

Organised Criminal Groups Legislation

POSITION PAPER



Department of Police, Fire and Emergency Management

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MINISTER'S FOREWORD

The Hodgman Liberal Government is committed to ensuring that Tasmanian communities are safe places to live, work and raise a family. Tasmanians have a right to enjoy their State free from acts and threats of violence, intimidation and public disorder.

One of the biggest threats to public safety and security is the danger posed by serious drugs like methamphetamine, also known as ice or speed. It is known that organised criminal groups, such as outlaw motorcycle gangs, are heavily involved in the importation and distribution of dangerous drugs into Tasmania. These gangs also readily resort to violence or intimidation to protect their way of life.

There have been many arrests, convictions and individuals gaoled. Police intelligence highlights a continuing and disturbing pattern of organised crime which places our community, families and children at unacceptable risk.

To tackle this, the Government has committed, as part of its 100-Day Plan, to develop laws aimed at disrupting these gangs. This Paper discusses the problems presented by outlaw motorcycle gangs and makes a number of proposals to reform the law to give police the powers they need to disrupt and dismantle criminal organisations, including outlaw motorcycle gangs.

Outlaw motorcycle gangs are a dangerous element in our society and the community should not fall for the positive marketing some outlaw gangs employ to garner public support.

The Government has a duty to ensure that community safety is paramount and to provide Tasmania Police with adequate tools to deal with organised crime.

Hon Michael Ferguson MP

Minister for Police, Fire and Emergency Management

PROPOSALS

Proposal 1

Modernise the existing consorting law in the *Police Offences Act 1935* to render it consistent with the legislation in other jurisdictions that is conviction based. This replacement offence will prohibit a person aged 18 years or more, who has been convicted of a serious offence, from habitually consorting with another nominated person, aged 18 years or more, who has also been convicted of a serious offence.

Proposal 2

Change the consorting law so that a prohibition on association only applies after that person has been supplied with a written consorting warning notice issued by an Officer of Police (i.e. the rank of Inspector or higher).

Proposal 3

Allow for review mechanisms when a person is given a consorting warning notice, so that a person issued a notice can seek review from an Officer of a higher rank, and if still aggrieved, may then apply to a Magistrate for a notice to be revoked.

Proposal 4

Create a number of defences to consorting for associating with family members, in the course of other identified lawful activities.

Proposal 5

A statutory time limit of five years will apply to the length that a consorting warning notice is valid.

Proposal 6

Prohibited item legislation similar to Queensland be introduced via amendments to the *Police Offences Act 1935*. Under such a model, it would be an offence for a person to wear, carry or openly display in a public place (or in/on a vehicle in a public place) clothing, jewellery or other insignia that show the patches, insignia or logo of an 'identified organisation'.

Proposal 7

That the Minister for the Department of Police, Fire and Emergency Management has the authority to prescribe by regulations which groups are identified, if they are satisfied that the wearing of the prohibited insignia relating to that organisation may:

- cause members of the public to feel threatened, fearful or intimidated;
- or

- may otherwise have an undue adverse effect on the health or safety of members of the public, or the amenity of the community, including by increasing the likelihood of public disorder or acts of violence.

Proposal 8

In determining whether or not to prescribe an organisation, the Minister must have regard to whether any person has, while a member of, or a participant in an organisation, engaged in serious criminal activity or been convicted of an offence involving public acts of violence, or damage.

CONSULTATION

The Tasmanian Government is committed to providing opportunities for community involvement in the development of Government legislation and policy. This paper examines a number of legislative proposals aimed at mitigating the dangers presented by outlaw motorcycle gangs (OMCGS) and other organised criminal groups.

The paper sets out the Government's proposals for possible reforms to the *Police Offences Act 1935*. These proposals are listed above and are also contained in the relevant parts of the paper so that the proposals can be understood in context.

Submissions are invited on these proposals.

How to Make a Submission

Submissions should be made in writing by close of business on 11 May 2018.

Submissions may be emailed to:

strategy.support@dpfem.tas.gov.au

or posted to:

The Inspector
Legislation & Development Review Services
GPO Box 308, Hobart, 7001

Other than indicated below, submissions will be treated as public information and will be published on our website at www.police.tas.gov.au.

Submissions will be published by 18 May 2018.

No personal information other than an individual's name, or the organisation making a submission will be published.

For further information, please contact: Tasmania Police at strategy.support@dpfem.tas.gov.au.

Accessibility of Submissions

The Government recognises that not all individuals or groups are equally placed to access and understand information. We are therefore committed to ensuring Government information is accessible and easily understood by people with diverse communication needs.

Where possible, please consider typing your submission in plain English and providing it in a format such as Microsoft Word or equivalent.

However, the Government cannot take responsibility for the accessibility of documents provided by third parties.

[Important Information to Note](#)

Your name (or the name of the organisation) will be published unless you request otherwise.

In the absence of a clear indication that a submission is intended to be treated as confidential (or parts of the submission), the Department will treat the submission as public.

If you would like your submission treated as confidential, whether in whole or in part, please indicate this in writing at the time of making your submission, clearly identifying the parts of your submission you want to remain confidential and the reasons why. In this case, your submission will not be published to the extent of that request.

Copyright in submissions remains with the author(s), not with the Tasmanian Government.

The Department will not publish, in whole or in part, submissions containing defamatory or offensive material. If your submission includes information that could enable the identification of other individuals then either all or parts of the submission will not be published.

[The Right to Information Act 2009 and confidentiality](#)

Information provided to the Government may be provided to an applicant under the provisions of the *Right to Information Act 2009* (RTI). If you have indicated that you wish all or part of your submission to be treated as confidential, your statement detailing the reasons may be taken into account in determining whether or not to release the information in the event of an RTI application for assessed disclosure. You may also be contacted to provide any further comment.

PART ONE – INTRODUCTION

Organised Criminal Groups

Organised crime is a significant challenge to law enforcement agencies in Australia. The Australian Criminal Intelligence Commission's research has noted that:

Serious and organised crime touches the lives of Australians in unprecedented ways. It is destructive, pervasive and complex. In December 2015, the then Australian Crime Commission estimated the cost of serious and organised crime in Australia to be at least A\$36 billion a year. That equates to A\$1,561 out of every individual Australian's pocket and adds 6.3 per cent to the average cost of living. Alongside the financial cost of serious and organised crime are the devastating health and social impacts of illicit drug use. There are also the highly visible flow-on effects of serious and organised crime activity on the Australian community, typically in the form of volume crime.

Serious and organised crime groups are deeply entrenched in the importation, manufacture and distribution of methylamphetamine in Australia, with two-thirds of targets on the National Criminal Target List reportedly involved in the sale and distribution of methylamphetamine and/or its precursors. These figures include members of OMCGs as well as domestic and transnational serious and organised crime groups)¹.

Outlaw Motorcycle Gangs (OMCGs) are significant participants in organised crime and present a risk to the safety of the public. The Australian Crime Commission's *Organised Crime in Australia 2015* report found that:

...there has been an escalation in outlaw motorcycle gang (OMCG)-driven violence, particularly in the public domain, between rival gangs and, at times, between members of the same OMCG. Often, this violence can put members of the public at risk as well. Extortion rackets have also been a well-recorded criminal business of organised crime groups, particularly of some OMCG members. Physical violence, intimidation and harassment are synonymous with extortion activities, and may continue to affect victims even after the extorted debt is settled².

The criminal activities of OMCGs distinguish them from other recreational motorcycle groups who gather purely to socialise and ride motorcycles. Unlike these other bodies, OMCGs self-identify as 'one-percenters', their view being that if 99 per cent of people who ride motorcycles are law abiding, they are the 1 per cent who are not.

¹ *Organised Crime in Australia 2017*, Australian Criminal Intelligence Commission, https://www.acic.gov.au/sites/g/files/net1491/f/2017/08/oca_2017_230817_1830.pdf, page 1.

² *Organised Crime in Australia 2015*, Australian Crime Commission, <https://www.acic.gov.au/sites/g/files/net1491/f/2016/06/oca2015.pdf>, page 32.

OMCG jackets usually carry a patch stating 1 per cent to reflect this fact. The groups are present in all Australian States and Territories, making them a major threat to Australia's national security.

Professor Arthur Veno, Adjunct Professor of Social Sciences and Psychology at Victoria University states that 'violence is central to club life. It's implicit in the rules, the way members live, and their interactions with other clubs'³.

In 2016, research by prominent criminologists, Professors Markovic and Gottschalk stated that Australian based OMCGs:

engage in a wide range of criminal activities which include the distribution and sale of illegal narcotics, firearms, blackmail, extortion, prostitution, money laundering, and of course violent activities. As other criminal groups have moved to form alliances with each other, OMGs have also formed partnerships with street gangs. They use them for high-risk criminal activities, thus shielding their members from law enforcement scrutiny and prosecutions⁴.

Just some examples of OMCG violence include:

- September 2, 1984: The Milperra Massacre – seven people killed in a battle between the Comancheros and Bandidos.
- August 31, 1998: Six people wounded when 85 Outlaws fought the Odin's Warriors OMCG in Mackay, Queensland.
- July 15, 1999: A bomb blast demolished the proposed new Rebel's clubhouse in Adelaide causing damage to nearby homes.
- August 8, 1999: Bomb attack on Bandidos' clubhouse in Geelong, Victoria.
- September 20, 1999: Homemade bomb attack on the Bandidos' clubhouse in Gosford, NSW.
- October 8, 1999: Three Rebels gunned down and died outside their clubhouse in Adelaide. The offenders were believed to be members of the Hells Angels.
- March 18, 2006: A violent brawl at the Royal Pines Resort Carrara, Queensland, between members of the Hells Angels and the Finks OMCG, where three people were shot, two stabbed and \$40,000 worth of damage caused.
- March 22, 2009: A violent brawl at Sydney Airport between the Hells Angels and Comancheros during which an associate member of the Hells Angels was murdered.
- May 2009: A report showed OMCGs were sourcing stolen military style weapons. One of several stolen rocket launchers was recovered from the Bandidos.
- February 2011: Defence sources revealed that OMCGs are infiltrating defence bases to obtain weapons.

³ Veno, A. & Gannon, E. (2009) *The brotherhoods: Inside the outlaw motorcycle clubs*. Crows Nest, Allen & Taylor, p. 139.

⁴ Gottschalk, P & Markovic, V. Transnational Criminal Organisations (TCOs): The Case of Combatting Criminal Biker Gangs, *International Journal of Criminal Justice Sciences*, Jun – Dec 2016, p. 40.

- April 4, 2013: A navy seaman assaulted a security guard then stole 14 guns from a patrol boat moored in Darwin. When facing court he stated he was pressured to steal the guns by the Rebels OMCG.
- February 2017: A former Rebels member who survived an attempt on his life and subsequently relocated to Queensland, was found murdered in a car in the NSW Central Tablelands.
- April 2017: A feud between a senior Comancheros bikie and a former club leader is believed by police to be the cause of two brazen assassination attempts in Melbourne.
- November 2017: New South Wales Police charge a Rebels member with murder four years after the shooting death of Johnny Salafia. Salafia, had just finished putting his young daughters to bed when the doorbell rang in 2013. He answered and was shot twice in the head and chest, and died where he fell.
- December 2017: A member of the Rebels and two associates charged with murder of a Central Coast man in New South Wales after kicking him to death at a petrol station.
- February 2018: Former Comanchero bikie chief Mahmoud Hawi died after being shot outside a busy gym in Rockdale, in Sydney's south at lunch time.
- March 2018: New South Wales Police said there have been six public shooting incidents and two Molotov cocktail attacks in the Hunter Valley region since January as a result of a feud between the Nomads and the Finks OMCGs.

Operation Morpheus is the ongoing Australia-wide multi-agency operation against OMCGs that commenced in 2014. In 2017, the operation resulted in:

- 1672 arrests.
- The seizure of 14 motor vehicles, 9 motorcycles and 1 light aircraft.
- The seizure of 315 firearms, as well as knives, tasers, grenades, pen guns and artillery.
- The seizure of 2.5kg of amphetamine, 87kg of methylamphetamine, 38 kg of ecstasy and 801 pills, and 2.3kg of cocaine.
- A total seizure of \$3,535,700.

Tasmania is not immune to the dangers, presented by OMCGs.

- In May 2013, an overnight siege occurred at a home in Kingston after an altercation between some members of the Rebels who were feuding with the occupants of the address. Shots were fired from near the home and from the street.
- In 2013, several senior leaders of the Launceston chapter of the Rebels, including the state president Colin Picard, were jailed for trafficking in more than \$500,000 worth of methamphetamine. In sentencing, Justice Estcourt said 'By any measure this was a large scale commercial drug trafficking operation of a kind not often seen in Tasmania'.
- In July 2014, a collaborative law enforcement operation disrupted a significant importation syndicate and led to Tasmania's largest drug seizure in recorded history. Four kilograms of methylamphetamine was intercepted in Tasmania and an additional four kilograms was seized in Queensland, with intelligence indicating that all eight kilograms of the drug were

destined for Tasmania. Members of the Rebels OMCG were charged in both states.

- In June 2015, a series of raids in Tasmania on a number of premises linked to the Rebels by a combined taskforce of national and state agencies resulted in 14 arrests, 100 charges, and seizures of more than \$200,000 in cash, 120gm of crystal methamphetamine (ice) worth \$120,000, 1.7kg of cannabis worth \$18,000 and 133 ecstasy tablets worth \$6,500.
- In September 2016, a combined Federal and state taskforce seized crystal methamphetamine (ice), cash and stolen goods from a fortified residence in Devonport linked to the Devonport Support Chapter of the Bandidos.
- On 14 March 2017, Rebels OMCG associate, Ryan Zmendak pleaded guilty to one count of trafficking methamphetamine, and one count of conspiracy to commit the crime of trafficking. Zmendak was involved in the importation of two packages containing the drugs from the UK in 2014, with an estimated street value of \$7.4 million.
- In October 2017, the Rebels chose to utilise Tasmania for their national run. This resulted in approximately 300 members attending the state. Despite being advised they would receive strong police attention, Tasmania Police still seized illicit drugs and weapons from members. Rebel members also returned positive drug tests for cocaine and methamphetamine, while driving. During the run Tasmania Police believe that a person received significant life threatening injuries at the Rebel's Hobart clubhouse. That investigation remains open.
- At the conclusion of the Rebels national run a commercial flight leaving Hobart was significantly delayed after members of the Rebels had to be removed after intimidating the cabin crew.
- In October 2017, the founder and previous president of the Tasmanian Rebels chapter, A J Graham was deported on character grounds. Graham has as a history of jail time for vicious assaults. Graham has served terms of imprisonment for serious assaults. In 2009, Graham was again gaoled after torturing a 19-year-old insurance investigator.
- In November 2017, the Bandidos elected to come to Tasmania for their national run. A total of 233 patched members came from mainland jurisdictions. The run coincided with a new chapter being established in Hobart.
- Prior to the Bandidos' run, a number of members of the local Mersey Chapter attended a pro-boxing event at the Devonport Basketball Stadium. Also in attendance were members of the Outlaws Devonport Chapter. There was significant tension between the two groups with verbal abuse occurring. Information provided to police indicate that the Outlaws intended to protect their 'turf' and were prepared to resort to violence to do so. A strong police presence prevented this from occurring.
- On 3 April 2018, as a result of a search at the Bandidos Clubhouse in David Street, East Devonport, a 28 year old man was charged with trespass, assault, evade, minor driving offences, drug offences, proceeds of crime and firearms offences as well as Supreme Court bail breaches and offences relative to his arrest. Investigations are continuing into other possible offenders.

In the last decade, other jurisdictions have initiated legislation aimed at combatting organised crime and illegal OMCG activity.

Activities in mainland states to hinder organised crime can cause a displacement effect, where due to the perception of comparatively lenient laws, organised criminal gangs move into Tasmania to further their criminal enterprises. Tasmania Police are already noting increases in OMCG numbers, as mainland OMCG chapters, hindered by stronger laws in their own states, start moving further into Tasmania. A number of OMCGs, whose members have been convicted of serious offences, are known to operate in Tasmania with 259 members, these include:

- The Black Uhlans
- The Devil's Henchmen
- The Outlaws
- The Rebels
- The Bandidos.

Intelligence held by Tasmania Police links Tasmanian OMCGs to the manufacture and distribution of illicit drugs, firearms offences and the use and threats of violence to protect their way of life, at the great expense of law abiding Tasmanians.

PART TWO – DISCUSSION OF ISSUES

Consorting Legislation

The Problem with Consorting in Tasmania

Consorting laws exist in every Australian State, as well as the Northern Territory. Originally developed as part of colonial anti-vagrancy laws, these outdated laws have been updated in every other jurisdiction except Tasmania. Modern consorting legislation in these other jurisdictions supports contemporary preventive policing practices that allow authorities to act at an early stage to prevent, or reduce, serious crime.

In Tasmania, section 6 of the *Police Offences Act 1935*, states that a person may be charged with consorting if they habitually consort with 'reputed thieves'. Consorting is not defined in Tasmanian legislation and due to the archaic nature of the legislation, it is rare for prosecutions to be initiated. It is necessary to go back to the 1960s and 1970s to obtain a meaning to the current offence. In the case of *Bryan v White* [1962] Justice Gibson held that, to prove the offence of consorting:

- (a) the accused must be proved to have known that those with whom he consorted were reputed thieves, etc.;
- (b) it is necessary only to prove thievish repute, not being thieves; and
- (c) 'good and sufficient reasons' is not equivalent to 'for purposes that are not unlawful.'

In *Johanson v Dixon* [1979]⁵, the High Court held that consorting 'means "associates" or "keeps company"', and 'denotes some seeking or acceptance of the association on the part of the defendant'. It need not occur for any unlawful or criminal purpose. This offence has not kept pace with modern society. It punishes repeated association by people who need not have a criminal conviction, but are only reputed to be thieves. Neither does it apply to more serious types of crime like drug trafficking, money laundering, and extortion. It does not take into account modern electronic forms of communication, and finally, there are no clearly defined defences for those who associate for employment, health or family reasons.

Other jurisdictions that have modernised their consorting legislation have adopted common themes.

⁵ *Johanson v Dixon* [1979] 143 CLR 376

Most jurisdictions have implemented a model based upon that in New South Wales (NSW) which only prohibits consorting amongst offenders convicted of certain very serious offences, and then only after they have been issued with a notification.

These models provide for legislated warning systems where, before they can be prosecuted, prescribed persons must first be warned (sometimes in writing) that they cannot consort with another specified person. A number of defences are also legislated, which include consorting with family members, or for work and health purposes.

The New South Wales Consorting Model

The NSW consorting legislation is found at Part 3A of the *Crimes Act 1900 (NSW)*. The Part states the following:

93W DEFINITIONS

In this Division:

"consort" means consort in person or by any other means, including by electronic or other form of communication.

"convicted offender" means a person who has been convicted of an indictable offence (disregarding any offence under section 93X).

93X CONSORTING

(1) A person who:

- (a) habitually consorts with convicted offenders, and
- (b) consorts with those convicted offenders after having been given an official warning in relation to each of those convicted offenders, is guilty of an offence.

Maximum penalty: Imprisonment for 3 years, or a fine of 150 penalty units, or both.

(2) A person does not "habitually consort" with convicted offenders unless:

- (a) the person consorts with at least 2 convicted offenders (whether on the same or separate occasions), and
- (b) the person consorts with each convicted offender on at least 2 occasions.

(3) An "official warning" is a warning given by a police officer (orally or in writing) that:

- (a) a convicted offender is a convicted offender, and
- (b) consorting with a convicted offender is an offence.

93Y DEFENCE

The following forms of consorting are to be disregarded for the purposes of section 93X if the defendant satisfies the court that the consorting was reasonable in the circumstances:

- (a) consorting with family members,
- (b) consorting that occurs in the course of lawful employment or the lawful operation of a business,
- (c) consorting that occurs in the course of training or education,
- (d) consorting that occurs in the course of the provision of a health service,
- (e) consorting that occurs in the course of the provision of legal advice,

- (f) consorting that occurs in lawful custody or in the course of complying with a court order.

Unlike Tasmania, consorting only applies to those who have actually been convicted of serious offences. It also recognises that consorting with certain groups should not be unlawful.

In 2012, when NSW updated their consorting legislation, the Parliament required the NSW Ombudsman to prepare a report into the new law after three years. That report was finalised in 2016. The report made 20 recommendations for improvement, but did not recommend that consorting legislation be repealed. The Ombudsman found that 'the consorting law provides police with an additional tool to disrupt serious organised crime that currently appears to be effective, particularly in the context of the policing of high-risk OMCGS'⁶. In summary, the seven legislative changes recommended by the NSW Ombudsman were:

- That consorting should not apply to a person under the age of 18, either as a charged person, or as a 'convicted person' whom another person may not consort with.
- That, to avoid confusion, the NSW official consorting warning notice should give the name of the convicted offenders that a person must not consort with (this recommendation originally came from NSW Police).
- That statutory time limits should apply to consorting warning notices.
- That consorting that occurs: by complying with parole/probation orders; in the course of the provision of emergency accommodation; or the support of welfare services be a defence to the charge.
- That the defence of consorting with family members be extended to kinship relationships between Aboriginal people.
- That the definition of accessing a health service as a defence to consorting be clearly defined.
- That the consorting legislation state that the purpose of the consorting law is the prevention of serious criminal offending.

It should be noted that there are no appeal rights for a person who is issued a consorting notice in NSW.

Constitutional Issues

Critics of consorting laws argue that they conflict with constitutional rights. However, laws that limit association between people to prevent future harm or crimes already exist, including family violence orders and restraint orders.

In 2014, the NSW consorting laws were challenged in the High Court after the President of the Nomads OMCG, Sleiman Tajjour and another member were convicted in 2012 for consorting.

⁶ *The consorting law. Report of the operation of Part 3a, Division 7 of the Crimes Act 1900*, NSW Ombudsman, April 2016, https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0005/34709/The-consorting-law-report-on-the-operation-of-Part-3A,-Division-7-of-the-Crimes-Act-1900-April-2016.pdf, p. 115.

In *Taijour v New South Wales* [2014]⁷, Taijour argued that the consorting provisions were in conflict with an implied constitutional right of freedom of association and/or that they were invalid because they conflicted with the implied freedom of political communication.

It was also argued that Australia's human rights obligations as a signatory to the International Covenant on Civil and Political Rights, which include freedom of association, would render consorting laws invalid.

The High Court ruled in a 6:1 majority, that NSW's consorting legislation was valid. The High Court accepted that, while it effectively burdens the implied freedom of communication about government and political matters, it was 'reasonably appropriate and adapted, or proportionate, to serve the legitimate end of the prevention of crime' in Australia's system of government. The High Court also held that the right to association guaranteed under the ICCPR 'imposes no constraint upon the power of a State parliament to enact contrary legislation'.

Proposal 1

Modernise the consorting law to render it consistent with the legislation in other jurisdictions that is conviction based. This replacement offence will prohibit a person aged 18 years or more, who has been convicted of a serious offence, from habitually consorting with another nominated person, aged 18 years or more, who has also been convicted of a serious offence.

Proposal 2

To ensure the law is equitable, change the consorting law so that a prohibition on association only applies after that person has been supplied with a written consorting warning notice issued by an Officer of Police (the rank of Inspector or higher).

Proposal 3

Allow for review mechanisms when a person is given a consorting warning notice so that a person issued a notice can seek review from an Officer of a higher rank, and if still aggrieved, may then apply to a Magistrate for a notice to be revoked.

Proposal 4

Create a number of defences to consorting for associating with family members, in the course of other identified lawful activities.

Proposal 5

A statutory time limit of five years will apply to the length that a consorting warning notice is valid.

⁷ *Taijour v New South Wales* [2014] HCA 35.

OMCG Colours and Insignia

Gangs offer a sense of belonging to a unified culture. OMCGS are no different, members get a sense of notoriety, status, and a worldwide brotherhood. However, OMCGS have one feature which differentiates them from most organised criminal groups.

Whilst most groups try to keep a low profile to avoid publicity and police attention, OMCGS operate more publically, with clearly badged jackets displaying their club logo and accompanying '1%' badge. These jackets, are referred to as 'colours'. Colours are worn to identify the wearer as a member of an OMCG, and one who follows OMCG culture. Additionally, the badges, and in particular the '1%' patch, identify that the OMCG and the member wearing them, chooses to operate outside the law with a strongly implied propensity to be involved in violence. Consequently, colours are not just used as a club regalia, but as a tool to intimidate, stand over and influence others in the community. Their greatest weapon is intimidation, which is why members wear their colours when debt collecting. You don't have to utter a specific threat in an OMCG jacket, its mere presence is enough. With this implied threat of violence, OMCG colours facilitate criminal activities by creating fear in the community, and a great reluctance by the public to report or bear witness when crimes occur. This overt intimidation perpetuates a 'code of silence' allowing OMCG to continue their more covert illegal activities.

The Australian Crime Commission reported in 2015, that 'there has been an escalation in outlaw motorcycle gang (OMCG)-driven violence, particularly in the public domain, between rival gangs and, at times, between members of the same OMCG. Often, this violence can put members of the public at risk as well'⁸.

Prohibited Item Legislation

Prohibited Items - Queensland

Jurisdictions across Australia have introduced various pieces of legislation in an attempt to protect the community from fear and intimidation by OMCG members, and also to lessen the likelihood of serious violence, brawls and shootings in public places.

In 2013, the Queensland Liberal Government introduced a suite of legislative amendments designed to combat organised crime, and in particular, OMCGS.

⁸ *Organised Crime in Australia 2015*, Australian Crime Commission, <https://www.acic.gov.au/sites/g/files/net1491/f/2016/06/oca2015.docx?v=1467241721>, pg. 39.

Amongst the suite of legislation was an amendment to the *Liquor Act 1992 (Qld)* to forbid persons in licensed premises from wearing or displaying 'prohibited items' associated with declared criminal organisations. Several OMCGS were declared to be criminal organisations. The rationale for the legislation was to prevent violent conflicts between OMCGS at licensed premises, and lessen the fear of other patrons who may be trying to use the facilities. The legislation did not prohibit OMCG members from attending a licensed premise. It only banned them when they were wearing a prohibited item.

A prohibited item was defined as any piece of clothing, jewellery, or other accessory that displayed any of the following⁹:

- The name of a declared criminal organisation; or
- The club patch, insignia or logo of a declared criminal organisation (i.e. colours); or
- Any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, a declared criminal association including the symbol '1%' and '1%er'.

In June 2015, the Queensland Labor Government instituted the Taskforce on Organised Crime Legislation to conduct a review of the 2013 legislation. The Taskforce was chaired by the Honourable Alan Wilson QC. The Taskforce also examined the prohibited items legislation and made the following finding.

Members of the general public have, Taskforce members accepted, the right to enjoy themselves in liquor licensed venues free from any fear or intimidation that the presence of colour-wearing OMCG members might incite. So, too, do the business owners and staff of those venues¹⁰.

The Taskforce also noted that the term 'criminal organisation' was not defined in the same way across a number of Acts, which led to confusion. The Taskforce recommended that one single uniform definition be applied to all the relevant Acts of Parliament. To address this issue of prohibited items in the *Liquor Act 1992*, the Taskforce thought it may be 'appropriate' to:

ban, by regulation, certain items, clothing and jewellery typically associated with a prescribed list of OMCG organisations. The exclusion of persons from licensed premises is anchored explicitly to organisations that appear in a list [which] is distinct from an executive declaration because it is targeted to a specific, identified risk present in licensed venues across the state.¹¹

⁹ S. 173EA Liquor Act 1992 (Qld).

¹⁰ Taskforce on Organised Crime Legislation (2016), Department of Justice and Attorney-General, Queensland, http://www.justice.qld.gov.au/_data/assets/pdf_file/0017/463022/report-of-the-taskforce-on-organised-crime-legislation.pdf, p. 292.

¹¹ Ibid, p. 294.

In 2016, the Queensland government inserted an offence into the *Summary Offences Act 2005 (Qld)* to prohibit a person from wearing or carrying their colours or OMCG insignia in a public place in a manner allowing them to be seen.

This new offence is now contained in section 10C *Summary Offences Act 2005 (Qld)* and reads as follows:

10C Wearing or carrying prohibited item in a public place

(1) A person in a public place must not wear or carry a prohibited item so that the item can be seen.

Maximum penalty—

- (a) for a first offence—40 penalty units or 6 months imprisonment; or
- (b) for a second offence—60 penalty units or 9 months imprisonment; or
- (c) for a third or later offence—100 penalty units or 12 months imprisonment.

(2) A person who is in or on a vehicle that is in a public place must not wear or carry a prohibited item so that the item can be seen from the public place.

Maximum penalty—

- (a) for a first offence—40 penalty units or 6 months imprisonment; or
- (b) for a second offence—60 penalty units or 9 months imprisonment; or
- (c) for a third or later offence—100 penalty units or 12 months imprisonment.

The definition of prohibited has also been changed as a result of the Bill. It retains the same types of clothing, insignia and jewellery already discussed, but the link to a declared criminal organisation has been replaced with a link to an identified organisation¹². An identified organisation is one prescribed in regulations by the Minister. The Minister for Justice (who administers the Queensland Act) may prescribe an identified organisation if satisfied that¹³:

the wearing or carrying of a proposed prohibited item by a person in a public place—

- (a) may cause members of the public to feel threatened, fearful or intimidated; or
- (b) may otherwise have an undue adverse effect on the health or safety of members of the public, or the amenity of the community, including by increasing the likelihood of public disorder or acts of violence.

¹² S. 173EA *Liquor Act 1992 (Qld)*.

¹³ S. 173EAA(2) *Liquor Act 1992 (Qld)*.

For forming a satisfaction, the Minister must have regard to whether any person has engaged in serious criminal activity, or committed a relevant offence of which the person has been convicted, while the person was a participant in the entity.

The change from declared criminal organisation to identified organisation was consistent with the recommendations of the Taskforce. The change means an organisation's items are prohibited by regulation because they cause a level of fear in the community that is unreasonable, not because the entire organisation is declared by a Minister to be criminal. Twenty six organisations, all OMCGs, have been prescribed as identified organisations, including a number of OMCG groups which currently operate in Tasmania.

The rationale given in the Bill's explanatory note was 'protecting the community from fear and intimidation and reducing the likelihood of public disorder and acts of violence in all public places' (2016, page 13).¹⁴

Prohibited Legislation in other Jurisdictions

South Australia

In 2015, South Australia (SA) introduced legislation similar to the original Queensland legislation banning prohibited items in licensed premises¹⁵. A prohibited item is defined as an item of clothing, piece of jewellery or accessory that displays the name, symbols or images of a declared criminal organisation. A declared criminal organisation for the purposes of this legislation is an entity declared in regulations, on the recommendation of the Minister.

Since the legislative clampdown on organised criminal groups in SA, the state has seen a noticeable decrease in OMCG activity. In 2016, Police Commissioner Grant Stevens reported to the Crime and Public Integrity Policy Committee of the Parliament that some OMCG clubhouses had been abandoned, that the level of violence in the community promulgated by OMCGs had decreased and significant police resources had been freed up as a result¹⁶.

¹⁴ *Serious and Organised Crime Legislation Amendment Bill 2016 - Explanatory Notes*, <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2016/5516T1491.pdf>.

¹⁵ Sections 117B – 117E *Liquor Licensing Act 1997 (Qld)*.

¹⁶ McLoughlin, C. 'SA bikie laws have dramatic effect on gang's behaviour police commissioner says' *ABC News*, 26 Feb. 2016, <http://www.abc.net.au/news/2016-02-26/sa-bikie-laws-have-dramatic-affect-on-gangs-behaviour-police/7204274>.

It was also noted that this has caused a displacement effect with senior members of OMCGS travelling to Victoria and the Australian Capital Territory to plan their activities, due to those states less restrictive laws¹⁷.

Northern Territory

The Northern Territory (NT) has a prohibited item regime underpinned by legislation. Section 33AA of the *Liquor Act (NT)* states that:

The Minister may determine additional conditions of a licence if the Minister thinks the determination is urgently needed for the wellbeing of the communities that might be affected by the operation of the licence.

Previously, in 2012, the NT government temporarily banned the wearing of OMCG colours, emblems or logos on licensed premises by making it a condition of a liquor licence.

On 27 March 2013, the NT Minister for Police, Fire and Emergency Services issued a determination, pursuant to section 33AA, that all liquor licenses in the Territory will have from that date, a condition barring 'from licensed premises any person who is wearing colours, insignia or emblems of an outlaw motorcycle gang'.

New South Wales

Alongside strong consorting NSW laws, regulation 53K and 53ZG of the *Liquor Regulations 2008 (NSW)* bans members of OMCGS from entering or remaining on licensed premises in the Kings Cross or Sydney CBD precincts whilst wearing clothing, jewellery or insignia of their organisation. The ban applies to clubs listed in the regulations (currently 20 OMCGS) or 'similar organisations'.

New South Wales Police have reported that the tough anti OMCG laws coupled with strict police law enforcement have resulted in 'gang members patching out of the bikie fraternity at a rate never seen before'¹⁸.

Western Australia and Victoria

Western Australia and Victoria are the only states not to have introduced some type of prohibited item legislation. Both states do possess complex legislation allowing certain organisations to be declared and controlled in some manner, however, this legislation has rarely been utilised. Recent media reports have highlighted issues with the lack of workable legislation in both Western Australia¹⁹ and Victoria²⁰ to control OMCGS.

¹⁷ Hunt, N. 'South Australian bikie gangs plan their activities and evade prosecution by meeting interstate because of inconsistent laws', *Advertiser*, 31 Mar. 2017, <http://www.adelaidenow.com.au/news/law-order/south-australian-bikie-gangs-plan-their-activities-and-evade-prosecution-by-meeting-interstate-because-of-inconsistent-laws/news-story/d6883cee8db3596a94a7d0a41b251c67>.

¹⁸ Benny-Morrison, A. 'Rebels bike club in "disarray" as members "patch out" at record rate, police say', *Sydney Morning Herald*, 10 Jan. 2016.

¹⁹ Taylor, G. 'New approach needed to rein in bikie gangs', *West Australian*, 13 May 2017.

²⁰ 'Bikies in Melbourne: Soft laws attract motorcycle gangs to Victoria', *Herald Sun*, 2 Apr. 2017.

Tasmania

Tasmania does not have any laws prohibiting OMCG colours or insignia. There is a danger that OMCGS will move to Tasmania if they perceive the State to have lax laws regulating their activities.

The displacement of OMCGS into Tasmania is of grave concern. The Bandidos OMCG, one of five OMCGS recognised by the Australian Criminal Intelligence Commission as posing the highest threat to Australians, in relation to size, geographical reach and violence, has recently extended into Hobart opening a new chapter.

Police intelligence has determined that the leader of this new Bandido chapter has two *Criminal Code* assault convictions, as well as two prior convictions for drug trafficking resulting in terms of imprisonment in 2006 and 2011. The Bandidos' membership in Tasmania has increased 300% since 1 July 2017.

The strong OMCG laws enacted in mainland states act force OMCGS, such as the Bandidos, to relocate or expand into Tasmania. AFP Acting Commander Anthony Hall said in 2016, that 'There will always be a displacement effect when law enforcement tactics ... create a [hostile] environment ... It's part of their business model trying to establish and expand throughout the country [attracted by] the higher prices that Australians pay, unfortunately, for crystal methamphetamine.'²¹

Proposal 6

Prohibited item legislation similar to Queensland be introduced through amendments to the *Police Offences Act 1935*. Under such a model, it would be an offence for a person to wear, carry or openly display in a public place (or in/on a vehicle in a public place) clothing, jewellery or other items that show the patches, insignia or logo of an 'identified organisation'.

A model prohibiting insignia in all public places is proposed. It is incongruous that members of the public choosing to drink in licenced bars are protected from the intimidation and risk of violence presented by F, whereas families enjoying cafes and parks are not given the same right to enjoy public spaces.

OMCGS have argued that prohibited item legislation will drive their behaviour underground. However, it should be noted that drug and firearms trafficking by OMCGS has always been covert, an underground activity. It is the intimidation towards the public and rival gangs and the visible acts of violence that have always been overt.

²¹ Billings, P. BACK OFF BANDIDOS: Police deliver blunt warning to bikies, *Mercury*, 28 May 2016.

This proposal recognises that unlike most organised criminal groups, OMCG members want their participation in their gang known because that is one of their best weapons - the public knowledge and threat that the gang is behind them.

Their colours are used to intimidate, influence, recruit and mark out territory, and that intimidation applies equally to persons eating in a park or café, as it does to persons in a licensed establishment. The prohibition is aimed at preventing that intimidation and reducing the public danger presented by OMCGS.

Proposal 7

That the Minister for the Department of Police, Fire and Emergency Management have the authority to prescribe by regulations which groups are identified, if they are satisfied that the wearing of the prohibited item relating to that organisation may:

- cause members of the public to feel threatened, fearful or intimidated; or
- may otherwise have an undue adverse effect on the health or safety of members of the public, or the amenity of the community, including by increasing the likelihood of public disorder or acts of violence.

This method of prescription is similar to prescribing other activities in public places such as pollution, language, and noise which negatively impact on public amenity, and also similar to the method successfully utilised in Queensland, albeit with the appropriate Minister who is responsible for the *Police Offences Act 1935*.

Proposal 8

In determining whether or not to prescribe an organisation, the Minister must have regard to whether any person has, while a member of, or a participant in an organisation, engaged in serious criminal activity or been convicted of an offence involving public acts of violence, or damage.