



An examination of outlaw motorcycle gangs and their involvement in the illicit drug market and the effectiveness of anti-association legislative responses



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ABSTRACT

Background: In 2013 the Queensland Government introduced criminal association and mandatory sentencing laws for members of outlaw motorcycle gangs (OMCGs). Forms of “criminal association” or “anti-bikie” laws have been introduced in several Australian jurisdictions, and recent High Court decisions upholding their constitutionality will ensure that they remain part of our justice landscape. Generally, the aims of these laws are to declare a specific organisation as “criminal” and impose various legal orders and offences that thwart the consorting of members and address organised crime, such as unexplained wealth regimes. There have been significant criticisms of these styles of association laws both here and internationally. The aim of this research is to show the extent of involvement of OMCGs in the drug trade and associated organised crime activity, and whether anti-association laws are an effective response to this type of organised criminal activity.

Methods: This paper relied on six years of data outlining the criminal activity of OMCGs from the Queensland Police Service (QPS) obtained under the legislative framework of The Queensland Right to Information Act (RTI) 2009. Information obtained from the Queensland Commission into Organised Crime (2015) and Queensland Taskforce into organised crime legislation (2015) was also used.

Results: The data suggest that the role of OMCGs in the drug market has been overstated and is not as dominant as has been portrayed by government agencies and the popular media. Generally, OMCGs account for less than one percent of organised crime type activity. This is also true for drug type offences where OMCGs are responsible for less than one percent of offences. The findings show that the Queensland example has highlighted the ineffectiveness of the criminal association laws and the mandatory sentencing provisions in that they have had little impact on drug market activity and little success in the courts.

Conclusion: The analysis presented here is twofold: an examination of the legal ramifications and an evaluation of the investigative utility of such laws from a policy evaluation standpoint. In both cases, there is little evidence to suggest that these laws are an effective or appropriate response.

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Introduction

In recent years, Australian governments have responded to the moral panic that has resulted from highly visible organised crime groups, such as outlaw motorcycle gangs (OMCGs), committing criminal acts in public. The legislative reactions to these perceived criminal challenges have been both punitive and populist from a penal perspective (Loughnan, 2009). In political terms reacting to such perceived tests of crime control with punitive strength is a

popular public platform for any government to extend its crime fighting credentials (Monterosso, 2009; Roberts & Indermaur, 2007).

Several forms of “criminal association” or “anti-bikie” laws have been introduced in Australian jurisdictions. The laws enacted in Queensland, one Australian jurisdiction and the focus in this paper echo similar efforts overseas in New Zealand, Canada and the Netherlands (Ayling, 2013a; Cash, 2012). The aims of criminal association laws in essence include: to declare a specific organisation as ‘criminal’; to impose restrictions that thwart the consorting of members; and to exercise enhanced powers for measures such as confiscating unexplained wealth (Bartels, 2010). These laws go towards achieving supply reduction, which is one of

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the three pillars of Australia's harm minimisation National Drug Strategy (Ministerial Council on Drug Strategy, 2011). In regards to supply reduction the aim of anti-association laws is to assist domestic policing (Ministerial Council on Drug Strategy, 2011). Anti-association laws could now be considered an important tool in the fight against organised crime.

In Queensland's experience, the introduction of such laws was ultimately a disproportionate response catalysed by public displays of violence by OMCGs. The reaction was characteristic of a moral panic with key ingredients including: episodic events/phenomena perceived as highly volatile; vilification of a defined group (OMCGs) who are seen as symbolic of the problem; public anxiety from perception of a heightened risk to society; significant and sensational media attention; and an institutional response seemingly out of proportion to the threat posed (Carrabine, 2008; Cohen, 2002). There is evidence of all of these factors in highly public episodes of OMCG violence; including shootings (for summary of key events see: Ravn, Westthorp, & Laughlin, 2013; Stigwood, 2015; Swanwick, 2008; Welch, Kennedy, & Harvey, 2009). These incidents attracted significant media attention and calls from the public for tougher action to combat these groups. This 'bikie moral panic' is not an experience isolated to Queensland as studies from New South Wales and abroad have drawn similar comparisons (Katz, 2011; Mann & Ayling, 2012; Morgan, Dagistanli, & Martin, 2010). Media attention to OMCGs has increased dramatically in the last five years. A search of the Factiva media database using the search terms "OMCG", "bikie" and "drugs" within Australian media content was conducted. It revealed that in 2011 there were 79 stories that met the search terms. Since then these types of stories have increased dramatically with 891 in 2012, 1211 in 2013, 1176 in 2014 and 1112 stories in 2015. Such media scrutiny and high profile events have meant that OMCGs have been the target of specific criminal organisation laws with a view to addressing public and media unrest on the issue (Ananian-Welsh & Williams, 2014; Ayling, 2011, 2013b).

When faced with moral panic it is often the knee jerk reaction of governments to enact laws with little real practical value (Carrabine, 2008). This serves two benefits, the first being that the government can claim to be active in 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. This position is similar to the "do something" mentality that permeates society in the face of a threat that causes moral panic (Katz, 2011; p. 233). It also allows governments to have an expressive or symbolic piece of legislation that shows it is acting on the problem (Ayling, 2013b). To some extent political expediency overtakes good law making and effective law enforcement under such circumstances.

Further to this end, a community's perception of crime is an important performance indicator for any police service. The Queensland Police Service (2013) nominated the level of community confidence and satisfaction with police performance as two of their key performance indicators in their strategic plan. The perceived 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 (Ren, Cao, Lovrich, & Gaffney, 2005).

While the introduction of laws targeting OMCGs may have served to temporarily quell public concern and satisfy calls for tougher crime control, there have been significant criticisms of these kind of association laws introduced both here and internationally (Ayling, 2011; Katz, 2011; Law Council of Australia, 2014; Morgan et al., 2010; Sarre, 2013; Schloenhardt, 2008a). Some of the negative claims are that they are ineffective and that they contravene civil and political rights (Gray, 2009; Law Council of Australia, 2014). The anti-association laws introduced in Canada in

2001 have been criticised for having no impact in decreasing organised crime offences, nor the illicit drug market activity of OMCGs (Schloenhardt, 2008b). There was scepticism that the laws were merely an attempt to expand police powers for no justifiable reason (Freedman, 2006).

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 (Ayling, 2011; Katz, 2011; Morgan et al., 2010).

The perception of most OMCGs is that they are deviant groups engaging in non-conformist behaviour (Barker, 2005). Senior Police have added to the perception of the bikie menace by statements suggesting that OMCGs "... play a major part in organised crime activities" as stated by the head of the Taskforce Maxima, the Queensland anti-bikie taskforce, Superintendent Mick Niland (Keen, 2016). While it is claimed that the laws introduced do not target specific groups, the Queensland Taskforce that reviewed the laws censured the blind amplification of "the role of any particular organised crime group" finding a focus on 'criminal gangs' and in particular on OMCGs (Taskforce on Organised Crime Legislation, 2016, p. 89). As such, it is important to consider the justifications given for introducing these clearly targeted measures and if the response to the perceived problem is indeed proportionate (or otherwise) in Queensland's experience.

Background to the Queensland experience

The Gold Coast, a popular tourist destination in South East Queensland, was the test case in the national battle against organised crime, and in particular OMCGs. The *Vicious Lawless Association Disestablishment Act 2013* (VLAD) was introduced in response to an OMCG brawl in the Broadbeach restaurant precinct on the Gold Coast on the 27th of September 2013 (Australian Crime Commission, 2015b; Ravn et al., 2013). The audacious actions of the OMCGs proliferated public and media attention to new heights and the Queensland Government deemed it a sufficient catalyst to introduce anti-gang laws, in addition to the anti-association laws already available under the *Criminal Organisations Act 2009* (COA).

Then Attorney General, Jarrod Bleijie, stated the VLAD laws had the following aims in relation to OMCGs:

We are drawing the line on criminal motorcycle gangs in Queensland ... The bill is intended to deter individuals from participating in these criminal organisations, encourage persons involved in such organisations to cooperate with law enforcement to avoid severe penalties, and break the morale of members in criminal motorcycle gangs (Queensland Parliament, 2013; p. 3115).

The VLAD (2013) 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 introduced by the Queensland Government from September 2013 are tabulated below (Table 1).

The Queensland Government (2014) claimed that the proposed laws would achieve the disruption of OMCGs. The amendments to the *Criminal Code* created three new offences of association and also prescribed 26 organisations to be criminal organisations, all of which are recognised OMCGs (Queensland Government, 2014). The essential difference between the COA (2009) and VLAD (2013) laws is that the former provided anti-association offences upon application to a court and a subsequent finding against the organisation. The VLAD laws relied on declarations of criminal organisation being made by the Attorney General to facilitate the anti-association offences.

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