

THE CRIMINAL LAW (TWO STRIKES CHILD SEX OFFENDERS) AMENDMENT ACT 2012.

THE CRIMINAL LAW AMENDMENT ACT 2012

THE WEAPONS AND OTHER LEGISLATION AMENDMENT ACT 2012 THE CRIMINAL LAW (FALSE EVIDENCE BEFORE PARLIAMENT) AMENDMENT ACT 2012 THE PENALTIES AND SENTENCES AND OTHER LEGISLATION AMENDMENT ACT 2012 THE YOUTH JUSTICE (BOOTCAMP ORDERS) AND OTHER LEGISLATION AMENDMENT ACT2012 THE CRIMINAL PROCEEDS CONFISCATION (UNEXPLAINED WEALTH AND SERIOUS DRUG OFFENDERS CONFISCATION ORDER) AMENDMENT ACT 2013 THE CRIMINAL LAW AND OTHER LEGISLATION AMENDMENT ACT 2013 THE CRIMINAL LAW (CHILD EXPLOITATION AND DANGEROUS DRUGS) AMENDMENT ACT 2013 THE VICIOUS LAWLESS ASSOCIATION DISESTABLISHMENT ACT 2013 THE CRIMINAL LAW (CRIMINAL ORGANISATION DISRUPTION) AMENDMENT ACT 2013 THE CRIMINAL LAW AMENDMENT (PUBLIC INTEREST DECLARATION) AMENDMENT ACT 2013



VICIOUS LAWLESS ASSOCIATION DISESTABLISHMENT ACT 2013

and

CRIMINAL LAW (CRIMINAL ORGANISATIONS DISRUPTION) AMENDMENT ACT 2013

SECTION 16(3A) OF THE BAIL ACT



TOTO, I'VE A FEELING WE'RE NOT IN KANSAS ANYMORE!

VICIOUS LAWLESS ASSOCIATION DISESTABLISHMENT ACT 2013 ("THE VLAD ACT")

(D) ANY OTHER GROUP OF 3 OR MORE PERSONS BY WHATEVER NAME CALLED, WHETHER ASSOCIATED FORMALLY OR INFORMALLY AND WHETHER THE GROUP IS LEGAL OR ILLEGAL.

(B) AN UNINCORPORATED ASSOCIATION;

(A) A CORPORATION;

(C) A CLUB OR LEAGUE;



"PARTICIPANT"

FOR THIS ACT, A PERSON IS A **PARTICIPANT** IN THE AFFAIRS OF AN ASSOCIATION IF THE PERSON—

(A) (WHETHER BY WORDS OR CONDUCT, OR IN ANY OTHER WAY) ASSERTS, DECLARES OR ADVERTISES HIS OR HER MEMBERSHIP OF, OR ASSOCIATION WITH, THE ASSOCIATION; OR

(B) (WHETHER BY WORDS OR CONDUCT, OR IN ANY OTHER WAY) SEEKS TO BE A MEMBER OF, OR TO BE ASSOCIATED WITH, THE ASSOCIATION; OR

(C) HAS ATTENDED MORE THAN 1 MEETING OR GATHERING OF PERSONS WHO PARTICIPATE IN THE AFFAIRS OF THE ASSOCIATION IN ANY WAY; OR

(D) HAS TAKEN PART ON ANY 1 OR MORE OCCASIONS IN THE AFFAIRS OF THE ASSOCIATION IN ANY OTHER WAY.

"OFFICE BEARER"

OFFICE BEARER, OF AN ASSOCIATION, MEANS—

(A) A PERSON WHO IS A PRESIDENT, VICE-PRESIDENT, SERGEANT-AT-ARMS, TREASURER, SECRETARY, DIRECTOR OR ANOTHER OFFICE BEARER OR A SHAREHOLDER OF THE ASSOCIATION; OR

(B) A PERSON WHO (WHETHER BY WORDS OR CONDUCT, OR IN ANY OTHER WAY) ASSERTS, DECLARES OR ADVERTISES HIMSELF OR HERSELF TO HOLD A POSITION OF AUTHORITY OF ANY KIND WITHIN THE ASSOCIATION.

"PROOF THAT A PERSON IS AN OFFICE BEARER"

SECTION 6

FOR THIS ACT, PROOF THAT A PERSON-

(A) HAS ASSERTED, DECLARED OR ADVERTISED THAT HE OR SHE IS AN OFFICE BEARER OF AN ASSOCIATION; OR

(B) IS COMMONLY TREATED BY OTHER PERSONS WHO PARTICIPATE IN THE AFFAIRS OF THE ASSOCIATION AS AN OFFICE BEARER OF THE ASSOCIATION; OR

(C) EXERCISES OR PURPORTS TO EXERCISE AUTHORITY IN THE AFFAIRS OF THE ASSOCIATION;

IS, UNLESS THE CONTRARY IS PROVED, SUFFICIENT PROOF THAT THE PERSON IS AN OFFICE BEARER OF THE ASSOCIATION. **"VICIOUS LAWLESS ASSOCIATE**

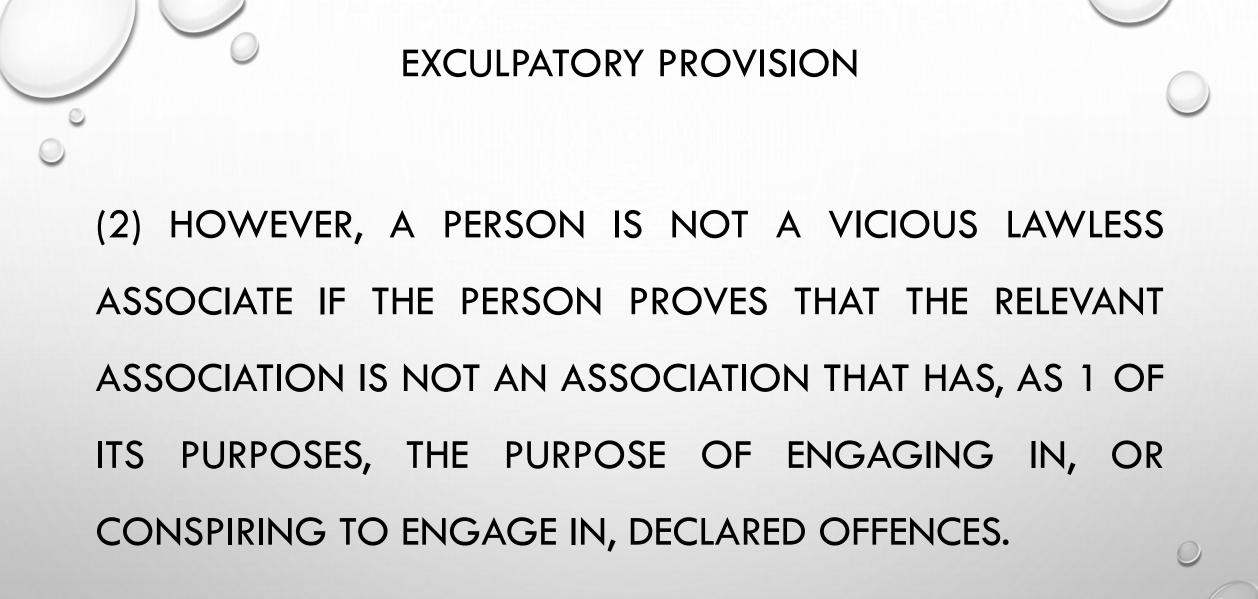
FOR THIS ACT, A PERSON IS A VICIOUS LAWLESS ASSOCIATE IF THE PERSON-

(A) COMMITS A DECLARED OFFENCE; AND

SECTION 5(1)

(B) AT THE TIME THE OFFENCE IS COMMITTED, OR DURING THE COURSE OF THE COMMISSION OF THE OFFENCE, IS A PARTICIPANT IN THE AFFAIRS OF AN ASSOCIATION (RELEVANT ASSOCIATION); AND

(C) DID OR OMITTED TO DO THE ACT THAT CONSTITUTES THE DECLARED OFFENCE FOR THE PURPOSES OF, OR IN THE COURSE OF PARTICIPATING IN THE AFFAIRS OF, THE RELEVANT ASSOCIATION.





DECLARED OFFENCE MEANS-

(A) AN OFFENCE AGAINST A PROVISION MENTIONED IN SCHEDULE 1; OR

(B) AN OFFENCE PRESCRIBED UNDER A REGULATION TO BE A DECLARED OFFENCE.

EXAMPLES OF "DECLARED OFFENCES"

- AFFRAY (IF THE PERSON IS A MEMBER OF A CRIMINAL ORGANISATION, THE MINIMUM IS NOW 6 MONTHS ACTUAL IMPRISONMENT. THE MAXIMUM IS NOW 7 YEARS)
- **RIOT** (CRIMINAL CODE)
- UNLAWFUL ASSEMBLY, RIOT OR MUTINY (CORRECTIVE SERVICES ACT)
- ASSAULT OCCASIONING BODILY HARM
- SERIOUS ASSAULT
- POSSESSION OF A DANGEROUS DRUG (SIMPLICITER, AND NOT LIMITED TO ANY CLASS OF DRUG)
- STEALING OR RECEIVING A FIREARM OR AMMUNITION

CONSEQUENCES

SECTION 7

(1) A COURT SENTENCING A VICIOUS LAWLESS ASSOCIATE FOR A DECLARED OFFENCE **MUST IMPOSE ALL** OF THE FOLLOWING SENTENCES ON THE VICIOUS LAWLESS ASSOCIATE—

(A) A SENTENCE FOR THE OFFENCE UNDER THE LAW APART FROM THIS ACT AND WITHOUT REGARD TO ANY FURTHER PUNISHMENT THAT MAY OR WILL BE IMPOSED UNDER THIS ACT;

(B) A FURTHER SENTENCE OF 15 YEARS IMPRISONMENT SERVED WHOLLY IN A CORRECTIVE SERVICES FACILITY;

(C) IF THE VICIOUS LAWLESS ASSOCIATE WAS, AT THE TIME OF THE COMMISSION OF THE OFFENCE, OR DURING THE COURSE OF THE COMMISSION OF THE OFFENCE, **AN OFFICE BEARER** OF THE RELEVANT ASSOCIATION—**A FURTHER SENTENCE OF 10 YEARS IMPRISONMENT SERVED WHOLLY IN A CORRECTIVE SERVICES FACILITY** WHICH MUST BE SERVED CUMULATIVELY WITH THE FURTHER SENTENCE MENTIONED IN PARAGRAPH (B).

CONSEQUENCES, CONT'D

(2) A FURTHER SENTENCE—

(A) MUST NOT BE MITIGATED OR REDUCED UNDER ANY OTHER ACT OR LAW; AND

(B) MUST BE ORDERED TO BE SERVED CUMULATIVELY WITH THE BASE SENTENCE IMPOSED.

(3) HOWEVER, IF THE BASE SENTENCE DOES NOT-

(A) IMPOSE A TERM OF IMPRISONMENT ON THE VICIOUS LAWLESS ASSOCIATE; OR

(B) REQUIRE THE ASSOCIATE TO IMMEDIATELY SERVE A TERM OF IMPRISONMENT IN A CORRECTIVE SERVICES FACILITY;

THE ASSOCIATE IS TO IMMEDIATELY BEGIN TO SERVE THE FURTHER SENTENCE MENTIONED IN SUBSECTION (1)(B) AND THE BASE SENTENCE IS TO HAVE EFFECT, SO FAR AS PRACTICABLE, AT THE END OF THE FURTHER SENTENCE OR SENTENCES.

CONSEQUENCES, CONT'D

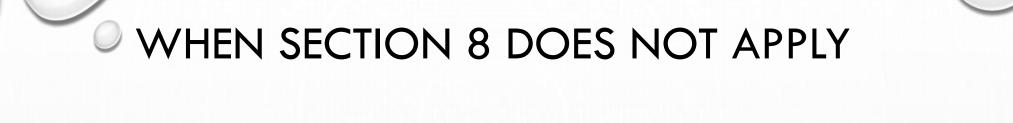
- IF THE "BASE SENTENCE" IS LIFE IMPRISONMENT, THE 15 YEARS COMMENCES FROM THE PAROLE ELIGIBILITY DATE APPLICABLE TO THE LIFE SENTENCE: SECTION 7(4)
- IF THE OFFENDER IS BEING SENTENCED FOR MORE THAN ONE DECLARED OFFENCE, THE FURTHER SENTENCE CAN ONLY BE IMPOSED WITH RESPECT TO ONE OF THEM: SECTION 7(5)
- BUT, WHEN DECIDING WHICH OFFENCE TO CHOOSE, THE COURT MUST SELECT THE OFFENCE THAT RESULTS IN THE LONGEST PERIOD OF IMPRISONMENT: SECTION 7(6)



SECTION 8

A "VLA" IS SENTENCED TO 5 YEARS IMPRISONMENT WITH PAROLE ELIGIBILITY AFTER 3 YEARS, AND THEN TO A FURTHER SENTENCE OF 25 YEARS.

THE VLA'S PAROLE ELIGIBILITY DATE WILL BE AFTER SERVING 28 YEARS.



SECTION 9

(2) FOR THE PENALTIES AND SENTENCES ACT 1992, SECTION 13A, AN OFFENDER IS TAKEN TO HAVE UNDERTAKEN TO COOPERATE WITH LAW ENFORCEMENT AGENCIES IN A PROCEEDING ABOUT AN OFFENCE IF AND ONLY IF—

(A) THE OFFENDER HAS OFFERED IN WRITING TO COOPERATE WITH LAW ENFORCEMENT AGENCIES IN A PROCEEDING ABOUT A DECLARED OFFENCE; AND

(B) THE OFFER HAS BEEN ACCEPTED IN WRITING BY THE COMMISSIONER OF THE POLICE SERVICE.

WHEN SECTION 8 DOES NOT APPLY, CONT'D

SECTION 9

(3) WHEN DECIDING WHETHER TO ACCEPT AN OFFER OF COOPERATION, THE COMMISSIONER MUST BE SATISFIED THAT THE COOPERATION WILL BE OF SIGNIFICANT USE IN A PROCEEDING ABOUT A DECLARED OFFENCE....

(5) SUBJECT TO SUBSECTION (6), THE DECISION-

(A) IS FINAL AND CONCLUSIVE; AND

(B) CAN NOT BE CHALLENGED, APPEALED AGAINST, REVIEWED, QUASHED, SET ASIDE OR CALLED IN QUESTION IN ANY OTHER WAY UNDER THE JUDICIAL REVIEW ACT 1991 OR OTHERWISE (WHETHER BY THE SUPREME COURT, ANOTHER COURT, A TRIBUNAL OR ANOTHER ENTITY); AND

(C) IS NOT SUBJECT TO ANY DECLARATORY, INJUNCTIVE OR OTHER ORDER OF THE SUPREME COURT, ANOTHER COURT, A TRIBUNAL OR ANOTHER ENTITY ON ANY GROUND.



SECTION 9

(6) THE JUDICIAL REVIEW ACT 1991, PART 5 APPLIES TO THE DECISION TO THE EXTENT IT IS AFFECTED BY JURISDICTIONAL ERROR.

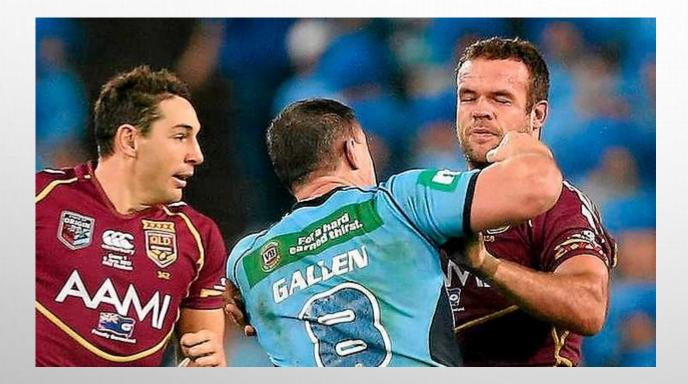
ESTABLISHING JURISDICTIONAL ERROR IS NO EASY TASK

SEE, FOR EXAMPLE: <u>PARKER V PRESIDENT OF THE INDUSTRIAL COURT OF QUEENSLAND</u> [2009] QCA 120 PER KEANE JA AT [32] ET SEQ

SUMMARY

- THE CONCEPT OF A "CRIMINAL ORGANISATION" IS NOT RELEVANT UNDER THE VLAD ACT, WHICH IS CONCERNED WITH "ASSOCIATION".
 - THESE PROVISIONS ARE NOT LIMITED TO OMCG'S
 - THE LEVEL OF FORMALITY REQUIRED TO ESTABLISH AN ASSOCIATION IS UNSPECIFIED
 - MERELY TAKING PART IN THE INDEX OFFENCE IS SUFFICIENT TO AMOUNT TO PARTICIPATION IN THE
 AFFAIRS OF THE ASSOCIATION
 - 3 PEOPLE WHO FORM A PLAN TO ASSAULT ANOTHER PERSON AND WHO DO SO <u>MAY</u> BE CAUGHT
 - 3 PEOPLE WHO UNDERTAKE A BUSINESS OF TRAFFICKING IN DRUGS ARE ALMOST CERTAINLY CAUGHT
 - IF A PERSON IS ALLEGED TO BE A VLA, THAT SHOULD BE SPECIFICALLY CHARGED AS A
 CIRCUMSTANCE OF AGGRAVATION
 - ISSUES THEN ARISE AS TO WHETHER THE INDICTMENT IS LIABLE TO BE QUASHED OR SEVERED

UNINTENDED RESULTS



PAUL GALLEN GETS \$1000 FINE WITH NO CONVICTION RECORDED...

PLUS 15 YEARS

PLUS ANOTHER 10 AS AN "OFFICE BEARER"

ALL FUTURE STATE OF ORIGIN GAMES TO BE PLAYED IN NSW

CRIMINAL LAW (CRIMINAL ORGANISATIONS DISRUPTION) AMENDMENT ACT 2013 ("COD ACT") SECTION 16(3A) OF THE BAIL ACT 1980

AMENDMENT OF SECTION 16 OF THE BAIL ACT

SECTION 4 OF THE COD ACT INSERTS NEW PROVISIONS INTO SECTION 16:

. . .

(3A) IF THE DEFENDANT IS A PARTICIPANT IN A CRIMINAL ORGANISATION, THE COURT OR POLICE OFFICER MUST—

(a) REFUSE TO GRANT BAIL UNLESS THE DEFENDANT SHOWS CAUSE WHY THE DEFENDANT'S DETENTION IN CUSTODY IS NOT JUSTIFIED;

(3C) FOR SUBSECTION (3A), IT DOES NOT MATTER WHETHER THE OFFENCE WITH WHICH THE DEFENDANT IS CHARGED IS AN INDICTABLE OFFENCE, A SIMPLE OFFENCE OR A REGULATORY OFFENCE.

"CRIMINAL ORGANISATION"

SECTION 1 OF THE CRIMINAL CODE:

CRIMINAL ORGANISATION MEANS—

(A) AN ORGANISATION OF 3 OR MORE PERSONS-

(I) WHO HAVE AS THEIR PURPOSE, OR 1 OF THEIR PURPOSES, ENGAGING IN, ORGANISING, PLANNING, FACILITATING, SUPPORTING, OR OTHERWISE CONSPIRING TO ENGAGE IN, SERIOUS CRIMINAL ACTIVITY AS DEFINED UNDER THE CRIMINAL ORGANISATION ACT 2009; AND

(II) WHO, BY THEIR ASSOCIATION, REPRESENT AN UNACCEPTABLE RISK TO THE SAFETY, WELFARE OR ORDER OF THE COMMUNITY; OR

(B) A CRIMINAL ORGANISATION UNDER THE CRIMINAL ORGANISATION ACT 2009;

(C) AN ENTITY DECLARED UNDER A REGULATION TO BE A CRIMINAL ORGANISATION.

"SERIOUS CRIMINAL ACTIVITY"

SECTION 6, CRIMINAL ORGANISATION ACT 2009

SERIOUS CRIMINAL ACTIVITY MEANS-

(A) A SERIOUS CRIMINAL OFFENCE; OR

(B) AN ACT DONE OR OMISSION MADE OUTSIDE QUEENSLAND, INCLUDING OUTSIDE AUSTRALIA, THAT, IF DONE OR MADE IN QUEENSLAND WOULD HAVE BEEN OR WOULD BE A SERIOUS CRIMINAL OFFENCE.

"PARTICIPANT"

SECTION 60A, CRIMINAL CODE

PARTICIPANT, IN A CRIMINAL ORGANISATION, MEANS-

(A) IF THE ORGANISATION IS A BODY CORPORATE—A DIRECTOR OR OFFICER OF THE BODY CORPORATE; OR

(B) A PERSON WHO (WHETHER BY WORDS OR CONDUCT, OR IN ANY OTHER WAY) ASSERTS, DECLARES OR ADVERTISES HIS OR HER MEMBERSHIP OF, OR ASSOCIATION WITH, THE ORGANISATION; OR

(C) A PERSON WHO (WHETHER BY WORDS OR CONDUCT, OR IN ANY OTHER WAY) SEEKS TO BE A MEMBER OF, OR TO BE ASSOCIATED WITH, THE ORGANISATION; OR

(D) A PERSON WHO ATTENDS MORE THAN 1 MEETING OR GATHERING OF PERSONS WHO PARTICIPATE IN THE AFFAIRS OF THE ORGANISATION IN ANY WAY; OR

(E) A PERSON WHO TAKES PART IN THE AFFAIRS OF THE ORGANISATION IN ANY OTHER WAY;

BUT DOES NOT INCLUDE A LAWYER ACTING IN A PROFESSIONAL CAPACITY.



SECTION 7, CRIMINAL ORGANISATION ACT

(1) SERIOUS CRIMINAL OFFENCE MEANS THE FOLLOWING-

(A) AN INDICTABLE OFFENCE PUNISHABLE BY AT LEAST 7 YEARS IMPRISONMENT, INCLUDING AN OFFENCE AGAINST A REPEALED PROVISION OF AN ACT;

(B) AN OFFENCE AGAINST THIS ACT;

(C) AN OFFENCE AGAINST A SECTION OF THE CRIMINAL CODE MENTIONED IN SCHEDULE 1.

EXAMPLES OF SERIOUS CRIMINAL OFFENCES

- ASSAULT OCCASIONING BODILY HARM
- POSSESSION OF A DANGEROUS DRUG
- THREATENING VIOLENCE
- ASSAULTS IN INTERFERENCE WITH FREEDOM OF TRADE OR WORK
- THREATS

SECTION 16(3A) V 16(3)

- IS THE "SHOW CAUSE" TEST ANY DIFFERENT?
 - (3A) SAYS "<u>MUST</u> REFUSE" TO GRANT BAIL…"
 - (3) SAYS "<u>SHALL</u> REFUSE…"
- THE SAME WORDS USED IN DIFFERENT PLACES IN THE ONE SECTION SHOULD HAVE THE SAME MEANING
 - (3A) SHOULD NOT REQUIRE "EXCEPTIONAL CIRCUMSTANCES"
- WHAT DOES "SHOW CAUSE" MEAN?
 - A NEBULOUS CONCEPT INVOLVING MULTIFARIOUS FACTORS. IT DOES NOT REQUIRE "PROOF", HOWEVER.

RETROSPECTIVITY

- S 16(3A) USES THE PRESENT TENSE: "IS A PARTICIPANT IN A CRIMINAL ORGANISATION"
 - THE SECTION ARGUABLY APPLIES AT THE TIME OF THE APPLICATION FOR BAIL, NOT WHEN THE OFFENCE WAS ALLEGEDLY COMMITTED
 - THE EXPLANATORY NOTES TO THE COD ACT CONTAIN THE FOLLOWING:

"THE AMENDMENTS OPERATE PROSPECTIVELY AND WILL ONLY CAPTURE OFFENDERS WHO COMMIT OFFENCES AFTER THE AMENDMENTS COMMENCE."

- ARGUABLY THEN, THE "SHOW CAUSE" REQUIREMENT CANNOT BE ENGAGED FOR AN OFFENCE THAT PREDATES THE COMMENCEMENT OF THE LEGISLATION (17 OCTOBER 2013)
- BUT WHAT ABOUT CONTINUING OFFENCES THAT STRADDLE THE COMMENCEMENT DATE?

OTHER ISSUES RELEVANT TO SHOWING CAUSE

- DELAY, ESPECIALLY IN CASES WITH A LARGE AMOUNT OF TELECOMMUNICATION INTERCEPT PRODUCT
- CONDITIONS IN CUSTODY WHILST ON REMAND
- CROSS-EXAMINATION OF THE DEPONENTS OF "OBJECTION TO BAIL AFFIDAVITS" PARTICULARLY WITH RESPECT TO ALLEGATIONS OF MEMBERSHIP OF CRIMINAL ORGANISATIONS
- CARE NEEDS TO BE TAKEN, AS SUBMISSIONS OR EVIDENCE ON A BAIL APPLICATION MIGHT BE USED TO PROVE MEMBERSHIP OF A "RELEVANT ASSOCIATION" FOR THE PURPOSES OF THE VLAD ACT.
- WHAT IF ALL MEMBERS OF THE ASSOCIATION ARE ARRESTED? ARE THEY, AT THE TIME OF THE APPLICATION FOR BAIL, MEMBERS OF AN ASSOCIATION THAT HAS A PURPOSE OF ENGAGING IN SERIOUS CRIMINAL ACTIVITY?