

I do want to preface everything I have written with one statement: while the abuse of these powers is hopefully unlikely, it is important that we protect against it. Disenfranchised members of the Tasmanian community could face real issues if these proposals were applied to them and they may not have the money or the know-how to prevent this from occurring. Essentially, all of this may fly under the radar without people noticing. That is principally why I oppose the whole lot. Furthermore, I admit that some of the things I think may not be agreed to; however, it is important to consider each different idea of mine on its own merits.

Consorting Warnings

The proposals admit that the current consorting laws in Tasmania are so archaic that they have never been used for a number of years. Hence, while the proposals may technically be concerned with amending current legislation it is, in effect, introducing new laws since the old ones have fallen into disuse. Because of this, it is important to consider if we actually need consorting laws.

Why do we need consorting laws? If people are committing criminal acts then they should be caught and found guilty through the legal system. If they are not, then the targeted people either did not commit the acts or there was insufficient evidence to prove they have done so (which we as a community have accepted as the standard for proving guilt). I see no reason why anti-association laws need to be put into place: surely even if police wished to deter previously-convicted people from committing crimes, they could just check in with them and let them know they are keeping an eye on them. Whether or not I agree with the police doing that, it is occurring: the Mercury reported police dropping in on potential arsonists earlier this year. Furthermore, if a person has served their sentence then they should be free. Even with significant amendments, consorting laws might still be able to be applied to some former criminals continually many years after they were last convicted of an offence. This is unfair.

However if the laws are to be amended and not repealed, I believe the onus should be on Tasmania Police to prove the need for such measures. A Justice of the Peace should have to approve every written consorting warning. They should be convinced the people targeted are likely to be currently engaged in or planning to engage in criminal activity together. Additionally, the people targeted should have to all have been convicted of serious criminal offences. These measures would ensure consorting warnings are not issued arbitrarily.

Concerning challenging consorting notices, legal aid must always be provided. The applicant should also not be required to pay court costs. This is important as otherwise a person could be discouraged from appealing the consorting warning because they cannot afford to do so, especially if they are issued with multiple consorting warnings. Furthermore, a consorting warning should not take effect while it is under review. If this is not feasible, then another Justice of the Peace should authorise an injunction against a consorting warning while it is under review if they believe the consorting warning would cause someone hardship. This would reduce the impact should consorting warnings be abused.

Consorting warnings should only apply for one year. Another consorting warning can always be sent after one year, however the shorter time limit should cause officers to stop and reconsider whether the restrictions need to be kept in place. Receiving consorting warnings each year would also serve as an important reminder for the targeted persons and so make it less likely they will forget about the restrictions that are in place. The administrative costs this involves are nothing when considered to the imposition that consorting warnings would place on the freedom of individuals.

It should be a sufficient defence if a person did not know the person was within the area of exclusion or had a legitimate reason for associating with the person (court appearance, education, employment, family and equivalent, healthcare, legal advice, organised political activity or religious observance, running a business, etc.). It is paramount political activity and religious observance be considered as legitimate defences, since everyone has a right to engage in these two activities (as suggested by the Australian Constitution's implied freedom of political communication and the Tasmanian Constitutions express freedom of religious observance).

Prohibited Items

We should not go forward with the banning of prohibited items. It is ridiculous to ban people from wearing or displaying things, especially when the definitions are so broad and open to abuse. Innocent people can be caught up in the process of making items prohibited: perhaps someone just really likes the 1% patch and wears that separately without anything else. Also, this whole argument of rocking up to someone's house and demanding money while wearing colours could be applied to generally just looking scary rather than any specific insignia. Yet for some reason (I think I know why), it hasn't been proposed to ban scary people.

An item should only be prohibited if it is described in the regulations. That is, the regulations should have to list every prohibited insignia relating to a club. Using the Tasmania Police as a clearly spurious example: the regulations would have to list the blue and white chequered pattern, the badge design, and the words police, constable, detective, etc. as separate entries under the heading of Tasmania Police. This is important as without clear definition, someone could be caught out for wearing or displaying something they did not know was prohibited. Of course, the legislation should have some leniency in it to allow for the prohibiting of words that are linguistically similar or images that are visually similar.

The legislation should provide that an item cannot be prohibited if it is related to political activity or religious observance. There is no reason why insignia related to politics or religion should be a prohibited item, so there is no reason why such a protection should not be included. If for some strange reason, there is a need to ban political or religious insignia then it really needs its own legislation with specific public debate around the implications banning such items would have. More exemptions should also be considered: school and work uniforms, insignia relating to particular ethnic groups (especially Aboriginal and Torres Strait Islander people), etc.

The proposed ideas as they stand currently would allow for listing Tasmania Police as a prescribing organisation: in 2004 police officer _____ was convicted of drug dealing (which I would presume is a serious criminal activity) and the wearing of the police uniform may cause members of outlaw motorcycle gangs (who are also members of the public) to feel threatened (also, other members of the public may feel threatened or intimidated of the police as well). Obviously, that is a big problem since the police are not a criminal organisation.

On Proposal 7, the legislation should only allow the prescribing of an organisation if the display of their insignia would: (a) cause a significant portion of the population to feel threatened, fearful or intimidated more than they would by someone displaying similar insignia not associated with a prescribed organisation (drawing on the police example again, formal uniforms); or (b) threaten the health or safety of members of the public, including by increasing the likelihood of public disorder or violence. The requirement that a significant portion of the population feel intimidated, etc. means that the unorthodox concerns of niche population groups will not adversely affect law-abiding citizens. If feel it is important to remove amenity as a general reason from the list, as the main focus

is on violence and disorder by amenity is a very broad term open to abuse: people wearing high-visibility vests reduce amenity because everyone assumes that there is construction work going on.

Concerning Proposal 8, it should be included in the legislation that organisations should only be prescribed if members or participants in that organisation have a higher prevalence of serious criminal convictions and/or convictions relating to public violence/damage than the general population (also taking into account mitigating factors such as the population of the geographical areas in which they are located and the purpose of the organisation). Putting in such a provision would protect the abuse of the prescribing power while not limiting the intended outcomes of the legislation. Assuming the arguments set forth in the positions paper are correct, the organisations which are the target of this legislation should meet those characteristics. If they do not, then there is no justification for banning them since they do not cause enough of a problem. The consideration of geographical area, if feasible, is important as lower socioeconomic areas would tend to have a higher rate of conviction than the general population so any organisation in that area may well satisfy the criteria otherwise. The purpose of the organisation is also important, since programs to rehabilitate past offenders might fall under the general definition.

Good Bikies

Also, there is this whole fixation on outlaw motorcycle gangs being bad. Some members of the communities they are based in find them good. They protect people from being exploited by other criminals. I have a mate who lives in a low socioeconomic area. Someone nicked his pet. He knew a couple of guys from the outlaw motorcycle club and so told them what had happened. Soon after the pet was back. Frankly then, some people may be happy with the gangs yet the proposals portray them as a menace to everyone in society.

Furthermore, there is this whole idea of making it hard for bikie gangs to exist so they will move elsewhere. If everywhere else has this legislation, they are not going to move elsewhere. Accept it. Following the media coverage from the gang conventions last year, everyone seemed pretty well behaved yet the police still talked about it negatively. If the police actually work alongside these gangs, you might find there may be middle ground. I am not sure if you will, but it certainly seems like it has not been tried in a while. Worth a try at least.

Summary

Repeal consorting laws, don't prohibit items and hopefully everyone will get along.

