

The Inspector
 Legislation & Development Review Services
 GPO BOX 308
 HOBART TAS 7001

Dear Sir/Madam

SUBMISSION REGARDING ORGANISED CRIMINAL GROUPS LEGISLATION – POSITION PAPER

We are writing to you regarding our opposition to the proposed 'bikie laws' as outlined in the 'Organised Criminal Groups Legislation – Position Paper' on Tasmania Police's website.

The proposed laws are a fundamental violation of human rights. The right for people to associate with who they want to associate with, and the right to join an organisation and wear that organisation's colours is a fundamental right of every Australian. The proposed laws undermine human rights principles that our great country is based on.

The basis of these new proposed 'bikie laws' seem to be based on an alleged increase in criminal activity involving motorcycle clubs. There is no evidence that motorcycle clubs use their organisational hierarchy to engage in crime in the alleged problem areas like Queensland, let alone Tasmania. Dr Terry Goldworthy, a Gold Coast police officer turned criminologist, has stated in a published paper that "bikie gang members were responsible for between only 0.17 and 0.6 percent of all reported crime in Queensland between 2008 and 2014".¹ In Tasmania, there is no evidence to support the justification of the introduction of these new bikie laws.

It is dangerous to proceed with attempting to implement these laws on a lack of evidence. For example, consider the consequences from the former Queensland LNP Government's disastrous VLAD laws that were introduced in 2013, which only saw two convictions, cost the taxpayers at least \$129 million², and massively infringed on human rights of many Queensland motorcycle riders. These types of devastating results need to be avoided in Tasmania.

We respond to each proposal and outline our objections below.

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.

We object to the proposed replacement offence as it is a violation of every Australian's human rights and would provide police with unreasonable powers. These types of powers have been problematic in other jurisdictions, such as Queensland, where members of motorcycle clubs have been charged by police with associating with each other in the foyer of court buildings. Such actions by police are unreasonable and unnecessary and in Tasmania would just result in police following around members of motorcycle clubs to simply enforce these types of anti-consorting laws. Following around members

¹ Goldworthy, T., & McGillivray, L. (2016). *Outlaw Motorcycle Gangs (OMCGs) and the drug trade: The fallacy of Queensland's anti-bikie laws and the implications both in Australia and overseas of using this model of crime management*. Annual Conference of the International Society for the Study of Drug Policy (ISSDP), Sydney, Australia.

² Hogan, V. 'Bleijie believes \$129m spent on bikie laws was justified', Queensland Times, 19 August 2015, <https://www.qt.com.au/news/bleijie-believes-129m-spent-bikie-laws-was-justifi/2744490/>.

of motorcycle clubs to see if they are socialising over a beer or attending an event together would be a huge strain on police resources and a further waste of tax payers' money. Dr Helen Watchirs of the ACT Human Rights Commission shares our view on consorting laws, that "to have such a serious limit on human rights, you need a very strong evidence base to show that you require that."³ No strong evidence exists in Tasmania.

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).

Whether a written consorting warning notice has been issued or not, we object to the proposed consorting laws in general, as they are against fundamental human rights principles that all Australians enjoy the benefit of – as discussed above.

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.

We have made our position clear that we do not support the proposed consorting laws. If these laws are passed, a review system would be utilised in many cases, as police often seek to convict people of consorting based on a lack of evidence. This has been evident in Queensland particularly. Further, Magistrates would have a lot of their time drained with frequently hearing applications to have consorting warning notices revoked. This would be a wasteful use of the Magistrates' time and police resources.

Proposal 4

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

Sadly, family members consorting with one another in the course of lawful activities should not even be an issue in our country. Even if Tasmania tragically adopts the proposed new bikie laws, some defences to consorting with family members will not be enough for many Tasmanians to enjoy their human rights. For example, people would still be prevented from communicating with friends and would even be prevented from keeping their current jobs, as they work with many of the people they would be prohibited from consorting with. The disturbance to daily life and human rights for many Tasmanians in this way needs to be considered regarding these proposed laws.

Proposal 5

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

³ Knaus, C. 'Bikie consorting laws under attack from human rights watchdog, union, lawyers', Canberra Times, 9 June 2016, <https://www.canberratimes.com.au/national/act/bikie-consorting-laws-under-attack-from-human-rights-watchdog-unions-lawyers-20160609-gpfj7.html>.

Hopefully, this will not become an issue because the proposed laws will not be introduced. A five-year statutory time limit is too long for the life of a consorting warning notice. Given that even a simple text message could result in the issuing of a consorting warning notice, this is a simple case of the alleged crime not fitting the punishment. A five-year statutory time limit is unreasonable.

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'.

We also strongly object to this proposal. The financial cost to the taxpayers introducing these laws is one thing, but the impact that these laws would have on Tasmanian motorcycle riders is significant. If no motorcycle riders could wear any clothing that show patches or logos of an 'identified organisation', that means all riders would look the same and would be equally targeted by the police. There is a widespread fear that motorcycle riders that all look the same would be harassed by the police,⁴ as seen in other states like Queensland. There are many examples showing that this widespread fear from the proposed laws is justified. One example is from in Queensland in 2014, when the Police Commissioner (Ian Stewart) had to apologise to recreational motorcycle riders that were affected by anti-bikie laws and admitted that they would be affected.⁵

If these laws are implemented they will result in negative economic consequences for motorcycle repair businesses and dealerships as well, as less people in Tasmania will want to spend more money on motorcycles, motorcycle parts, repairs and accessories due to fear of intimidation and harassment by police.

Also, as previously mentioned, we oppose this proposal because it is a fundamental human right for someone to wear an organisation's colours if they chose to.

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.*

We object to the proposed wide discretion for the Minister to prescribe which groups are identified. This ability allows the Minister the power to choose which groups are to be subjected to these laws, and there is nothing to compel the minister to take into account any statistics or evidence regarding

⁴ Beavis, L. 'Anti-bikie laws will smear other motorcycle riders in Tasmania, rally hears', ABC News, 7 May 2018, <http://www.abc.net.au/news/2018-05-07/anti-bikie-laws-will-smear-other-bike-riders-rally-hears/9733734>.

⁵ Silva, K. & Remeikis, A. 'Police Commissioner sorry for inconveniencing 'harassed' biker', Brisbane Times, 13 January 2014, <https://www.brisbanetimes.com.au/national/queensland/police-commissioner-sorry-for-inconveniencing-harassed-biker-20140113-30pxh.html>.

motorcycle clubs before making any decision. This would be a broad power for the minister to have, which would be abused by using it to abolish the human rights of members of motorcycle clubs.

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.

Even if a member of a motorcycle club has engaged in serious criminal activity or has been convicted of an offence involving public acts of violence or damage, we submit that this is not enough evidence to regard the whole organisation as one that must be targeted by biker laws. This would be discriminating against one motorcycle club based on the actions of one member, which is why this proposal is not supported.

Summary

There is no evidence whatsoever that motorcycle clubs in Tasmania use their organisational hierarchy to engage in crime, which is the key reason it seems for why the proposed laws are being considered.

The fact that other jurisdictions in Australia have introduced biker laws does not mean that Tasmania has to make the same mistake by wasting tax payers' hard-earned dollars on unnecessary laws, which will remove the human rights of many Tasmanians, and will result in nothing but harassment for motorcycle riders and no convictions. The call for these laws by the government and the police are built upon a lack of evidence and encouraged by media hype.

A few isolated incidents involving members of motorcycle clubs does not justify labelling all members of motorcycle clubs as criminals. In Australian society, we do not judge religious groups and other organisations based on the actions of a few members who have made mistakes. Members of police forces across all jurisdictions for example regularly attract media attention when members of their organisation are discovered in engaging in illegal behaviour, and yet the government and the public still treat police forces across Australia with the same degree of respect as always. Members of motorcycle clubs only wish to be treated with respect as well by being allowed to maintain their human rights along with their fellow Australians.

In the Position Paper, Hon Michael Ferguson MP, has commented that "Tasmanians have a right to enjoy their State free from acts and threats of violence, intimidation and public disorder". Members of motorcycle clubs also want Tasmanians to enjoy a state free from these acts as well and are not the source of the problem.

We urge you to please look at the statistics on this matter and consider the effect that these proposed laws would have on Tasmanians at different levels if implemented and note our objections to the proposals.

Yours sincerely and confidentially ,

Shaun Kelly



10/5/2018