



Our ref: LOR/TL

11 May 2018

The Inspector
Legislation & Development Review Services
Tasmania Police
By email: strategy.support@dpfem.tas.gov.au

Dear Sir,

Organised Criminal Groups Legislation Position Paper

I refer to the Commissioner's letter dated 27 April 2018 to the Society's President. Thank you for providing the Society with the opportunity to comment on the position paper.

As you point out, there are two central issues being the proposed amendments to consorting laws and the creation of prohibited item legislation.

At this time, the Society is not in a position to support or oppose legislation based on those two central issues. The issues raise complex and competing considerations. They deserve to be fully discussed and will be considered by the Council of the Society at its next meeting on 19 May. I expect that a position will have been adopted by the time any draft legislation is released for comment.

Notwithstanding the above and with the expectation that legislation will be drafted largely based on the paper the Society makes the following comments:

Anti-Consorting

The elements of a valid notice are:

- Conviction for a serious offence
- Service of a written notice

The elements of a breach are:

- Service of a written notice
- Habitually consorting with another nominated person

It is concerning that the circumstances in which a notice might be issued and the necessary elements to breach a notice are so wide. There is no requirement that the subject of a notice must be a member of an identified organisation. The proposed legislation is squarely aimed at these organisations and should be restricted to them. In addition, there is no requirement that a belief must be formed nor is any evidence necessary that there is any danger to the public or risk of unlawful behaviour to justify a notice being served.

The elements required to serve a valid notice makes the appeal provisions all but redundant. All a higher-ranking officer or magistrate will have to be satisfied of for an appeal to fail is that the two necessary elements are satisfied (conviction and service).

Colours

The Society notes that a number of jurisdictions prohibit the wearing of colours on licensed premises only. The paper puts forward arguments in support of a prohibition in public places without examining the reasons that other jurisdictions consider it appropriate to restrict the prohibition to licensed premises. The proposed legislation restricts people’s rights based on who they associate with and not individual unlawful conduct. Any such restriction ought to be to the least extent necessary. That may be on licensed premises only, and the Society urges the Department to consider whether this restriction might be more appropriate.

It is concerning that the Minister’s decision does not appear capable of appeal/review. It is essential there be a mechanism to review any findings or beliefs of the Minister that form the foundation of a decision to prescribe an organisation.

Review and Report

The Society suggests that any legislation ought to provide for an independent review and report on the use and effectiveness of the legislation, to be prepared after say, 12 months from any legislation taking effect.

Conclusion

Thank you again for the opportunity to make submissions. Please do not hesitate to contact the Society if there is anything arising you wish to discuss.

Yours faithfully



**Luke Rheinberger
Executive Director**