

## Online Submission to the Victorian Law Reform Commission

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

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| <b>Number</b> | 2                    |
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| <b>Date</b>   | 30 July 2015         |

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| <b>Question 1</b> | What changes or additions would you make to the information presented in Table 1 (page 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.  |
| <b>Response</b>   | No response   |
| <b>Question 2</b> | Is the draft model for assessing the risk of infiltration (pages 32 to 37) a helpful way to assess the risk of organised crime group infiltration of lawful occupations and industries?   |
| <b>Response</b>   | No response   |
| <b>Question 3</b> | What changes or additions would you make to the draft model for assessing the risk of infiltration (pages 32 to 37)?  |
| <b>Response</b>   | No response   |
| <b>Question 4</b> | 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 to 37)?  |
| <b>Response</b>   | My general response to these tools is to remind policy-makers that academic evidence needs to be in the forefront of their thinking. My expertise is in the private security sphere. The academic evidence suggests that no one 'bullet' is enough ....there are a range of things that will make the life of the organised criminal too difficult in trying to infiltrate the industry. I am convinced that one of the best mechanisms is to get the industry associations on board. ASIAL was spurned by the NSW regulator because they overlooked a bogus accreditation / training operator. The NSW regulator cut off its nose to spite their face in so doing. |
| <b>Question 5</b> | For the purpose of preventing organised crime group infiltration of lawful occupations and industries, what are the advantages and disadvantages of regulation by:<br><br>(a) a traditional occupation or industry regulator such as the Business Licensing Authority<br><br>(b) Victoria Police<br><br>(c) both a traditional regulator and Victoria Police?   |
| <b>Response</b>   | (c) both a traditional regulator and Victoria Police?   |

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| <b>Question 6</b>  | 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)?   |
| <b>Response</b>    | No response   |
| <b>Question 7</b>  | 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)?   |
| <b>Response</b>    | Yes. Licensing is the minimum and it allows a database, with fingerprints of handprints to match.   |
| <b>Question 8</b>  | <p>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:</p> <ul style="list-style-type: none"> <li>(a) positive licensing regimes</li> <li>(b) negative licensing regimes</li> <li>(c) registration schemes</li> <li>(d) rules relating to the effective control of a business</li> <li>(e) rules relating to who may be employed in a business</li> <li>(f) rules relating to re-entry</li> <li>(g) other entry-regulation tools that you would like to comment on?</li> </ul> <p>Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.</p> |
| <b>Response</b>    | I have long been of the view that the market will drive the corrupt operators from the industry especially of governments and private providers operate a 'gold standard' scheme where only those that meet the gold standard will be eligible for the most lucrative contracts. Governments seem keen to go to the cheapest on the market. A corrupt operator can be the cheapest. A gold standard approach would wipe them out  |
| <b>Question 9</b>  | 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?   |
| <b>Response</b>    | No response   |
| <b>Question 10</b> | In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to monitor an occupation or industry?   |
| <b>Response</b>    | No response   |
| <b>Question 11</b> | <p>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:</p> <ul style="list-style-type: none"> <li>(a) short licence periods/regular licence renewals</li> </ul>  |

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|                    | <p>(b) a complaints-based model versus an inspection-based model</p> <p>(c) investigative powers (or particular investigative powers)</p> <p>(d) prohibited practices</p> <p>(e) record-keeping obligations</p> <p>(f) continuous disclosure obligations</p> <p>(g) other monitoring tools that you would like to comment on?</p> <p>Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.</p>             |
| <b>Response</b>    | No response  |
| <b>Question 12</b> | 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)?   |
| <b>Response</b>    | No response  |
| <b>Question 13</b> | Which enforcement measures are useful, or might be useful, in preventing organised crime group infiltration of lawful occupations and industries?  |
| <b>Response</b>    | No response  |
| <b>Question 14</b> | 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?  |
| <b>Response</b>    | No response  |
| <b>Question 15</b> | <p>Are there any problems with current information-sharing arrangements? If so, how might these problems be overcome?</p> <p>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.</p>   |
| <b>Response</b>    | The main information sharing is the convictions data ...a convicted person loses his licence etc   |
| <b>Question 16</b> | <p>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:</p> <p>(a) insufficiently protect the rights of people affected by decisions of the regulator</p> <p>(b) insufficiently protect the rights of any other stakeholder</p> <p>(c) impose additional burdens on regulators, courts and/or tribunals in relation to the provision of reasons for decisions and opportunities for review.</p> |
| <b>Response</b>    | So called 'light touch' regulation applies to industries less likely to be infiltrated. In other words, you should not operate a 'one size fits all' model.  |
| <b>Question 17</b> | In seeking to prevent the infiltration of organised crime groups into  |

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|                 | <p>lawful occupations and industries:</p> <p>(a) are there issues that 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 to 68)?</p> <p>(b) are there issues that are, or might be, better dealt with through occupation/industry-based regulatory regimes rather than other legal responses?</p> |
| <b>Response</b> | <p>I think we all know the limitations of the law. Self-regulatory models have their limitations too. Industry association and market-based models are useful but limited. The bottom line is that you deploy the tools that best 'fit' and constantly tweak them to maximum advantage. See Prenzler and Sarre, 2014.</p>   |