or engaging in a prohibited practice.¹¹³

4.139 Ancillary orders may also be available. For example, an order for damages may be sought against a person who has engaged in a prohibited debt collection practice, where that act has caused humiliation or distress.¹¹⁴

Discretion in the use of enforcement measures

4.140 The regulator may have a discretion as to the enforcement measure to be imposed.

4.141 For example, under the Private Security Act, if Victoria Police is satisfied that there are grounds for believing that the holder of a private security licence has engaged in unfair, dishonest or discreditable conduct in carrying on any activity authorised by the licence, Victoria Police may hold an inquiry into the matter.¹¹⁵ Following such an inquiry, Victoria Police may take any of several measures, including taking no further action, reprimanding the licence holder, imposing or varying a licence condition, and suspending or cancelling the licence.¹¹⁶

Costs and benefits

4.142 An examination of costs and benefits in relation to enforcement measures may need to consider:

- the proportionality of the enforcement measure in relation to the non-compliant conduct, including any interference with a right to work (particularly if a rigorous licensing process was undertaken)
- the deterrent value of the enforcement measure for organised crime group members; for example, measures that disrupt a business or activity (such as licence cancellation or banning orders) versus monetary penalties
- the likely period of time between the non-compliant conduct and the imposition of an enforcement measure (for example, licence suspension or cancellation may be able to be imposed relatively quickly)
- the regulatory resources required in seeking particular types of enforcement measures (for example, the process involved in suspending or cancelling a licence is likely to be less onerous for the regulator than the pursuit of criminal proceedings against the licensee)
- whether discretion should be available to regulators in the use of enforcement measures, and to what degree

111 See Eamonn Moran, 'Enforcement Mechanisms (including Alternatives to Criminal Penalties)' (2009) 2 *LOOPHOLE—Journal of the Commonwealth Association of Legislative Counsel* 12, 13.

112 See, eg: *Private Security Act 2004* (Vic) s 5 (fines only); *Estate Agents Act 1980* (Vic) s 12(1).

113 *Australian Consumer Law and Fair Trading Act 2012* (Vic) s 45(1).

114 *Ibid* s 46(1).

115 *Private Security Act 2004* (Vic) s 50.

116 *Ibid* s 56.

- the rights of review available to the occupation or industry participant who is the subject of an enforcement measure
- the capacity of the regulator to complete enforcement actions (for example, the capacity to enforce payment of monetary penalties).

Question

- 13 Which enforcement measures are useful, or might be useful, in preventing organised crime group infiltration of lawful occupations and industries?

Regulating exit from an occupation or industry

- 4.143 Regulating the exit of people from occupations and industries may serve particular functions in relation to organised crime groups.
- 4.144 First, an organised crime group may seek to infiltrate an occupation or industry by acquiring a licence from an existing licensee under transfer of the licence. Among the regulatory regimes examined, it is common for licences to be personal to the licence holder and non-transferable.¹¹⁷ There are some exceptions to this; for example, under the Firearms Act, Victoria Police may authorise transfer of a firearm dealer's licence due to death, bankruptcy or mental impairment of the dealer.¹¹⁸
- 4.145 Second, a regulatory regime may impose restrictions on the surrender of licences. A licensee may be permitted to surrender a licence at any time, except, for example, when a relevant authority has decided to conduct an inquiry into the licensee or its actions.¹¹⁹ A regulator may be empowered to investigate the activities of a former licensee.¹²⁰
- 4.146 These types of restrictions on the surrender of licences may render an occupation or industry less attractive to organised crime groups. Ease of surrender may be attractive to organised crime groups, which may wish to quickly exit an occupation or industry if there is a risk that unlawful conduct will be detected.

Question

- 14 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate the exit of people from an occupation or industry? Which tools are, or might be, useful for this purpose?

117 See, eg: *Gambling Regulation Act 2003* (Vic) s 3.4.15; *Sex Work Act 1994* (Vic) s 39(4); *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 69OD.

118 *Firearms Act 1996* (Vic) ss 84, 85.

119 *Sex Work Act 1994* (Vic) s 40A.

120 *Ibid* ss 61A (definition of 'licensee'), 61D(1), 61E.

Information sharing for the purpose of regulation

- 4.147 Access to information is critical to the effective use of many of the regulatory tools described throughout this chapter. For example, regulators need to access information to determine whether a person is fit and proper to hold a licence. Lack of access to information could lead to unsuitable people gaining entry to an occupation or industry. Equally, difficulties in accessing information could cause unreasonable delays in processing applications even of suitable people, or result in applications of suitable people being refused.
- 4.148 Preliminary consultation conducted by the Commission for this reference has indicated that it may be necessary to improve information sharing between government agencies in order to prevent the infiltration of lawful occupations and industries by organised crime groups.
- 4.149 Some of the limitations of current information-sharing arrangements have been described as follows:
- systems to access the information of multiple government agencies for the purpose of risk assessment are rare [in Australia]. Police intelligence is usually the sole source of additional information (other than information gathered by the regulatory agency itself) on which the agency can rely to base its decisions, and the extent to which there is any sharing of that information by the police with the agency depends on the governing legislation. In Australia, information exchange between criminal justice and other agencies is usually highly constrained by legislation. Special arrangements may be made for the purpose of whole-of-government initiatives such as task forces, but overall information sharing is not of the same order as the institutionalised form of information exchange that is part of the Dutch administrative approach.¹²¹
- 4.150 The ‘Dutch administrative approach’ provides an alternative model of information sharing. Under the Dutch model, administrative authorities responsible for granting licences and similar authorisations may collect open-source information. If that information raises concerns, the administrative authorities have recourse to a centralised information/data-collection agency, the BIBOB Bureau. The BIBOB Bureau:
- accesses and collates confidential information not generally available to administrative authorities, which may include, for example, police intelligence and judicial and financial information. ... The Bureau then provides a written assessment to the requesting authority as to the integrity of the applicant and the risks involved in granting the application. The Bureau’s assessment is not binding on the authority, and the responsibility for the ultimate decision, and for defending that decision upon appeal, remains with the authority.¹²²
- 4.151 To some extent, the Dutch model is similar to the approach taken by some of the Victorian regulatory regimes examined for this paper. For example, often a Victorian regulator has the power, when considering a licence application, to conduct any inquiry it thinks fit.¹²³ The regulator may also be entitled or required to give details about the application to Victoria Police so that Victoria Police can make its own inquiries and report back to the regulator (see [4.59]–[4.60]).

121 Julie Ayling, ‘“Going Dutch”? Comparing Approaches to Preventing Organised Crime in Australia and the Netherlands’ (2014) 1(1) *European Review of Organised Crime* 78, 98.

122 *Ibid* 93.

123 See, eg, *Sex Work Act 1994* (Vic) s 36A(2)(a).

- 4.152 However, despite any apparent similarities between the Victorian and Dutch regimes, Australian agencies may have been less successful than their Dutch counterparts in overcoming problems related to information sharing.¹²⁴ This may be partly due to the BIBOB Bureau having or seeming to have access to a broader range of information than Victoria Police. Another advantage in the Netherlands may be that it has only one police force¹²⁵ while Australia's agencies exist within a federal structure where the Commonwealth, states and territories generally have their own regulators and police forces.
- 4.153 Whatever the lessons that may be learned by studying overseas approaches, it seems likely that solutions to any information-sharing problems in Victoria will have to take into account the specific issues in this jurisdiction, including the fact that:
- Information about people is held and used by a range of government agencies. This may lead to a duplication of work where a person is being investigated by, or is making applications to, more than one agency. In the absence of near-perfect information sharing, it is also likely to lead to different information being available to different agencies.
 - Information may be held by agencies in various Australian jurisdictions.
 - Relevant information about a person or organisation may be confidential (for example, information held by a police force may be operationally sensitive).
 - Even where information is shared, the time and cost of seeking information from agencies in different jurisdictions may be considerable.
- 4.154 Some of these issues may be dealt with through the creation of a single, centralised agency that collates and assesses probity-related information, at either a Victorian or Commonwealth level, similar to the BIBOB Bureau.
- 4.155 Another possibility may be the creation of a single, open-source database for regulators that holds information gathered in the course of regulatory activities, subject to necessary restrictions.

Question

- 15 Are there any problems with current information-sharing arrangements? If so, how might these problems be overcome? Information-sharing arrangements can refer to information sharing between regulators and Victoria Police, between different Victorian regulators, between Victorian and interstate regulators, and between any other agencies that hold relevant information.

Protections for people affected by decisions of the regulator

- 4.156 The discussion throughout this chapter shows that regulators often have considerable powers to restrict entry into an occupation or industry, or to remove an occupation or industry participant. The exercise of these powers may limit the employment and business opportunities of prospective participants or ex-participants. The rights of these people may be protected by administrative law measures such as rights to reasons for the decision and rights of review. However, under some of the regulatory regimes examined, these rights may be limited.

Reasons for the decision

- 4.157 The provision of reasons for a regulator's decision may permit scrutiny of the regulator's decision making, and may allow a person to address the matters that underlie the decision (for example, the reasons for why a licence was refused).
- 4.158 However, the provision of reasons may be discretionary. For example, the VCGLR is not required to give reasons for a decision to either grant or refuse an application for a gaming industry employee's licence, but may give reasons if it thinks fit.¹²⁶
- 4.159 Reasons for a decision may be restricted where the decision is made on the basis of protected information. For example, under the Private Security Act, if Victoria Police decides not to grant a private security business licence because the granting of the licence is not in the public interest, and that decision is made wholly or partly on the basis of protected information, the applicant is not entitled to reasons, to the extent that the reasons relate to the protected information.¹²⁷ However, if the applicant seeks review of the decision by the Victorian Civil and Administrative Tribunal (VCAT), Victoria Police must provide VCAT with the reasons for the decision.¹²⁸

Rights of review

- 4.160 Rights of review vary among the regulatory regimes examined for this paper.
- 4.161 For example, under the Gambling Regulation Act, if a single VCGLR commissioner refuses to grant a gaming industry employee's licence, the applicant may appeal against the decision to the full VCGLR.¹²⁹ An appeal must specify the grounds on which it is made (despite the fact that the applicant may not have received reasons for the decision).¹³⁰ The decision of the full VCGLR on an appeal may, but does not have to, include the reasons for the decision.¹³¹
- 4.162 Under the Private Security Act, a person whose interests are affected by a decision to refuse an application for a private security business licence may apply to VCAT for a review of that decision.¹³² However, that right of appeal does not exist if Victoria Police refuses to grant the licence because the applicant or a close associate of the applicant is a prohibited person.¹³³
- 4.163 A regulatory regime may make certain protections available to licence applicants in the event of review. For example, under the Private Security Act, if Victoria Police informs VCAT that a decision not to grant a licence was based on protected information, VCAT must appoint a special counsel to represent the interests of the applicant.¹³⁴ If VCAT determines that the information in question is in fact protected information, only Victoria Police and the special counsel are entitled to be present at the hearing of the appeal to the extent that it relates to that protected information.¹³⁵

126 *Gambling Regulation Act 2003* (Vic) s 9A.1.5(4).

127 *Private Security Act 2004* (Vic) s 29A(1).

128 *Ibid* s 29A(2)(d).

129 *Gambling Regulation Act 2003* (Vic) s 9A.1.7(1).

130 *Ibid* ss 9A.1.5(4), 9A.1.7(2).

131 *Ibid* s 9A.1.7(4).

132 *Private Security Act 2004* (Vic) s 150(1).

133 *Ibid* s 150(2).

134 *Ibid* s 150B(1).

135 *Ibid* ss 150C, 150D.

Question

- 16 Please comment on the extent to which regulatory tools that may be used to prevent the infiltration of organised crime groups into lawful occupations and industries may:
- (a) insufficiently protect the rights of people affected by decisions of the regulator
 - (b) insufficiently protect the rights of any other stakeholder
 - (c) impose additional burdens on regulators, courts and/or tribunals in relation to the provision of reasons for decisions and opportunities for review.

Other legal responses

4.164 The terms of reference ask whether, to what extent and in what circumstances regulatory regimes may be effective in helping to prevent organised crime group infiltration of lawful occupations or industries. To this end, there may be legal measures that are preferable or complementary to occupation/industry-based regulatory regimes in preventing infiltration.

Anti-association/crime control orders

4.165 Anti-association or crime control orders could possibly be used independently of occupation/industry-based regimes to prevent or disrupt organised crime group infiltration of lawful occupations or industries.

4.166 In Victoria, the *Criminal Organisations Control Act 2012* (Vic) sets out a regime for the making of control orders in respect of organisations that are involved in serious criminal activity, and the individual members of such organisations. Broadly speaking, a control order may prohibit association between organised crime group members, the operation of a business, and/or the use of property by individuals or organisations subject to control orders.¹³⁶ Victoria Police has indicated that the *Criminal Organisations Control Act* has not been widely used to date (the Act only came into operation in March 2013).¹³⁷

4.167 Crime control orders may also work in tandem with occupation/industry-based regimes; for example, such orders may be the basis for a group-based exclusion under a licensing regime (see [4.50]–[4.56]).

Anti-money laundering laws

- 4.168 As Chapter 3 indicated, the concealment or laundering of the proceeds of crime appears to be one of the key purposes of organised crime group infiltration of lawful occupations and industries. Anti-money laundering laws may therefore help make certain business types and professional facilitators less attractive to organised crime groups.
- 4.169 The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act) sets out a reporting regime for entities that deliver certain 'designated services'. A wide range of services are prescribed as designated services in four principal areas of industry: banks and other lenders, non-bank financial service providers, gambling and bullion service providers, and money service providers.¹³⁸ These individuals and businesses are known as 'reporting entities'.¹³⁹ Among other things, reporting entities are obliged to enrol with the Australian Transaction Reports and Analysis Centre (AUSTRAC), implement and maintain an anti-money laundering program to identify, assess and mitigate and manage the risk of money laundering, and lodge transaction reports and compliance reports with AUSTRAC.¹⁴⁰
- 4.170 In addition to the reporting regime under the AML/CTF Act, governments have sought to curtail money laundering through the creation of criminal offences under Commonwealth and Victorian law that prohibit certain dealings with the proceeds of crime.¹⁴¹

Criminal asset forfeiture and confiscation

- 4.171 Criminal asset confiscation orders may assist in preventing infiltration, insofar as the benefits of any criminal conduct arising from infiltration may be neutralised through the forfeiture of tainted property or the making of a pecuniary penalty order.
- 4.172 In Victoria, the *Confiscation Act 1997* (Vic) sets out a regime for forfeiture and confiscation of the proceeds of crime. Forfeiture orders may be available upon conviction for an offence (conviction-based orders)¹⁴² or on a civil basis without a finding of guilt or conviction (civil-based orders).¹⁴³ A pecuniary penalty order may also be available upon conviction for an offence, which requires a person to pay a sum of money to the state that is equivalent to the value of the benefits a person derived from an offence.¹⁴⁴
- 4.173 At the Commonwealth level, the *Proceeds of Crime Act 2002* (Cth) sets out a regime for confiscation of the proceeds of criminal conduct in contravention of Commonwealth laws. The regime includes conviction-based and civil-based forfeiture orders and pecuniary penalty orders.¹⁴⁵

Unexplained wealth orders

- 4.174 Unexplained wealth orders empower a court to order the forfeiture of property where the court is satisfied that a person is reasonably suspected of having engaged in serious criminal activity (regardless of whether that person has been charged with, tried or convicted of the offence/offences that are suspected of constituting the serious criminal activity), or where the court is satisfied that there are reasonable grounds to suspect that the property in question was not lawfully acquired.¹⁴⁶

138 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 6; Australian Transaction Reports and Analysis Centre and Attorney-General's Department, *Review of the AML/CTF Regime*, Issues Paper (2013) 18.

139 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 5.

140 Australian Transaction Reports and Analysis Centre and Attorney-General's Department, above n 138, 11.

141 *Crimes Act 1958* (Vic) ss 194, 195; *Criminal Code Act 1995* (Cth) ch 10 pt 10.2.

142 *Confiscation Act 1997* (Vic) pt 3 div 1, div 2, div 4.

143 *Ibid* pt 4.

144 *Ibid* pt 8.

145 *Proceeds of Crime Act 2002* (Cth) ss 47–49, 116.

146 *Confiscation Act 1997* (Vic) pt 4A. See also *Proceeds of Crime Act 2002* (Cth) pt 2-6 (different criteria apply under this Act).

- 4.175 Unexplained wealth orders could possibly be used against organised crime group members who seek to remain at arm's length from criminal activity¹⁴⁷ (for example, by using complex legal structures to conceal the true ownership of businesses used to facilitate crime or to conceal or launder the proceeds of crime). However, the utility of unexplained wealth orders is yet to be fully ascertained; in Victoria, the legislation for the making of such orders was only introduced in 2014, and as at 2012 no applications had been made for an unexplained wealth order under the Commonwealth Proceeds of Crime Act.¹⁴⁸ (The unexplained wealth order provisions were inserted into the Commonwealth Proceeds of Crime Act and became operative in 2010.)¹⁴⁹

Question

- 17 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries:
- (a) What issues are, or might be, better dealt with through legal responses other than occupation/industry-based regulatory regimes (including but not limited to the 'other legal responses' described at pages 66–68)?
 - (b) What issues are, or might be, better dealt with through occupation/industry-based regulatory regimes rather than other legal responses?

147 See Lorana Bartels, 'Unexplained Wealth Laws in Australia' *Trends & Issues in Crime and Criminal Justice* no. 395 (Australian Institute of Criminology, 2010) 4–5.

148 Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, above n 93, 405.

149 Part 2-6 of the *Proceeds of Crime Act 2002* (Cth) (unexplained wealth orders) was inserted by the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010* (Cth). Part 2-6 commenced operation on 19 February 2010.

Conclusion

5. Conclusion

- 5.1 This paper has examined a broad range of issues relating to the establishment of principles for assessing the risk of infiltration by organised crime groups of lawful occupations and industries, and for developing suitable regulatory responses.
- 5.2 The review is directed at preventing such infiltration. It is not directed at the investigation, prosecution or punishment of existing organised crime activity.
- 5.3 The Commission welcomes submissions from all areas of the community. It particularly invites submissions from:
- law enforcement agencies
 - regulators
 - occupation and industry participants or potential entrants
 - specialists in organised crime and regulatory strategies.
- 5.4 You can provide input to the Commission's review by responding to the questions throughout the paper. The full list of questions is provided at pages 72–74. Information about how to make a submission is provided at pages v–vi. To allow the Commission time to consider your views before deciding on final recommendations, **the submission deadline is 3 August 2015.**
- 5.5 Your responses to these questions will assist the Commission to determine the most useful principles for recommendation to the Attorney-General.



Questions

Questions

- 1 What changes or additions would you make to the information presented in Table 1 (pages 23–26) and Table 2 (pages 31–32) regarding the purposes of infiltration? You may wish to comment on occupations or industries that are not listed in Tables 1 or 2.
- 2 Is the draft model for assessing the risk of infiltration (pages 32–37) a helpful way to assess the risk of organised crime group infiltration of lawful occupations and industries?
- 3 What changes or additions would you make to the draft model for assessing the risk of infiltration (pages 32–37)?
- 4 Having regard to the regulatory tools described in Chapter 4, which regulatory tools are, or might be, useful in addressing each of the risks identified in the draft model for assessing the risk of infiltration (pages 32–37)?
- 5 For the purpose of preventing organised crime group infiltration of lawful occupations and industries, what are the advantages and disadvantages of regulation by:
 - (a) a traditional occupation or industry regulator such as the Business Licensing Authority
 - (b) Victoria Police
 - (c) both a traditional regulator and Victoria Police?
- 6 If a regulator is required to prevent the infiltration of organised crime groups into an occupation or industry, how does this affect, or how might this affect, the pursuit of its other regulatory purposes and objects (whether positively or negatively)?
- 7 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate entry into an occupation or industry (for example, by requiring would-be entrants to obtain a licence)?

- 8 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of any of the following:
- (a) positive licensing regimes
 - (b) negative licensing regimes
 - (c) registration schemes
 - (d) rules relating to the effective control of a business
 - (e) rules relating to who may be employed in a business
 - (f) rules relating to re-entry
 - (g) other entry-regulation tools that you would like to comment on?

Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.

- 9 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of group-based licence exclusions?
- 10 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to monitor an occupation or industry?
- 11 When monitoring an occupation or industry in order to prevent or detect the infiltration of organised crime groups, what are the costs and benefits of any of the following:
- (a) short licence periods/regular licence renewals
 - (b) a complaints-based model versus an inspection-based model
 - (c) investigative powers (or particular investigative powers)
 - (d) prohibited practices
 - (e) record-keeping obligations
 - (f) continuous disclosure obligations
 - (g) other monitoring tools that you would like to comment on?

Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.

- 12 What are the most useful ways of detecting people (particularly organised crime groups) who are operating in a lawful occupation or industry without the required authorisation (such as a licence)?
- 13 Which enforcement measures are useful, or might be useful, in preventing organised crime group infiltration of lawful occupations and industries?
- 14 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate the exit of people from an occupation or industry? Which tools are, or might be, useful for this purpose?

- 15 Are there any problems with current information-sharing arrangements? If so, how might these problems be overcome? Information-sharing arrangements can refer to information sharing between regulators and Victoria Police, between different Victorian regulators, between Victorian and interstate regulators, and between any other agencies that hold relevant information.
- 16 Please comment on the extent to which regulatory tools that may be used to prevent the infiltration of organised crime groups into lawful occupations and industries may:
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Victorian
Law Reform
Commission

**Use of Regulatory Regimes
in Preventing the Infiltration
of Organised Crime into Lawful
Occupations and Industries**

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