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Taskforce on Organised Crime Legislation
9th of September 2015

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Submission to the Queensland Taskforce on Organised Crime Legislation by Assistant Professor Terry Goldsworthy¹.

In response to a request from the Executive Director of the Commission I would make the following submissions. I will provide my responses as they relate to each term of reference.

1. If provisions in the 2013 legislation are effectively facilitating the successful detection, investigation, prevention and deterrence of organised crime;

Two years into the campaign by the Queensland government against Outlaw Motorcycle Gangs (OMCGs), some meaningful analysis of the effectiveness and justification for the unprecedented measures is possible.

Approaching the two-year anniversary of Queensland's bikie crackdown, some police have claimed victory by citing the closure of club houses and claims in reduction in membership. In one claim the head of Queensland Police Service (QPS) Taskforce Maxima stated that the bikie war had decimated the OMCGs. He gave the example of the Outcasts OMCG as being one that had been almost completely eradicated (Doorley, 2014).

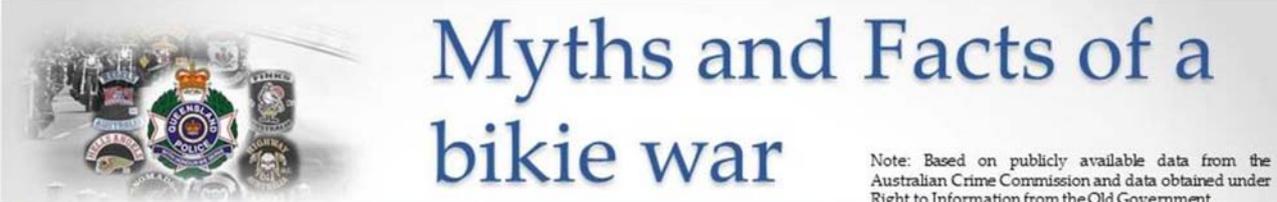
Taskforce Maxima boss detective Superintendent Mick Niland said all 26 declared criminal motorcycle gangs had suffered significant reductions in membership, with the Outcasts now consisting of a single member. "He is the last man standing," Supt Niland said. "He is the Queensland president in Gympie and he's like the Black Knight." (Doorley, 2014)

¹ The author is an Assistant Professor in the Criminology Department, Faculty of Society and Design, Bond University, Gold Coast. He has previously served in the Queensland Police Service for 28 years up to the rank of Detective Inspector. He served 16 years as a Detective in the Gold Coast Crime Unit, Gold Coast Criminal Investigation Branch and South Brisbane Criminal Investigation Branch. His final posting in the QPS was as an Inspector in the Legal and Policy Unit, Ethical Standards Command. The author has completed a Bachelor of Commerce, Bachelor of Laws, Master of Criminology, Doctor of Philosophy, Diploma of Policing, Advanced Diploma of Investigative Practice, He was admitted to the Queensland Bar in 1999.

In reality the QPS were later forced to admit that the Outcast OMCG had in fact ceased to exist as an OMCG a year before the introduction of the Queensland Criminal gangs laws in 2013 (Robertson, 2015). Such unsupported statements from QPS and LNP government spokespersons have been common during the Queensland bikie war.

On the timing of the club’s split, the police agreed. They told Guardian Australia their records indicated the Outcasts had disbanded in Queensland in 2011, despite the remaining presence of its single member. (Robertson, 2015)

Other senior police, though, have been more circumspect in their comments and say the war will never be won. The head of taskforce Takeback, Superintendent Keogh, stated that the bikie war will never be over and that “It’s going to be an ongoing problem long after I’m dead and buried and long past Islamic State.” (Cartwright, 2015). This lack of consensus among police highlights problems with Australia’s approach to combating bikie gangs in Australia. Arrest and punishment have been the tools of trade in this war. But, in reality, the war is neither won nor over. A number of myths have been promulgated in the war on OMCGs.



MYTH	FACT
All OMCG members are criminals.	Fact - 2014 Queensland government data showed that about 60% of gang members did not have a criminal history.
OMCGs are dominant players in organised crime.	Fact – whilst OMCG members do commit some organised crime offences, they are generally responsible for less than 1% of those crime types such as drug trafficking and production, homicide, extortion, robbery, fraud and prostitution.
OMCGs are just harmless groups of guys who ride bikes.	Fact – Some members of OMCGs do commit serious and violent offences, the level of criminality in the gangs is higher than the general public.
OMCGs use the gang structure to facilitate organised crime activity.	Fact - The current crackdown in Queensland has produced very few instances of criminal enterprise being facilitated by the gang structure. Individuals within the groups do however undertake independent criminal enterprises.
Tough laws and crackdowns are reducing the number of OMCG members and making it hard for them to gather.	Fact – Australian Crime Commission data would indicate that gang numbers have increased in the last three years in Australia. OMCG members in Queensland are still free to meet in private in large groups.
OMCGs only commit serious crime.	Fact – the vast majority of crime committed by OMCG members are minor criminal offences. The four most common being public nuisance, breach of bail, low level drug possession and obstruct police.

Figure 1: Myths and facts of a bikie war.

In reality, though, a more forensic analysis is required. Previous analysis has shown that OMCGs have limited involvement in organised crime and that they make a small contribution to general crime.

The bikie war's success should be judged on the following indicators:

- **Successful prosecution of bikie gang members for serious and organised crime offences, with these offences making up the majority of charges;**
- **Evidence that gang numbers are reducing and that recruitment is being interdicted;**
- **An evidence base that proves association laws stop the criminal elements of bikie gangs meeting to facilitate criminal enterprise;**
- **A marked positive impact on the organised crime markets that police claim the bikie gangs are dominant in; and**
- **Showing that the gang structures were being used for a common criminal purpose or enterprise.**

No evidence has been provided to the public to prove that any of these have been achieved. Without doubt, bikie gangs are less visible in Queensland – but they have now gone underground. If that was a success indicator, then the campaign has achieved it.

On the statistics and anecdotes that have emerged, it appears likely there will be no smoking gun to indicate success at the end of this campaign. There will be no major evidence that bikie gangs are the epicentre of organised crime in Australia, nor Queensland. Yes, they play a part, but not an overwhelming one.

Moral panic and association laws

In essence, the aims of 'criminal association' laws are threefold: to declare a specific organisation as 'criminal'; to impose control orders that thwart the consorting of members; and to exercise enhanced powers to confiscate unexplained wealth (Bartels, 2010). While the various forms of these laws claim not to target any specific groups, there does seem to be a focus on 'criminal gangs' and in particular on OMCGs. The Queensland Government, for example, has extended its push against organised crime by implementing a series of additional laws targeting criminal gang activity (otherwise known as VLAD or *Vicious Lawless Association Disestablishment Act 2013* and other associated laws).

In recent years Australian governments have responded to the moral panic that has resulted from highly visible organised crime groups committing criminal acts in public. In political terms reacting strongly to such perceived challenges to crime control is a popular public platform for any government to extend its crime fighting credentials. The legislative reactions to these perceived criminal challenges have been both punitive and populist from a penal perspective (Loughnan, 2009).

In essence the criminal association laws were a reaction to moral panic that had arisen in relation to highly public displays of violence by OMCGs. Moral panic is described by Cohen

(2002) as cited in Morgan et al (2010) as requiring public disquiet, significant media attention, demonising of a certain group and a disproportionate reaction by the state. The problem is usually highly volatile appearing quickly and disappearing just as quickly. All of the above factors can be seen to be present in the highly public episodes of OMCG violence. Examples of this are the mass attack of the Finks OMCG on Hells Angels members at the Royal Pines Resort on the Gold Coast in 2006² and the murder of a Hells Angels member by Comancheros members at Sydney airport in 2009. Both incidents attracted significant media attention and calls from the public for tougher action against OMCGs.

Is this moral panic justified? This is a crucial question that in reality can only be determined by examining empirical data. The perception of most OMCGs is that they are deviant groups engaging in non-conformist behaviour (Barker, 2005). Perceptions such as this are reinforced by generalised statements for authorities that paint a picture with little evidence to support it as seen in the comments of a South Australia Police Superintendent, “Bikies and their associates have become major players in today’s drugs trade, and other criminal communities, right across Australia. Today, being a member of an outlaw motor cycle gang is no longer only about motor bikes, it is about generating power and money, and lots of it” (Bray, 2010, p. 19).

It is because of this high profile that OMCGs have been the target of specific criminal organisation laws (Ayling, 2011b, 2013). The community’s perception of crime is an important performance indicator for any police service. The QPS for instance nominates the level of community confidence and satisfaction with police performance as two of their key performance indicators in their strategic plan (Queensland Police Service, 2015). The perception of the ability of a law enforcement agency to deal effectively with a real or otherwise threat such as OMCGs is of vital importance in maintaining community confidence.

When faced with moral panic it is often the knee jerk reaction of governments to enact draconian laws with little real practical value. This serves two benefits, the first being that the government can claim to be active is addressing the issue and the second is the value of being able to claim that they have the toughest policy or legislation in place to deal with crime. Queensland provides an interesting insight into the political thought process in relation to enacting laws such as these. A cursory examination of media articles highlights a range of critical comments from the former LNP government about association laws. The remarkable aspect of this is that whilst some of the LNP comments may have been made in opposition, where it is common place to critique all the government of the day does, the former LNP government continued to criticise association laws after coming into office.

Of interest is that the LNP actively sought out potential targets of the Queensland association legislation as proposed by the Blich Labor government whilst in opposition and had meetings with representative groups such as, the United Motorcycle Council of Queensland, and publicly voiced its opposition to the laws on the grounds that there would be ineffective and give too much power to the police (Shand, 2009). This was one of the platforms with which the LNP went to the election with. It subsequently won an overwhelming majority in Queensland’s Parliament. This accords with the notion that the public expect to be involved in the decision processes that decide our laws (Ayling, 2013). It may also explain why RTI

² The author was the senior Detective responsible for the initial investigative response in relation to this incident.

data obtained showed that in early 2014 some 66 percent of survey participants³ did not support or had concerns about the VLAD laws.

The attacks upon the association legislation continued once the LNP gained office when Attorney-General Jarrod Bleijie described the laws as stamping on the civil liberties of people, “It is not anti-bikie laws but anti-association laws.” (Scott, 2012, p. 15). Bleijie described the laws as being ineffective in dealing with organised crime “The Newman government does not think anti-association laws are the right way to deal with rogue bikie gangs and other organised crime syndicates” (Hurst, 2012). When members of rival OMCGs engaged in a gunfight in a crowded Robina shopping centre which result in an innocent civilian being wounded, Queensland Premier Campbell Newman made the following statement regarding the criminal association laws: “That is just here and now as a stop-gap until we get the chance to go to Parliament and really do some good there” (Helbig, 2012).

This position is similar to the “do something mentality” that permeates society in the face of a threat that causes moral panic (Katz, 2011). It also allows governments to have an expressive or symbolic piece of legislation that shows it is doing something to address the problem (Ayling, 2013). To some extent political expediency overtakes good law making and effective law enforcement.

Several forms of "criminal association" or "anti-bikie" laws have been introduced Australian jurisdictions, and the recent High Court decision upholding their constitutionality will ensure that they remain part of our justice landscape. Similar kinds of “anti-gang” laws have operated in various states in the USA and in Canada for some years.

There have been significant criticisms of these styles of association laws both here and internationally (Ayling, 2011b; Katz, 2011; Morgan, Dagistanli, & Martin, 2010), and these will be canvassed in more detail later. Some of the negative claims are that they are ineffective and that they contravene civil and political rights. In addition, there are concerns about the secret gathering of criminal intelligence, undisclosed hearings and the operations of “public safety orders” and the creation of offences for associating in public. In 2013 the Queensland Government extended the war on bikies or criminal gangs by implementing a whole series of new additional laws targeting criminal gang activity (referred to as criminal gang laws).

This submission examines the legislative framework (with an emphasis on the *Criminal Organisations Act 2009* and VLAD Laws in Queensland) from a national and international perspective. Drawing on this legal background the submission then provides criminological evidence about the likely effectiveness of these laws in dealing with the organised criminal activities of outlawed groups (i.e. an exploration of the links with money laundering, illicit drug distribution and serious violence). The submission then canvasses the potential for this legislation to provide any additional useful tools for police to disrupt organised criminal networks.

Rationale for change and the Queensland Criminal Gang Laws (VLAD)

The Gold Coast tourist mecca in Queensland is set to be the test case in the national battle against organised crime and in particular OMCGs. Whilst other states have failed to

³ RTI data obtained from Queensland Government from a survey conducted by Schottler Consulting of 1200 respondents to gauge community awareness and attitudes to VLAD laws at the beginning of 2014.

withstand legislative challenges to their criminal organisation and association laws, the Queensland criminal association legislation, both the *Criminal Organisations Act 2009* and VLAD Laws association offences now contained within the Criminal Code, have withstood High Court Challenges. These legal victories for the government are framed in the light of considerable negative publicity surrounding the activities of OMCGs on the Gold Coast.

An example of this was a BBC documentary that included a tour of the Finks OMCG clubhouse on the coast and also interviews with its members. It also featured commentary from a representative of the Queensland Police Union who described the Gold Coast as the “crime capital of Australia” (Elder, 2013). International media exposure such as this was also supported by more national exposure in programs such as the ABC’s 7.30 Report which ran a similar story highlighting the criminal activities of the Finks OMCG Gold Coast chapter and the seeming inability of the Queensland Police Service (QPS) to deal with such activities using current investigation tools and practices (Wordsworth, 2013).

The Finks Gold Coast chapter was subject to order application under the *Criminal Organisations Act 2009*. This application was subsequently withdrawn in March 2014, no public reason was given for the withdrawal by the QPS (Robertson, 2014). The most likely reason being that there was substantial risk of proceeding and losing the matter, and such a decision’s implication from public opinion and legal aspects on the VLAD laws.

Circumstances intervened however before the Finks matter could proceed to the Supreme Court with the occurrence of an OMCG brawl in the Broadbeach restaurant precinct on the Gold Coast on the 27th of September 2013. A large contingent of the Bandidos OMCG members proceeded into one of the restaurants in the precinct on a busy Friday night and called out two males associated with the Finks OMCG. A wild brawl then ensued despite uniformed police officers being present at the scene. The situation escalated when police arrested a number of Bandidos and conveyed them to the Southport Watchhouse and Police station. A large number of Bandidos attended to the police station and attempted to gain entry and demanded the release of their fellow members. Police reinforcements were urgently called in from surrounding areas and further OMCG members were arrested.

The media storm that followed was unprecedented; to some extent the audacious actions of the OMCGs in allegedly laying siege to a police station propelled this incident and OMCG behaviour to new heights of public attention. The stage was set for the Newman LNP government to use this incident as a catalyst to introduce much more draconian anti-gang laws, in addition to the criminal association laws under the *Criminal Organisations Act 2009*, that were already in place. The success or otherwise of the Queensland case and the new additional criminal gang laws will be crucial in setting the stage for a nationwide crackdown on OMCGs.

This move towards criminal association and criminal gang laws is bedded in the crime control model of criminal justice. In this model community safety is ensured by moving towards the restriction of individual autonomy (Findlay, Odgers, & Yeo, 2009) .

The new VLAD laws promulgated by the Queensland Government have no parallels in other jurisdictions and so their effectiveness and validity are still to be determined through crime trend analysis and court challenges. Whilst the Queensland association laws survived the High Court challenge in the matter of *Kuczborski v The State of Queensland [2014] HCA 46*, the specific VLAD provisions remain untested. The VLAD laws and amendments are comprehensive and affect a number of existing pieces of legislation as well as introducing

new ones (Queensland Government, 2014). The amendments and a summary of the additional legislation enacted or proposed by the Queensland Government from September 2013 are tabulated below (Table 1).

Table 1: Summary of Queensland Criminal Gang Laws		
Title	Basic purpose	New offences/powers
<i>Vicious Lawless Association Disestablishment Act 2013</i>	The act contains a legislative scheme which provides strong mandatory sentences for associates of criminal gangs who commit serious offences as part of their participation in the gang. A new mandatory sentencing regime will be complemented by the ability of the court to reduce sentences where an offender cooperates with law enforcement.	Provides mandatory sentences for participants in an association who commit a declared offence. The mandatory sentence is in addition to any sentence for the primary offence. 15 years for any person shown to be a participant. 10 year additionally for any person shown to be a participant and office holder.
<i>Tattoo Parlours Act 2013</i>	The act will ban members of criminal organisations and their associates from owning, operating or working in body art tattoo parlours. The Bill introduces a new occupational licensing and regulatory framework. This will ensure that people authorised to operate in the Queensland tattoo industry have been subject to rigorous identification and probity requirements.	Provides for power of entry to parlours. Offence provisions for providing misleading information to obtain a licence. Provides for the Commissioner of Police to refuse a licence base on criminal history or criminal intelligence of the applicant or associate of the applicant.
<i>Criminal Law (Criminal Organisations Disruption) Amendment Bill 2013</i>	This bill provided updates to the Criminal Code, Crime and Misconduct Act, Police Powers and Responsibilities Act, Tow Truck Operator Act, Penalty and Sentences Act and the Bail Act. The new criminal law bill contains a range of criminal gang-targeted amendments, including the creation of new offences, increased penalties for existing offences and increased police powers.	New offences include: three or more members of a criminal gang (including those listed by regulation), being together in a public place a member of a criminal gang being at a banned location, such as a criminal motorcycle gang clubhouse, or banned event a member of a criminal gang recruiting, or attempting to recruit, another person to the gang. (Note these are expanded upon in the text)

The former LNP government claimed that the proposed laws will achieve the disruption of OMCGs (Queensland Government, 2014). The amendments to the Police Powers and Responsibilities Act extends the impoundment of vehicle powers and also gives increased powers for police to demand name and address and the search of known or suspected members of a criminal gang.

The amendments to the Bail Act put a reverse onus on member or former member of a criminal gang to show cause as to why they should be granted bail (Queensland Government, 2014). The amendment to the Crime and Misconduct Act allows for The CMC to conduct

coercive hearings and gather intelligence in relation to criminal organisations, there is no need for a specific offence to have been committed. Essentially the amendments allow the CMC to conduct hearings for the purpose of gathering intelligence. Criminal gang members will not be able to refuse to answer questions on the basis of fears for their safety and face mandatory jail terms for contempt offences (Queensland Government, 2014).

The amendments to the Criminal Code create three new offences of association and also prescribe 26 organisations to be criminal organisations (Queensland Government, 2014). These organisations are all recognised OMCGs. In RTI documents obtained from the QPS elite anti bikie squad, Taskforce Hydra, they identified that only 14 OMCGs operate in Qld⁴. The listing of an additional 12 organisations can only be a pre-emptive strategy in case any of these organisation should attempt to begin operations in Queensland. Amendments have also been made to liquor legislation to prevent members of certain prescribed criminal gangs from entering or remaining at licensed premises while wearing their patches or club colours (Queensland Government, 2014).

The VLAD laws that have been enacted in Queensland have generally resulted in the expansion of police powers and the creation of new offences This matches the trend of similar laws throughout Australia (Loughnan, 2009). Indeed it has been suggested that there has been a fundamental shift in the balance of power between the state and the individual with the state being favoured (Barns, 2008). This type of legislation is not only state based, but is also linked to the Australian Commonwealth governments Organised Crime Strategic Framework (Loughnan, 2009). The purpose of the framework is to identify key organised crime threats and co-ordinate a whole of government response (Commonwealth Attorney-Generals Department, 2009). The Commonwealth Attorney General has clearly identified OMCG's as a potential target of this framework:

Outlaw motorcycle gangs, hierarchical and highly-controlled organised crime groups or underworld figures have dominated the public's image of organised crime in Australia. These traditional groupings continue to have a strong involvement in organised crime activities and remain a significant threat. (Commonwealth Attorney-Generals Department, 2009)

Legislation such as the Queensland *Criminal Association Act* is clearly aimed at OMCGs with the former attorney General for Queensland reading the bill into parliament stating:

Members of outlaw motorcycle gangs and other criminal organisations have been involved in activities such as attempted murder, extortion, drug manufacturing and distribution and pose a threat to Queensland. In response to outlaw motorcycle gang violence in southern states, other states and territories around Australia have passed legislation aimed at disrupting the activities of criminal organisations. The extraordinary powers provided for in this bill are necessary... (Queensland Parliament, 2009)

A key element of the strategic framework is the biennial development, by the Australian Crime Commission (ACC), of an Organised Crime Threat Assessment to provide a shared

⁴ Information obtained from the QPS under a Right to Information application lodged in June 2013.

picture among relevant stakeholders of the most significant threats and harms arising from organised criminal activity.

A review of the latest organised crime assessment released to the public does not identify OMCG's as the primary high level threat, but rather lists them generically with a number of other criminal organisations. It highlights the following key and emerging issue:

Violent incidents involving serious and organised crime reported in the media are frequently 'street crime' or opportunistic crime, such as alcohol-related incidents and individually targeted violence. However, in recent years 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 (Australian Crime Commission, 2015c, p. 32).

There is no specific evidence provided as to the involvement of OMCGs in organised crime, the case studies provided focus on crimes committed in public and with violence, not organised crime. In submissions to a joint Parliamentary committee on association laws in 2009 the ACC stated that OMCGs were not the primary criminal threat in Australia (Commonwealth of Australia, 2009). Victorian Police in submissions to the same committee stated that they "had bigger fish to fry" and blamed the fixation on OMCGs on excessive media attention (Commonwealth of Australia, 2009, p. 26).

In the aftermath of the Broadbeach brawl executive director of the ACC, Karen Harfield, described the OMCG threat as serious but went on to say;

"...While it is difficult to gauge the percentage of organised crime officially attributed to OMCCs. They are involved in many aspects of serious crime in Australia including the illicit drug market, the distribution and use of firearms, serious fraud, money laundering, extortion and corruption..." (Wuth, 2013, p. 9).

Again only generalised statements are provided as to the involvement of OMCG groups in organised crime and the amount of crime they commit is not quantified.

In their fact sheet on OMCG's the ACC recognise that OMCG's are but one of many threats and their actual involvement in organised crime is hard to measure.

However, it is difficult to gauge the percentage of organised crime attributed specifically to OMCG members. While they are prevalent in all states and territories, they are just one part of the broader and integrated picture of organised crime groups in Australia. (Australian Crime Commission, 2011)

The Queensland legislation is based heavily on this platform of being a response to a credible organised crime threat. The explanatory notes to the bill for the *Criminal Organisation Act* argue that organised crime poses a significant threat and that the legislation provides an alternative mechanism to combat this (Queensland Government, 2009).

The structure and methods of organised crime pose a challenge to the criminal justice system which is generally designed to prosecute and

punish isolated crimes committed by individuals. A successful prosecution of one or even more members of an organisation may have little effect on the criminal operations of the organisation as a whole. Further, successful prosecutions of organised criminal groups may be hindered by intimidation and violence towards witnesses and investigators.(Queensland Parliament, 2009, p. 3030)

When enacting the VLAD laws, the then Attorney-General, introduced the bill to parliament in the following terms.

I am pleased to introduce the Criminal Law (Criminal Organisations Disruption) Amendment Bill 2013. After a violent confrontation between two criminal motorcycle gangs recently occurring in Broadbeach, the government vowed that we would act swiftly and decisively to ensure the community is protected from these vicious, violent thugs... The reforms contained in the bill require urgent passage as they are crucial to disrupting the activities of criminal motorcycle gangs who are a serious threat to community safety in Queensland. The incident at Broadbeach on Friday two weeks ago drew a line in the sand for criminal motorcycle gangs in Queensland. We said as a government, 'Enough is enough.' When criminal motorcycle gang members are so bold as to go to a restaurant or cafe at Broadbeach in front of victims and innocent individuals, we have to act tough. That is why we fully acknowledge and appreciate that the three bills that I have introduced in the Assembly this afternoon are very tough measures, but warranted in all the circumstances. (Queensland Parliament, 2013, p. 3157)

No mention was made of addressing organised crime. Yet in the explanatory note to the bill the purpose of the legislative amendments were framed as addressing organised crime⁵.

On 28 September 2013, in the wake of violence at Broadbeach involving criminal motorcycle gangs, the Queensland Government announced its commitment to:

- 1. Adopt a zero tolerance crackdown on criminal gangs;*
- 2. Provide whatever additional resources are necessary for the Queensland Police Service to carry out this crackdown;*
- 3. Introduce a range of tougher laws to tackle criminal gangs; and*
- 4. Support any moves to have additional criminal gangs declared a 'criminal organisation' under the Criminal Organisation Act 2009...The Bill is aimed at ensuring the protection of the community by making the establishment of organised crime in Queensland a difficult prospect.*

The legislation had all the hallmarks of a moral panic, the act that was the catalyst had little relation to the legislative response and its purpose.

The laws enacted in Queensland are similar to those put in place in other states in Australia and also overseas in countries such as New Zealand, Canada and the Netherlands (Cash,

⁵ Criminal Law (Criminal Organisations Disruption) amendment bill 2013 Explanatory Notes, page one.

2012). They also bear some resemblance to anti-terrorism laws enacted in Australia after the terrorist attacks of 9/11 and the Bali Bombing in respect of some of the powers given to law enforcement authorities (Cash, 2012; Loughnan, 2009).

How much crime do OMCGs commit?

It seems the QPS is not sure itself when it comes to determining how much crime OMCGs commit. When requested by APN News and Media to respond to the below question their reply was vague⁶.

Question. What percentage of serious crime does the QPS estimate that OMCGs contribute in Qld as a percentage of total crime and separately as a percentage of serious crime?

Response. It has been assessed the extraction of the data, to obtain this information, would take significant time and resources to complete and as a result has not been attempted. However of all the charges brought upon CMG participants since the beginning of this operation, in October 2013, approximately 43% are for serious criminal offences as defined below.

Given this response it would be reasonable to wonder of what evidentiary basis the QPS has determined OMCG involvement in organised crime and crime in general. In reality on their own Criminal Gangs FAQs webpage the QPS asserts that QPS data indicates that "...reported crimes against criminal motorcycle gangs equate to around 0.6 per cent of all crimes in Queensland" (Queensland Police Service, 2015a).

This theme is continued when the APN News and Media requested the below data.

Question. A full breakdown of the types and number of charges as they pertain to the three nominated groupings of offenders, they being members, combination and associates. The full listing of charge type and numbers is required for each separate group -

Response. The Queensland Police Service does not keep statistics on the breakdown by number and type of charges attributed to the groupings within the Criminal Motorcycle Gang (CMG) environment. As well as not recording offenders in this manner, CMG participants have been arrested under 35 different statutes and on over 300 different offences. As a result the request has been assessed as requiring significant resources and time to complete and therefore has not been attempted.

Yet this is exactly the data that I obtained in response to my RTI request RTID226ER from the QPS and the Premiers Office. I obtained six years-worth of data for every OMCG related charge in Queensland broken down by charge type, number and gang. So this poses two possible scenarios. Either the QPS does not know what data it actually holds, or it is not making full disclosure when asked to do so in relation to OMCG arrest and charge figures.

⁶ Responses from the QPS to various APN News and Media requests were provided to this author.

When the VLAD laws were enacted in 2013 attempts were subsequently made to link the OMCGs and the new laws targeting them as being responsible for the reduction in overall crime in Queensland. An examination of the overall crime rate in Queensland indicates that it has been steadily reducing for the past 12 years. Apart for an aberration in 2011/12, this trend has been consistent and independent of the VLAD laws⁷. A reduction in general offences such as robbery, break and enters, and stolen vehicles was also attributed to the introduction of the VLAD laws, aimed at OMCGs.

Assistant Commissioner Mike Condon says robbery is down 25 per cent, unlawful entry down 22 per cent, property damage down 15 per cent and unlawful use of a motor vehicle 23 per cent since the introduction of VLAD legislation. (Coghill & Wood, 2014)

However, comparison of the levels of reported property crime in Queensland year-to-year clearly show that property crime was already substantially reducing in 2013 – before the VLAD laws came into effect. Previous analysis of government data shows that bikies had little involvement in the type of offences being put forward by the government.

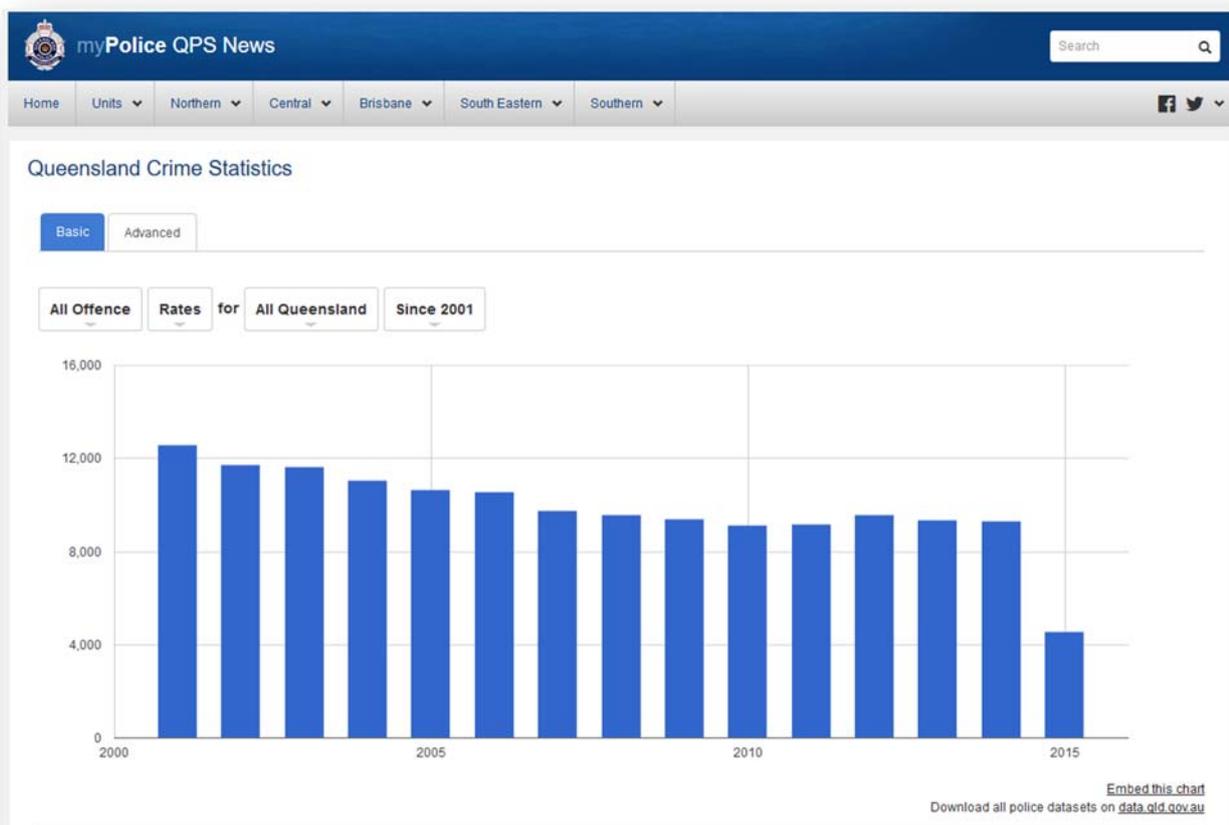
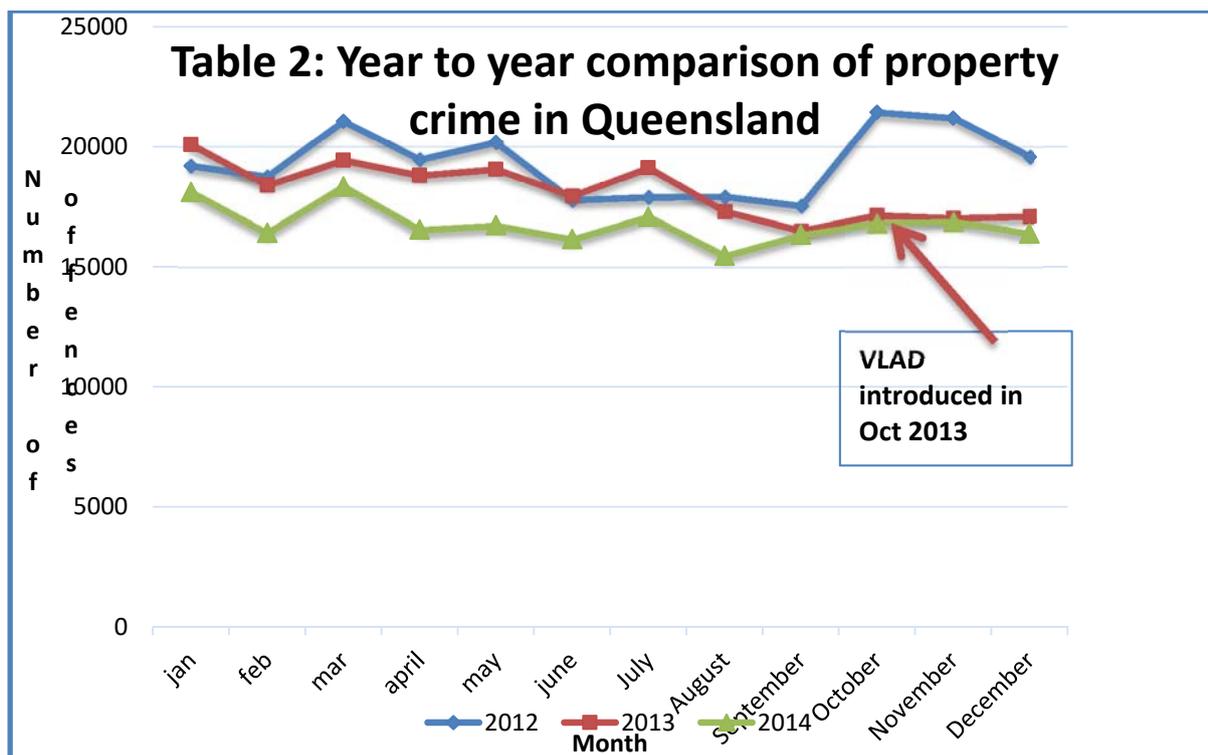


Figure 2: Queensland crime rates sourced from MyPolice website.

⁷ Sourced from publicly available MyPolice data.



Data obtained under RTI shows the level of involvement of OMCG members in general offences in the South Eastern Region over a 5 month period, their involvement is minimal.

Table 3: Comparison of reported offences and OMCG arrests for Jan 2013 to May 2013 for the South East Region Qld

Offence	Number reported in SER	Number of OMCG related arrests	Percentage %
Robbery	190	0	0
Break and enter	4257	3	.06
Fraud	2116	3	.14
Handling stolen goods	453	3	.6
Assaults	155	3	2
Unlawful use of a motor vehicle	1627	2	.12

The Queensland Police Service (QPS) released statistics in relation to bikie related crime committed in the South Eastern Region during a 17 month period over 2012/13⁸. The below table represents the figures made available to the media (Queensland Police Service, 2013).

These figures do allow for some analysis of OMCG related crime to be conducted. For the period January 2012 to May 2013 some 402 offenders were arrested on 1083 charges. From the statistics provided by the QPS MyPolice website we can determine that 127,698 offences were reported for the same period. Using these figures as a guide it can be estimated that some .8% of crime in the region could be attributed to OMCGs. This figure reduces to

⁸ Press release made by QPS Assistant Commissioner, South Eastern Region on June 12 2013 available at <http://mypolice.qld.gov.au/goldcoast/2013/06/12/police-crackdown-on-omcg-members-and-associates/>.

approximately .2% of crime for the area if just OMCG members are considered. OMCG members accounted for only 33 percent of arrests. These figures are in accordance with other estimations of OMCG derived crime including New South Wales Police estimations that .6% of crime could be attributed to OMCGs (Cash, 2012).

Data extracted from the QPS shows that over a 5 month period on the Gold Coast in 2013 the three most common offences committed by members or OMCGs were possession of dangerous drugs, breach of bail and unlicensed driving. This data further showed that over a 12 month period in 2012/2013 two clubs were responsible for the majority of offences they being the Bandidos and Finks. Of the other 18 clubs nominated in the data supplied many failed to register any offence at all.

	OFFENDERS	CHARGES
COOMERA	89	193
GOLD COAST	252	744
LOGAN	61	146
TOTAL	402	1083

Figure 3: Arrests and charges from SER QPS media release.

Data obtained from the Queensland government under RTI shows that bikie gang members were found guilty of 4323 criminal charges between April 2008 and April 2014⁹. In the same period, 2,537,223 total offences were reported to police. This means that bikie gang members were found guilty of 0.17 percent of reported Queensland offences. For the same period the top four most numerous offences were public nuisance, low level drug possession, obstruct police and breach of bail. In fact for this six year period these four offences combined accounted for 30 percent of all charges resulting in a finding of guilt for OMCGs in Queensland.

Table 4: Top ten charges by number resulting in a guilty finding against OMCG members in Qld between April 2008 and April 2014.

Type of Charge	Number
Possessing dangerous drugs	523
Commit public nuisance	285
Breach of bail condition	258
Assault or obstruct police officer	218
Contravene direction or requirement	151
Failure to appear in accordance with undertaking	144
Possess utensils or pipes etc that had been used	126
Stealing	121
Assaults occasioning bodily harm	110
Wilful Damage	103

⁹ RTID226ER Administrative.

Given the over-policing of bikies, one could also reasonably expect that these arrest figures in relation to OMCGs would be inflated to some degree. The figures rest on all the offenders being conveniently termed “participants of a criminal organisation”. The police will not supply figures for the actual arrests of members – nor the grey and fuzzy “associate arrests” – instead grouping them into a homogeneous category. If we were to consider just members, I suspect the arrest and charge figures would be drastically reduced.

Since the inception of the bikie war we have seen large police resources dedicated solely to focusing on OMCGs. The QPS in response to a request for APN News and Media indicated that Taskforce Maxima has been operating for 18 months (Oct 13 to Mar 15) and the staffing capacity is:

- a) Plain clothes officers – 95
- b) Uniform officers – 5
- c) Intelligence officers – 6

Add the 100 or so officers of the Gold Coast RAP then you could approximate that some 200 hundred police have been allocated to policing some 2109 OMCG participants. This is a policing ratio of one police officer to each 10 OMCG members. Compare this to the general population to police ratio based upon population of 4,795, 513¹⁰ with an approximate police service of 11,000. This results in a general population ratio of one police officer to each 435 members of the general population. Clearly, as experience in the Aboriginal communities have shown, if you over police a population in society than their level of criminality will rise substantially.

Media and OMCGs

Part of the problem in getting an unbiased and informed representation of OMCG related crime for the public is the fact that the QPS has been quite dynamic in its engagement of mainstream media in ensuring positive coverage for the laws. An analysis of media reports on the bikie war by The Courier-Mail and its weekend News Corp stablemate The Sunday Mail over a two-month period showed that 60% of stories had a police viewpoint, while only 20% had independent input.

To improve the results for this indicator there has been substantial media engagement including background briefings with journalists and news directors, the provision of regular enforcement footage and positive messaging through all media outlets. On-line media forums are also regularly conducted allowing direct questions from the public to the Operations Leader for Taskforce Maxima.

- Targeted public relations strategies including background briefing of journalists and better coordination of government messaging have seen a reduction in the level of negative media articles throughout February and March 2014.

Figure 4: Extract from Strategic Monitoring Team Report 2014.

As part of the bikie war, the police have worked hard to win the media war, wooing and winning over most of the mainstream media, in particular the print sector. This is in

¹⁰ As indicated by the Queensland Government population counter as at 9/12/2015 at <http://www.qgso.qld.gov.au/products/reports/pop-growth-qld/qld-pop-counter.php>.

alignment with objectives set out by the bikie Strategic Monitoring Team¹¹ to reduce bad news stories – and their efforts have paid off.

Table 5: Analysis of bikie war related stories in the Queensland Courier Mail and Sunday Mail from 17/11/2014 to 9/1/2015

Date	Heading	Content	Police comment	Independent comment
23/11/2014	<i>Gangbusters state crime rates plunge as police go</i>	Lists arrest figures and links to broader crime	Yes	No
29/11/2014	<i>Why Bleijie can sing Jailhouse Rock</i>	Lists arrest figures and links to broader crime	Yes	No
2/12/2014	<i>Thousands of charges since bikie blitz began</i>	Number of charges in bikie war	Yes	No
5/12/2014	<i>Bikie turbocharger</i>	Police plans to continue bikie blitz	Yes	No
15/12/2014	<i>Newman's A-grade result for Queensland</i>	Editorial re the success of the bikie war	No	No
15/12/2014	<i>We will slash crime rate again: police</i>	Story about crime reduction and link to bikie war	Yes	No
20/12/2014	<i>We will wipe out bikies</i>	Police comments on decrease of bikie memberships	Yes	No
3/1/2015	<i>Building sites in Bleijie's sights</i>	Bikie laws to move into construction industry	No	Yes
4/1/2015	<i>Bikies will back state Labor at next state election</i>	Story highlighting that bikie groups will be voting labor at state election	No	Yes
4/1/2015	<i>Hands off bikie laws, police warn politicians ahead of state election</i>	Serving police and police union warn Labor not to change laws	Yes	No
5/1/2015	<i>Acting Attorney-General John McVeigh won't reveal what will happen with Queensland anti-bikie laws following 2016 review</i>	LNP review of laws in 2016	No	No
6/1/2015	<i>It's illogical to ponder changes to bikie laws</i>	Editorial comment re Labor's plans to repeal bikie laws	Yes	No
6/1/2015	<i>Queensland Labor pledges to scrap extended sentences for bikies if elected</i>	Commentary of labor's proposed changes to VLAD laws	No	Yes
7/1/2015	<i>Queensland police to share bikie-busting strategies at WA crime awareness conference</i>	Story about QPS presenting at a national conference on bikies, recounts arrest figures	Yes	No
7/1/2015	<i>Newman revs up his crimefighter crusade</i>	Some detail about bikie war and election strategy	No	No

Queensland's media has been flooded with operational police stories, with seemingly every bikie arrest the subject of a specific media release. In the same period, other offenders arrested for similar offences often didn't rate a mention.

¹¹ Extract from the preliminary report of the Bikie Strategic Monitoring Team 2014.

How many gangs are there and defining membership of OMCGS.

Data obtained under RTI from the QPS in 2013 indicates that there were 14 OMCGs officially recognised as operating in Queensland. Membership includes full members, probationary, prospect and nominee members. There were approximately 920 members of outlaw motorcycle gangs in Queensland¹².

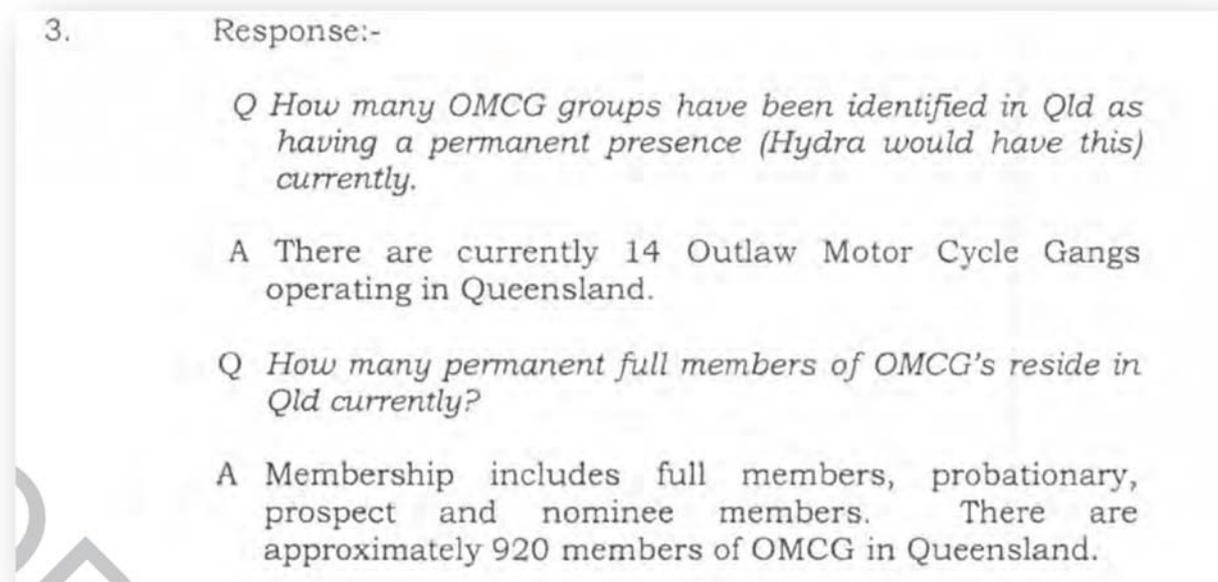


Figure 5: Extract from report of Detective Inspector G Watts, head of Taskforce Hydra, report dated 19 July 2013

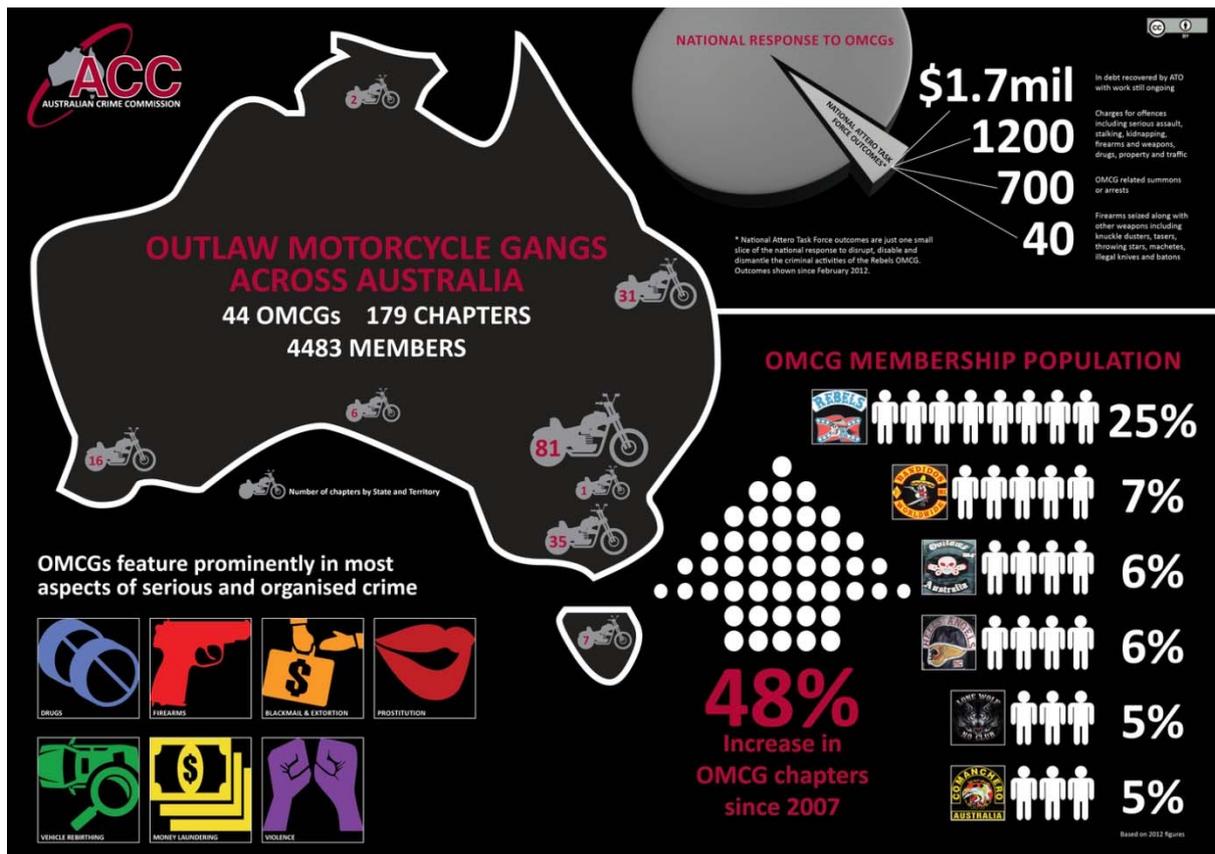
Membership of the gangs is spread throughout the major towns and cities of Queensland, with the larger proportion of members located in the south eastern corner of the state. The South Eastern Police Region, which includes the Gold Coast and Logan areas, has the greatest concentration of members, with seven clubs based in the Gold Coast Policing District (which stretches from Coomera to the New South Wales border at Tweed Heads).

The Gold Coast has three of the high-risk clubs: namely the Finks, the Bandidos and the Rebels. Of interest is that despite Queensland Police only nominating 14 clubs as existing in Queensland, the VLAD laws listed some 26 gangs that are to be prescribed as “criminal organisations”. This prompts the question: **if the QPS is not recognising 12 of the gangs as even being present in Queensland, why is the government legislating them as criminal organisations?**

Part of the criminal gang laws’ purpose is that they are meant to be a disincentive to bikie gang membership. Police claim to have decimated gangs. But despite the positive rhetoric, gang numbers would appear to have increased nationally.

Australian Crime Commission (ACC) data indicated that in 2012 there were 4483 bikie gang members across Australia. Current ACC data shows that there are now approximately 6000 members – a 34% increase in three years (Australian Crime Commission, 2015d).

¹² Extract from report of Detective Inspector G Watts, head of Taskforce Hydra, report dated 19 July 2013.



Of interest is that the QPS states that there were 920 OMCG members and associates. Yet in response to a request from ANP News and Media the QPS stated that number of OMCGs had actually increased since the introduction of VLAD.

Question. How many associates / probationaries / nominees of OMCG reside in Qld currently?

Response. The State Intelligence Command assessed the CMG environment as at 1.1.14 and identified some 2109 CMG participants. Then as at 15.2.15 the State Intelligence Command assessed the CMG environment in Queensland and identified there were some 1625 CMG participants. These being identified as follows:

<i>Confirmed (members)</i>	789
<i>Associated (associates)</i>	439
<i>Disassociated</i>	371
<i>Unconfirmed</i>	26

Indeed on QPS figures there as an increase of OMCG membership of some 129 percent from July 2013 to January 2014, a 6 month period. Either the QPS intelligence system is in a state of disarray as to who is actually an OMCG member, or there has been an increase in recruitment to the OMCGs since the bikie war began.

So, either gang numbers had grown exponentially, or many of those arrested could not have been members. Either case is damning to the campaign's claims of success. Clearly one could argue that the VLAD laws are not interdicting recruitment.

The actual involvement of OMCGs in the commission of criminal offences is further blurred when we consider who should be included as being a member of the actual OMCG. The figures produced by the QPS in a 2013 media release by the former Assistant Commissioner Graham Rynders show that some 56% of the reported arrests can be attributed to associates. Yet in the previous two categories we see that all forms of recognised club memberships are included (including ex-members which would seem to defy the logic of their crimes being OMCG related).

Table 6: OMCGs members and associates arrested in the South East Region between January 2012 and May 2013

Police Districts within the Qld South Eastern Region (SER)	Member	Combination (Ex-member, Probationary, Prospect and Nominee)	Associate
Coomera	38%	8%	54%
Gold Coast	29%	10%	61%
Logan	46%	18%	36%
Total	33%	11%	56%

How these associates are actually linked to OMCGs is difficult to determine as the guidelines for included such are not provided nor explained by the police. The Detective Inspector in charge of Task Force Hydra, the elite QPS anti-bikie unit, expressed concern some weeks after these figures were released and commented on ABC radio on the 9 July 2013 about the dangers of included associates as being OMCG related crime.

“A bikie associate is not a member and really I think it’s very irresponsible to link those people with an outlaw motorcycle gang” and further... Well, what I can say is that if the person is not a member of an outlaw motorcycle gang and is involved in an offence, it is not really bikie related. It doesn’t have the same effect. An associate is not a member. That person is not a member of an OMCG therefore it is not bikie involved”. (Australian Broadcasting Corporation, 2013)

The apparent contradictory stance between two senior officers of the QPS highlights the conundrum faced by law enforcement agencies when dealing with information relating to highly public crime groups such as OMCGs. To not include the associate arrests may show the law enforcement agency in a negative light as not doing enough to combat what appears to be an obvious crime threat.

If on the other hand the associate arrest figures are included it raises the concern that the public perception one of OMCG crime being out of control. A further issue is that under the Queensland legislation the police must support the application for a criminal declaration of an organisation with restricted criminal intelligence. It would be a valid assumption to believe that associate related crime has been included in the intelligence brief supplied to the court, if it was to be removed the brief would be substantially weakened.

When faced with a request for data under the RTI scheme the QPS responded that “...records of associates of each OMCG are not generated and to generate an accurate assessment of associates would require an unreasonable amount of time”¹³. If this is the case then it begs the

¹³ Extract from report of Detective Inspector G Watts, dated 13 July 2013.

question how is it that associate offence data is released to the media created and who does it include?

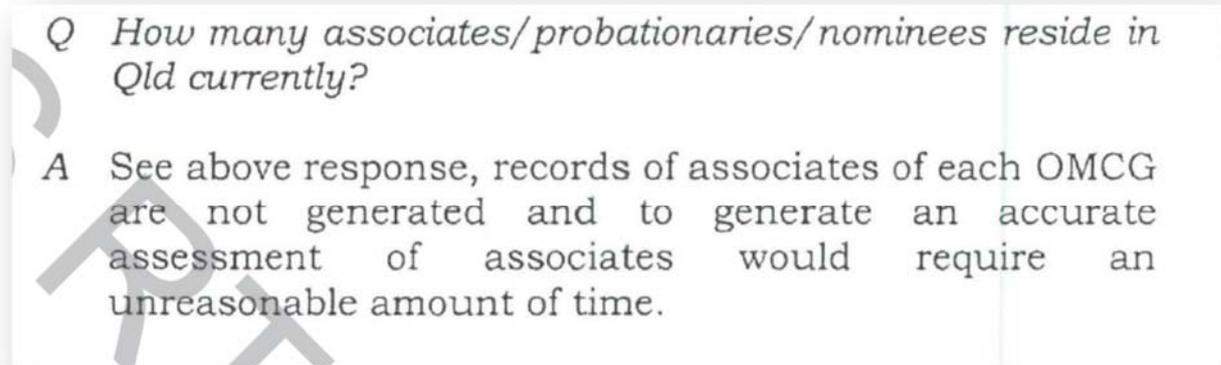


Figure 6: Extract from report of Detective Inspector G Watts, head of Taskforce Hydra, report dated 19 July 2013

This confusion leads into a discussion of who can actually be considered a member of a criminal organisation. Under the Queensland legislation schedule 2 of the *Criminal Organisation Act* it sets out standard inclusions such as office holders, members or prospective members. It also includes two broad reaching provisions for membership of a criminal organisation where someone identifies as a member of the organisation, or alternatively where the group identifies someone as being a member of the organisation.

In these two circumstances there is no need for a two way relationship for membership to be established. Similar provisions in New South Wales were criticised by that states former Director of Public Prosecutions, Nicholas Cowdrey, who stated that “This is extraordinarily broad-reaching – this criterion could be fulfilled without the person himself having any intention of being part of the organisation and could be established without any evidence of that person’s actual involvement with the organisation” (Cowdrey, 2009, p. 323).

The VLAD laws allowed for an even wider net to be cast with the term participants being defined as follows in section 4 of the *Vicious Lawless Association Disestablishment Act 2013*.

4 Meaning of 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.*

The parameters of organised crime

The purpose of this type of association legislation is to disrupt organised crime networks. This aim was clearly alluded to by the Qld Police Minister on 21 March 2013 when he referred to the failure of a Finks OMCG high court challenge to the *Criminal Organisation Act 2009* and he stated the first application for a criminal association declaration would "...strike at the heart of organised crime"(Queensland Parliament, 2013, p. 834) . This poses the question what exactly is meant by the term organised crime.

The Royal Canadian Mounted Police defines organised crime as being "It is defined by Canada's Criminal Code as crime committed by any group of at least three people that has as one of its main purposes or activities the facilitation or commission of one or more serious offences where the primary motive is profit" (Royal Canadian Mounted Police, 2004). What is exactly mean by the term organised crime can be difficult to define and there has been much scholarly disagreement as what defines conduct as organised crime (Ayling, 2011a; Stys & Ruddell, 2013).

Of note is that neither the *Criminal Organisation Act 2009*, nor the *Vicious Lawless Association Disestablishment Act 2013* refer to organised crime at all. Both mention serious crime activity which is defined in the main as being a seven year imprisonment offence and a range of other Criminal Code offences. Many of these type of offences could not be construed as having the nature of organised crime activity, for example low level drug possession may fall within serious criminal activity but clearly many of these offences are not organised crime offences.

In trying to explain the involvement of OMCGs in organised crime activity the QPS had elected to rely on the definition of 'serious crime' as contained in section 7 of the *Criminal Organisation Act 2009*. Essentially this section includes offences that are indictable offences punishable by at least 7 years. By its very nature this definition will be overly inclusive and will include many offences that are clearly not of an organised crime nature. It does however allow the QPS to claim a much higher level of "organised crime" activity for OMCG related offences.

In determining what the role is of various groups with the criminal marketplace it is worth going back to a legislative grounding to define what we class as organised crime. Both the *Crime and Corruption Act (Qld)* and the *Australian Crime Commission Act* define organised crime and its elements. A better understanding of what organised crime is obtained by looking at the *Crime and Corruption Act 2001 (Qld)* which includes the following definition of organised crime in Schedule 2 "...criminal activity undertaken with the purpose of gaining profit, power or influence, and involving offences punishable by not less than seven years' jail, two or more people, and planning and organisation or systematic and continuing activity".

Further the *Australian Crime Commission Act 2002 (Commonwealth)* in section 4(1) defines organised crime as crime "...that involves two or more offenders and substantial planning and organisation, and that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques...".

There is little doubt that OMCGs do commit crime. As noted in Barker many OMCGs demonstrate criminal propensities and recruit from those who hold similar deviant values of crime and violence (Barker, 2011). The crucial question is however do OMCGs proliferate in

the commission of organised crime? When one looks at much of the overt violent crime committed by OMCGs it simply does not fit within the definition of violent crime.

Indeed much OMCG crime can be characterised as being opportunistic, overt, violence driven and individual in nature. This compares against organised crime which is often covert, profit driven, organised or planned and a group action. Indeed the crimes committed by

Parameters of organised crime in Australia

- Organised crime is defined under the *Crime and Corruption 2001 (Qld) Schedule 2* as encompassing:
 - **organised crime** — criminal activity undertaken with the purpose of gaining profit, power or influence, and involving offences punishable by not less than seven years' jail, two or more people, and **planning and organisation or systematic and continuing activity**
- *Australian Crime Commission Act 2002 section 4* states organised crime means an offence:
 - that involves two or more offenders and **substantial planning and organisation**, and
 - that involves, or is of a kind that ordinarily involves, the use of **sophisticated methods and techniques**,...

Figure 7: Parameters of organised crime in Australia.

OMCGs differ from other organised crime groups as “The great majority of biker violence is also directed at their fellow travellers in this rather lawless milieu.

This distinguishes them from many other forms of organized crime that deliberately insinuate themselves directly into legitimate organizations and the lives of ordinary citizens” (Quinn & Shane Koch, 2003, p. 300). As noted by the Joint Parliamentary Committee in 2009:

...However, the committee is persuaded by the ACC that OMCGs are a visible and therefore prominent target in both the political and public arenas, and that serious and organised crime often involves a level of sophistication or capacity above that of many OMCGs. (Commonwealth of Australia, 2009, p. 32)

The laws are held out as a solution to the organised crime threat posed by OMCGs. The Australia Crime Commission noted the difficulty in determining the level of involvement of OMCGs in organised crime “However, it is difficult to gauge the percentage of organised crime attributed specifically to OMCG members. While they are prevalent in all states and territories, they are just one part of the broader and integrated picture of organised crime groups in Australia.” (Australian Crime Commission, 2011, p. 2). The crucial point here is that OMCGs are just one part of a much wider problem, yet the association laws as enacted

by Queensland fail to address any other alleged organised group except for OMCGs in the main.

The involvement of OMCGs in organised crime

There is difficulty in actually determining the amount of crime committed by OMCGs. This is further complicated if one is to actually try to determine the amount of serious or organised crime that OMCG's may be responsible for. This was noted by the Commonwealth Joint Committee (2009) which stated "the level of OMCG involvement in serious and organised crime is difficult to clearly establish ...".

Various governments in Australia have made much of the role of outlaw motorcycle gangs (OMCGs) and their involvement in the methylamphetamine trade. Tellingly, in the ACC (2015a) report on the methylamphetamine market they rate only two mentions: one is as a part of the wider criminal gang picture; the other as a case study for involvement in the drug trade in a small rural Victorian town. Nowhere was the critical evidence of their dominance of this particular drug market put forward, despite what many law enforcement agencies have been claiming in recent years.

International policing organisation Interpol frames its discussion of organised crime in terms of criminal activity (INTERPOL, 2015):

Organised networks are typically involved in many different types of criminal activity spanning several countries. These activities may include trafficking in humans, illicit goods, weapons and drugs, armed robbery, counterfeiting and money laundering.

The UN Convention against Transnational Organised Crime (2004) suggests that organised crime groups have a number of elements (United Nations Office on Drugs and Crime, 2015). These include:

- *A group of three or more persons that was not randomly formed*
- *Existing for a period of time*
- *Acting in concert with the aim of committing at least one crime punishable by at least four years' incarceration.*

The motive behind any group is to obtain, directly or indirectly, a financial or other material benefit. The ACC report on the Australian methylamphetamine market outlines the following crime groups as being active in the meth market (Australian Crime Commission, 2015a, p. 11):

...Members of Australian-based outlaw motorcycle gangs, Australian organised crime groups as well as persons of Middle Eastern, Eastern European and West African backgrounds, and Vietnamese, Chinese, Canadian, US and Mexican serious and organised crime groups.

Since 2013, Queensland has been targeting crime committed by OMCG members. Earlier this month, South Australia proposed similar laws to Queensland's. State Attorney-General John Rau argued that these laws target organised crime (ABC News, 2015). However, a snapshot

of OMCG organised crime activity in Queensland may suggest that too many resources are being devoted to what could be best described as low-level players.

Table 7: Organised Crime Activity of Queensland Outlaw Motorcycle Gangs April 2008 – April 2014 by count and as a percentage of overall reported crime.			
Type of Crime	Number of OMCG related offences	Total Queensland offences	Percentage
Extortion	0	367	0
Drug Trafficking	21	2153	0.9
Murder	3	294	1.0
Fraud	69	106316	.06
Unlawful possession of weapons/supply	147	23249	0.6
Robbery	17	10963	0.1
Production of dangerous drug	40	10085	0.3
Prostitution	0	1230	0
Supply of dang drug	41	15558	0.2

The picture of OMCGs being dominate organised crime players does not overly improve when organised crime-type offences are considered. OMCG members' involvement is insignificant in totality. Money laundering has rightly been considered as being at the centre of organised crime, yet not one charge of money laundering was proven against a bikie gang member in six years in Queensland. Most of the crime that bikie gang members committed simply does not fit the nature of organised crime offences

2. If provisions in the 2013 legislation are effectively facilitating the successful prosecution of individuals;

Making the arrest is only part of the law-enforcement response. Successfully prosecuting the matter is the other. For the police, the numbers of arrests and charges are indicators of success. This is due to this being the part of the criminal justice process that police have most control over. Once a matter moves beyond this point, the police's ability to influence the outcome is diminished. Queensland's bikie war has been marred by a number of high-profile failures when the matters were tested in court (Wymes, 2105). Some matters, like Sally Kuether's association arrest, did not even go to trial. No evidence was even offered (Australian Broadcasting Corporation, 2015).

Police heralded the large increase in extortion arrests that had been made as a result of the bikie war (Willacy, 2014). Many of these are now failing at court (Brisbane Times, 2015). Of more concern is that some complainants are accusing police of standover tactics in eliciting their complaints (Dibben, 2015). This alleged conduct may leave investigators open to criminal charges if proven.

Perhaps most damning was the collapse of many of the riot charges that were the catalyst for the bikie crackdown in the first place (Stigwood, 2015). Allegations have also been made that senior police interfered in the normal prosecution processes (Stigwood, 2015).

Data obtained under RTI shows that from April 2008 to April 2014, around 20% of charges against bikies in Queensland failed to result in a successful prosecution. The ethos of charging to inflate arrest figures with little regard for court outcomes may be one explanation for this high rate of failure. It would be of interest to get the QPS to provide the normal failed prosecution rate for the general population and compare this to the rate for OMCG related charges.

In regards to the association provisions of the VLAD laws their impact on criminal activity has been minimal and their effectiveness remains untested. Data supplied by the QPS in response to a request for APN News and Media shows that as of February 2015 on 10 occasions OMCG members have been located in groups of 3 or more and charged under section 60A of the Criminal Code. 36 OMCG members have been charged with association offences. None have been convicted. A number have had the charges dropped for lack of evidence. This figure of 36 equates to 2% of offenders arrested by Operation Resolute as of 18 February 2015, an insignificant number.

The association laws have been nothing but a distraction for law enforcement. I would argue promote lazy and unfocused policing which concentrates on who the person, rather than the crucial aspect of what criminal activity they are doing.

In relation to the VLAD mandatory sentencing provisions themselves their impact has been minimal. Since the introduction of the laws in October 2013 up to 18 February 2015 some 1813 persons had been arrested on 5088 charges as part of the bikie crackdown, Operation Resolute. Of these charges only 89 persons had been charged with 138 offences under the VLAD legislation. So less than 5% of offenders and 3% of charges in the bikie crackdown have been related to the VLAD legislation, hardly a game changer you would think.

It becomes even less so when you compare the VLAD charges to overall crime in Queensland for the period October 2013 to the end of February 2015. In that period there were 587,664 offences reported in Queensland according to MyPolice data, VLAD related charges made up 0.02% of overall crime. The impact of the VLAD legislation is insignificant in relation to the reported crime in Queensland and its importance has been exaggerated.

Why have there been so few charges laid under the VLAD provisions? The explanation is simple. First, the vast majority of offences involved were of such a minor nature that they are not covered by the VLAD laws. Second, the people arrested were acting as individuals: they did not commit their offences as part of some criminal conspiracy for the benefit of the organisation.

It is easy to claim someone is a participant in arrest figures and media releases. It is not so easy to do this when subject to the scrutiny of the criminal courts, where actual evidence is required to be proven to requisite standards. In a number of instances, claims of bikie gang membership evaporated when the courts required proof.

3. If the 2013 legislation strikes an appropriate balance between ensuring the safety, welfare and good order of the community and protecting individual civil liberties, including in relation to the anti-association provisions in the 2013 legislation; and

The former LNP government's rapid response with new far-reaching and unprecedented laws does not match the scale of the crime threat posed by bikies on the Gold Coast, and risks undermining some basic principles of the criminal justice system.

Bikies have become the poster boys of crime in Queensland. In the two years we've seen the announcement of a Spartan, bikies-only jail likened to Guantanamo Bay, tough new laws rushed through a marathon session of state parliament overnight, and a constant stream of news about "the war on bikies". It was all sparked by Broadbeach brawl involving the Bandidos OMCG at a Gold Coast restaurant. But what really sparked public outrage was that after the brawl, it was alleged bikies laid siege to a major police station in Southport.

From 1994 to 2010, I worked as a detective on the Gold Coast, in charge of the Criminal Investigation Branch at Burleigh Heads. So I was as shocked as anyone to see the TV images of the police seemingly incapable of controlling the situation - not just that the bikies would be so brazen, but also that the local police appeared unable to respond.

This inability to respond is key; QPS media have indicated that on the night in question only approximately 50 police were working¹⁴. The QPS statistical review for 2011-2012 indicates that the Gold Coast Police District¹⁵ had an actual strength of some 920 officers as at the 30 June 2012. This means only 5.3 percent of actual staff were rostered for a Friday night peak calls for service period. This lack of rostering management would have severely impinged on the ability of police to adequately respond on the night in question. The lack of ability could only have exasperated the situation. In essence the argument is that the lack of police resourcing led to the breakdown of good order, rather than the actions of the OMCG members on the night.

Order was quickly restored when Taskforce Take Back (now the Rapid Action Policing group or RAP) and Taskforce Maxima were put in place. Together both groups contributed about 200 police to a targeted campaign. What occurred was the provision of sufficient policing resources to deal with good order issues. I would argue that with these resources and a clear strategic focus on criminal activity the QPS would have been able to achieve the operational outcomes that it has, regardless of VLAD type laws.

The other crucial aspect of justifying association laws is that you must be able to say that the vast majority of those associating are criminals. One of the strongest arguments to support the LNP government's crackdown is that the overwhelming majority of bikies are supposedly hardened criminals.

¹⁴ Conversation with reporter from Sydney Morning Herald who indicated that this was the response provided by QPS media when asked how many staff were rostered at the time of the brawl.

¹⁵ This figure includes Coomera and Gold Coast districts which were merged under the Stewart review at the time of the bikie brawl.

However, data I obtained through RTI provides a more accurate picture of criminality within OMCGs as at April 2014¹⁶. This data shows that the majority of bikies in the majority of clubs have no criminal history. If you include all OMCGs listed in the government data, it shows that approximately 60% of members have no criminal history. The highest level of criminality is limited to just two clubs, the Bandidos and the Lone Wolves. A number of the clubs proscribed by the legislation as criminal organisations don't even feature in the government data. The data examined both confirmed and unconfirmed gang members under the generic term "participants".

Table 8 : Level of Queensland OMCG criminality as of April 2014

OMCG	Percent of members with criminal history
Bandidos	72
Lone Wolf	71
Hells Angels	55
Mongols/Finks	51
Nomads	49
Life and Death	44
Rebels	40
Odins Warriors	37
Black Uhlans	36
Highway 61	33
Outlaws	27
Other's including 8 clubs: Comancheros, Fourth Reich, Gypsy Jokers, Iron Horseman, Outcasts, Phoenix, Red Devils, Renegades (average of 34 assigned to all 8 clubs)	34

This data on levels of criminality within the gangs also highlights an important point, not all OMCGs are of the same nature when it comes to levels of criminality. This highlights an inherent weakness in the current Queensland approach of treating all OMCGs with the same broad brush in relation to criminal behaviour, it is simply not supported by the evidence.

Table 9: Amount of criminal activity by guilty offences for Queensland OMCGs for the period April 2008 and April 2014.

OMCG Club	Number of Offences	% of total offences
BANDIDOS CMG	1424	33
FINKS CMG	693	16
REBELS CMG	576	13
HELLS ANGELS CMG	365	8
LONE WOLF CMG	305	7
NOMADS CMG	280	6
BLACK UHLANS CMG	212	5
ODINS WARRIORS CMG	88	2
LIFE AND DEATH CMG	87	2
MONGOLS CMG	63	1
OUTCASTS CMG	63	1

¹⁶ Data was obtained under RTI from information presented by the Premiers Office during a roundtable on the VLAD laws as to the level of criminality of Qld OMCG members. This information was extracted from QPS data. I was a participant of the roundtable.

RENEGADES CMG	56	1
HIGHWAY 61 CMG	52	1
OUTLAWS CMG	37	1
COMANCHERO CMG	10	0
GYPSY JOKERS CMG	10	0
IRON HORSEMEN CMG	2	0
Total	4323	100

Even more telling is that when looking at criminal activity on a club by club basis for OMCGs in Queensland, we can see that just four of the clubs account for 70 percent of the proven criminal offences in Queensland. This would also be telling as to the levels of criminality within the clubs as some may have few members in Queensland and thus not be statistical relevant nor representative of the OMCG.

Perhaps the most concerning of the new range of legislative measures put in place are the mandatory sentences put in place under the VLAD act, which stipulates that for certain declared offences a member of an association can face extra punishment. Any person shown to be a member of an association can face a mandatory 15 years imprisonment on top of the original sentence, and if shown to be an office bearer the person faces an additional 10 years imprisonment (Queensland Government, 2014). This leads to the possibility that some members of an association may face an additional 25 years mandatory imprisonment for a declared offence. Some of the declared offences are quite low level offences such a possession of a dangerous drug, possession of a weapons and assault occasioning bodily harm.

These are offences for which it is not unusual to receive a fine or suspended sentence. This serves to highlight the serious implications that even a relatively minor offence can now have. Many public commentators have suggested that these draconian laws will be subject to High Court challenges and fail. However, Appleby (2013) suggests that a recent High Court decision upheld minimum mandatory sentences in relation to people smugglers. There is a crucial difference in the criminal gang legislation however, that is that the person will be sentenced to the mandatory imprisonment not for any action they have committed but rather for who they are. The VLAD mandatory provisions remain to be tested by the High Court of Australia.

The other obvious issue is that if you remove all lawful occupations for bikies there is little alternative but for them to undertake a life of crime. Rehabilitation does not feature in the current war. The public perception of the war has not been helped by police telling people who they can and cannot be friends with, as stated by Detective Inspector Brendan Smith (Davies, 2013):

It cannot be socially acceptable to be a friend of a bikie, you have to learn that it is not on.

The purpose of the legislation is to target criminal activity, not police social interactions.

4. How best to replace or amend the 2013 legislation, in accordance with the Queensland Government's election commitments..

The former LNP government's new anti-bikie legislation has not gone through due process or been given the consideration it needs as to its fairness and impact on the wider community.

It is also concerning that the free and robust flow of information to the Queensland community from the state government on issues such as crime was being stifled.

There's no question we should be focusing on bikies who commit criminal acts, as I've argued in the past. And no one - whether you're a politician, a police officer or someone holidaying on the Gold Coast - wants to see bikies brawling on our streets.

However, we need to make sure that in responding to a visible but relatively small criminal threat, we don't undermine the criminal justice system in the process. Bikies undoubtedly commit crime. Unfortunately, in this current climate, if you attempt to explain why the current approach is wrong you are simply labelled a bikie supporter. For most commentators nothing is further from the truth.

The crime committed by bikie gangs would be better combated by using crime management techniques that target actual crime rather than the current set of association laws, which merely target the person and to a large extent miss the criminal activity. The results are not positive. A change in investigative and policing strategy is needed.

As Ayling (2013) points out policing is slowly moving to a more rational based approach with a reliance on empirical research as an evidence base for decision making. Policing should be aiming to achieve best practice as indicated by research evidence rather than just slavishly following precedents of crime responses from other jurisdictions.

Former LNP Deputy Opposition Leader and Shadow Attorney-General Lawrence Springborg touched on the above issues when he stated "Organised and serious drug crime is about profiteering. Labor's anti-association laws do nothing to stop organised crime groups from racketeering and drug pushing ... they don't work and that's why the Hervey Bay task force and teams from the State Crime Operations Command failed to use the laws in this recent major firearm and drug bust in Hervey Bay."(Fraser Coast Chronicle, 2010).

One of the first problems with association laws are that they do not provide any additional tools for police to investigate organised crime being committed by OMCGs.

When reacting to a moral panic it is often the case that the legislative response is lacking in consideration of its potential impacts. These impacts can include such things as the impost on police resources in particular the usage of these resources and the availability of such, the burden on the justice system and the impinging on human rights etc. (Ayling, 2013).

It is concerning that some two years after the VLAD laws were passed we have seen little positive outcome in the form of successful convictions of OMCG members. This to some degree mimicks the outcomes under the *Criminal Organisation Act*, no positive outcomes have been achieved. At one stage Queensland police were confident that they would succeed in their attempts to have the Finks OMCG Gold Coast chapter declared a criminal

organisation. A Detective Inspector based on the Gold Coast stated; "...we're already planning how we're going to enforce the control orders we believe will be handed down by the court... We are also looking at targeting other gangs with the same legislation." (Stolz, 2013). Such sentiments are now history.

One way of addressing a perceived crime problem is conduct a risk assessment of the potential problem. For any legislation to be effective it must be practical and well considered from a policy perspective, laws that fail to meet this test can be ineffective and negative in impact in their intended area of use (Ayling, 2011a). As pointed out by Cash (2012), other investigation techniques such telephone interception laws, unexplained wealth laws, proceeds of crime legislation which are seen as less restrictive and intrusive on basic individual civil liberties are available to police to conduct investigations against OMCGs. Such methods include:

- Effective intelligence gathering and analysis
- Intelligence driven policing – targeting and effective use of your resources
- Send out a clear message to the criminal element
- Flexible operational practices
- Coercive hearings not solely based on intelligence gathering
- Proceeds of crime
- Going back to the basics
- Telephone intercepts
- Other electronic surveillance modes
- Multi-agency and multi-sector task forces – new methods of investigation
- Look at where the money is and where it is going.

History has shown that using traditional investigation methodologies and can result in successful outcomes. Below are just two operations that I was the senior manager of that targeted OMCGs by using normal investigative techniques.

Table 10: Successful QPS operations targeting OMCGs prior to the VLAD laws.		
Operation Name	Howl	Piston
Year of operation and geographic location	November 2005 Gold Coast and Northern NSW	July 2006 Gold Coast
Primary Law Enforcement Agency	QPS and NSW Police	QPS
Type of operation	Proactive	Reactive
OMCG club targeted	Lone Wolves	Bandidos
Primary criminal intelligence supporting the formulation of the operation	Drug trafficking	Extortion threats
Investigative techniques used	Traditional techniques – electronic methods, search warrants	Traditional techniques – witnesses, search warrants
Outcomes achieved	24 offenders charged with 59 charges including officer holders within the club	3 offenders charged with 10 charges including officer holders within the club
Nature of charges/property located	Drug trafficking, firearm offences, cash	Extortion, assault, firearm offences, drugs, cash
Clubhouse searched	Yes	Yes
Number of properties search	37	7

The future of organised crime

In regards to future trends in organised crime I would offer the following. As has been previously shown, while OMCGs no doubt have some involvement in organised crime, they are not the kingpins. TOC groups are the most concerning threat to Australia when talking about organised and serious crime. More than 60 per cent of Australia's highest-risk criminal targets, including transnational targets, are involved in the methylamphetamine market (Australian Crime Commission, 2015b).

Unfortunately, the ACC's (2015a) report on the methylamphetamine market has a broad base and lacks detailed or overly new evidence (Australian Crime Commission, 2015a). One issue that does seem to bear consideration is the rising role of TOC groups. With so much focus on domestic gangs as the peak criminal threat, perhaps we have taken our eye off the ball of the real criminal threat outside Australia's borders. Traditional crime groups and traditional definitions of organised crime may no longer be the best way of understanding and framing our response to organised crime.

In its 2015 organised crime report, the EU's law enforcement agency, Europol, called for a new definition of organised crime (EUROPOL, 2015, p. 11). It observed:

The group structures that dominate fictional representations of organised crime are disintegrating and will increasingly give way to an organised crime landscape dominated by loose networks made up of individual criminal entrepreneurs who interact and conduct their business in a shared, and often digital, criminal underworld.

The United Nations Office on Drugs and Crime has recognised that organised crime has diversified and become more transnational (United Nations Office on Drugs and Crime, 2015):

Organised crime is not stagnant, but adapts as new crimes emerge and as relationships between criminal networks become both more flexible and more sophisticated, with ever-greater reach around the globe.

The NSW Crime Commission acknowledges that "organised crime groups undertake a wider range of criminal activities with greater complexity" (New South Wales Crime Commission, 2013, p. 3).

Today's organised crime occurs through loose and undefined networks made up of criminal entrepreneurs and freelancers with little concern for group branding or loyalty. Their business model is increasingly digital, concealed by legitimate activity and global in reach. Australia's geographic isolation is no longer the buttress that it once was. Globalisation has made us an attractive and available target. Australia's approach to organised crime must move in sync with global activity and must be evidence-based. Queensland will be no exception to this trend.

Can we learn from the war on terror?

Unlike the war on terror, there has been a distinct lack of community engagement by authorities with at-risk groups in the bikie crackdown. This is despite recognising that youth are entering bikie gangs through feeder clubs.

In August 2014, as part of its response to the “war on terror”, the Australian government announced a Countering Violent Extremism Programme. It is focused on early intervention and counter-radicalisation programs – that is, crime-prevention strategies through education and community engagement. In Queensland, the only strategy put forward to deal with the bikie gangs’ possible recruiting avenues is the implementation of curfews.

Put simply, the Australian policing response to bikie gangs is one-dimensional. Enforcement is the primary focus. Little attention has been paid to analysing the motivations of those joining the bikie gangs when compared to the prevention of radicalisation in counter-terrorism strategies.

Little attempt has been made to engage the bikie gangs’ leadership, nor implement strategies to remove their criminal elements. Unlike Islamic State, whose purpose is terrorism, the bikie gangs’ criminal behaviour is a by-product of some of the organisation’s members. It is not the sole purpose.

If the bikie gangs are serious about retaining their rights and freedoms, it would be entirely reasonable that they may well accept some regulation that removes criminal elements but allows them to remain lawful organisations. A refusal to undertake a process like this would undermine many of the arguments they have raised in their defence.

For instance why not allow the OMCGs the option of existing but with a licencing regime with conditions as to who can be members and restrictions of criminal conduct. Allow the gangs to exist, then if they breach the licencing rules, that right can be removed. In essence you would control the gangs through a regulatory framework and would not be driving them underground.

It is now up to governments and law enforcement to look beyond arrests and consider what strategies and engagement could be pursued to allow criminal-free bikie groups to exist. It is also time for the gangs to show that they truly want to be just a bunch of guys who ride bikes and don’t deserve the criminal tag they have.



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