Submission
Serious and Organised Crime Legislation Amendment Bill 2016
Assoc Prof Mark Lauchs

I am in general agreement with the removal of excessive provisions of the VLAD laws and the new offence provisions relating to sex offences and white collar crime. However, I am concerned about the unintended consequences of much of the new 'Organised Crime Regime'.

I will begin by discussing the group that has been the focus of the various suites of legislation around Australia, the outlaw motorcycle gangs (OMCG).

The overall goals, at least of the consorting provisions, are "disrupting serious and organised crime" (s139)[1]. They also note that a future review will determine whether "any demographic has been disproportionately or adversely affected by the consorting provisions" (s139). This submission will make the case that this outcome is very likely and steps should be taken now to prevent the adverse effects. But first it will address some of the misapprehensions behind much of the criminal organisation legislation across Australia.

Outlaw Motorcycle Gangs in Society

OMCG are called the 'one percenters' because they are the elite of bikie clubs. They are extremely hard to join, have very high 'standards' of behaviour and place the interests of the club before all other ties members may have in the community. Men join because the clubs provide them with "brotherhood"; the support, close friendship and absolute loyalty that most people get from their family. While the motorcycles are important, the club and their mates are the real prize of membership. Membership is time consuming, taking people away from their family and other friends, but socially very rewarding. What happens inside the club is exclusively the business of members. There is a very strict wall of silence that ensures that members never discuss club business be it licit or illicit (Barger, Zimmerman, and Zimmerman 2001).

Unfortunately for the rest of society, one of the things that attract members to the club is their enjoyment of barbarian behaviour (riding, sex, drug taking, drinking and fighting) that makes them socially unacceptable to the wider community. They have disdain for the rest of society and enjoy intimidating and scaring the general public. The reaction of the general public to the patches, the tattoos and the loud bikes ridden *en masse* are part of the fun of being an outlaw.

Another important aspect of being in the one percenter culture is artificial territorial disputes. Clubs claim territory and defend it against incursions by other clubs, while at the same time provoking those same clubs by trespassing in their territory. Arthur Veno calls this "pissing contests" (Veno and Gannon 2009). Clubs are on a 'war mentality' with other clubs, continually fighting to show their superiority over other clubs with territory being a trigger for conflict (Quinn and Forsyth 2011). These wars have existed in Australia as long as there have been outlaw clubs. The clubs that lost either folded or were absorbed into the winning clubs. According to the Australian Harley Riders'

[1] References to sections in this submission are the sections in the Bill not the new or amended sections in other legislation.

(AHR 2012) *Australian Motorcycle Club Register*, there were over 240 one percenter clubs formed in Australia, of which 47 still exist, containing approximately 6000 patched members (ACC 2013). Most of these had small memberships in a single chapter. Twenty-seven of the old clubs patched over to other clubs or changed their name to a current club, for example, in the 1970s the Southern Cross Angels in Sydney and the Angels in Melbourne became Hells Angels chapters. Only ten clubs patched over to foreign clubs. The wars are continuing, but what were once battles fought out of public sight, are now very public and with increasingly indiscriminate violence.

Most of the discussion of the outlaw clubs relates to organised crime. Our research at QUT has shown that bikies are minority players in the drug market (Lauchs, Bain, and Bell 2015). More importantly, most of the members never participate in serious organised crime, and those that do usually work with people outside the clubs. However, as a proportion of the population, club members are at least 20 times more likely to be involved in crime than the rest of us. Which makes them a valid target for a police taskforce.

Clubs are attractive to organised criminals. They have men with a reputation for violence who can provide protection and the absolute secrecy of the organisation ensures operations are kept secret. Clubs were not set up as criminal organisations but some chapters are used to facilitate serious crime (Lauchs, Bain, and Bell 2015). The level of criminality in chapters varies enormously across the nation. The local chapters of clubs are fairly autonomous and develop their own culture. Some chapters are more violent than others and/or have greater proportions of criminal activity. Based on my research of media reports and court judgements, most chapters have relatively little violence and no organised crime.

The vast majority of outlaw club members are sort of law abiding. If the Finks Application by the Queensland Police Service is an indication (Condon 2012), those with criminal records usually have committed barbarian offences of traffic violations, violence, small drug offences, etc. Again members offend much more often than the average person but are generally a public nuisance not a threat to safety. But the clubs do not try to limit or prevent violence when it occurs. Professional football teams also suffer from the same type of barbarian offending by their members. But unlike the outlaws, the football clubs try to stop this type of behaviour.

This is an ‘own goal’ by the OMCG. By not informing on the minority of serious crime members within their clubs, they give the government the ammunition it needs to effectively ban them. What this means is that we have two separate problems with outlaw clubs: the organised crime and the violence. The latter is a natural part of their culture and the former is a fairly recent addition facilitated by, but not a part of, the culture.

The ‘bikie problem’ is real. Legislation helps resolve the organised crime issue but excellent police work, backed by good resources and the cooperation of the Federal Government agencies is what really matters. Taskforce Maxima was a great example of this in operation. It was extremely successful in addressing organised crime by bikies. However, as will be discussed below, 90% of the people they charge are not bikies, so they are even more successful as non-bikie organised crime.

OMCG have a positive side. They give men who are seeking support and friendship a club where they can, literally, be loved. But they also intentionally clash with mainstream society and the police to provoke a reaction. They then complain about the reaction as if they were innocent. As Australian bikie Boris Mihailovic explained:

> Ironically, if the Brownshirt [redacted]-storm didn't happen, then the outlaw motorcyclist would be concerned that he had somehow failed in his outlawry. So it is all weirdly self-serving and self-perpetuating. (Mihailovic 2014, 113-114)

Thus the clubs are in an invidious position. They could help solve the issue by reducing violence and informing on, or excluding, the members involved in organised crime. Similarly, politicians have the opportunity for a diplomatic solution by engaging in talks try and bring this about. But this outcome goes against the very sense of brotherhood and exclusivity that makes them one percenters. Can they do this and still be outlaws?

In effect, the VLAD laws, for all their flaws, do not ban OMCG culture. They allow the banning of specific clubs that have historical associations with high level criminality. I submit that any club currently proscribed under VLAD could take their non-criminal members and form a new club under a new name and operate in Queensland today with no restrictions. Club members, therefore, have the opportunity to continue their culture and lifestyle, minus the participation in organised crime and public violence, the very things they claim are falsely associated with the general membership (UMCQ 2013). It would be difficult for any government to justify registering the new club if it did not contain the known offenders who had been members of the previous club.

Review of Byrne and Wilson Reports

Queensland has had two inquiries into organised crime in the last year: the Byrne Report (Byrne 2015) into organised crime generally and the Wilson Report (Wilson 2016) into the VLAD legislation. Both are critical of the resources spent pursuing bikies instead of other forms organised crime on the basis that OMCG are marginal players in crime in Queensland, and that Taskforce Maxima only targeted OMCG, when resources are better spent looking at all organised crime in Queensland. These claims, when published in the Byrne Report, were disputed by the Queensland Police Service (Vogler, Wardill, and Tin 2015). Further, the Wilson Report noted (Wilson 2016, 78) that bikies were not responsible for either a large number or large proportion of serious crimes in Queensland. I submit that it would be more correct to say that they are disproportionately represented in the crime figures.

In making their conclusions they justify a legislative response to organised crime that may be unnecessary if there is a better understanding of the success of Taskforce Maxima. The thrust of the arguments is that bikies represent less than 1% of all crime and the resources of Taskforce Maxima were, therefore, misplaced and should have been targeted at all organised crime. The Byrne Report estimated that bikies commit 0.5% of all crime in Queensland. The Wilson Report came up with convoluted figures reaching a range from 0.1-0.5% of crime.

For the moment, let's ignore the fact that the crime targeted by the Taskforce was not all crime in Queensland but only a minority of offences committed, namely, serious offences. There are 4.69

million people in Queensland. This would mean that bikies, who numbered approximately 900 in 2013, or one in every 5200 people, committed between one in every 200-1000 crimes. So they were offending at a rate of between 5 to 25 times as often as the average person. This exceptionally high relative rate of offending would make them a reasonable target for the police.

Even if we only look at offenders rather than the whole population, the Wilson Report states bikies committed 0.87% of crimes but made up only 0.38% of offenders (Wilson 2016, 79). Thus they on average they commit twice as many offences as the average criminal. Again, this ignores the fact that serious offences only make up a minority of total offences, thus bikies will commit serious offences at an even higher rate.

However, not all bikies in clubs commit serious crimes. Based on the police report into the Finks MC (Condon 2012), at most only 20% of club members are involved in serious crime. The QPS did not target all bikies in Taskforce Maxima, they only targeted the serious offenders. These offenders are then 25 to 150 times more likely to offend than the average person and 10 times as often as the average criminal.

Now let's consider a point that all state governments around the country have gotten wrong: bikies do not control organised crime or the drug market. They made up only a very small proportion of those charged under Taskforce Maxima – in July 2015, the QPS reported that 2270 people had been charged and only 150 of those under VLAD, or 6.6%. Thus at least 90% of offenders arrested by the Taskforce are not bikies. Taskforce Maxima arrested more than ten times as many non-bikies as bikies. This is not a bikie Taskforce; it is a serious crime taskforce. And it was not a misuse of resources.

There are over 11,000 sworn officers in Queensland. Once again, let's be conservative and round the number off to 11,000. Taskforce Maxima has 120 of those officers according to the Byrne Report or just over 1% of all officers in Queensland. So 1/100 officers were allocated to deal with 150 bikies (ignoring the other 2120 offenders they arrested) who offend at a rate possibly 25 times higher than the average person. Again, this is a good use of resources.

Finally, it was claimed in the Wilson Report that there are no figures on OMCG offending for the period before 2013. The Report relies on the submission of an academic who obtained police figures for this period via a Right to Information application from the Department of Premier and Cabinet, on the basis that it was "the only available information" (Wilson 2016, 77). These figures are then relied upon to support the conclusions about OMCG crime. It makes no sense that an RTI could reveal information held by the agencies participating in the Wilson review, yet the same agencies were unable to provide that information to the review. It makes less sense that the panel could make that statement and then credulously believe it was available through RTI. Amazingly, it appears the panel did not ask the government for the same data nor take the RTI release, which is publicly available, and check the data.

The 100 officers of Taskforce Maxima arrested 2270 offenders from across Queensland. Other branches of the QPS also investigated organised crime and made even more arrests. At no time was there an exclusive focus on bikies; a group that forms less than 10% of all organised crime arrests. I

submit that this conclusion undermines the arguments of both reports into organised crime and will play a part in the cost-benefit analysis of the introduction of the new laws.

The New Legislation

The Queensland Government has introduced new laws for criminal organisations. These are not bikie laws as they are much more far reaching. The "new Organised Crime Regime" outlined in the proposed legislation does both good and bad. Its goal, as stated under clause 139, are "disrupting serious and organised crime". We have to consider whether the price of the changes exceeds the benefits obtained. There were many claims by the United Motorcycle Council of Queensland that the VLAD laws could be applied to any form of club. While theoretically possible, it was highly unlikely that the laws would have been extended beyond the OMCG. The proposed legislation will extend beyond OMCG and apply to all members of Queensland society. The decision making that sat with the Attorney-General under VLAD to make determinations as to character of groups, has been devolved down to the level of individual police sergeants under the Bill.

Criminal Organisations

The laws do not overcome the problem of identifying a criminal organisation (a point discussed at length in the Wilson Report), yet they rely on this categorisation throughout the proposed legislation. Specifically, it is extremely difficult to claim the existence of a group that does not, like OMCG, oblige the government by incorporating themselves, have a formal management structure and declared membership. Simply stating that it does not matter if the group has a name or a continuing existence outside of crime (s.279) does not make it possible to definitively prove a group exists. There have already been decisions establishing that the VLAD laws could not apply to perceived criminal networks that did not declare their membership or name their group (*Police v Hannan & Murrell* [2016] QMC 2). While it might be possible to show criminal association by studying social networks (Lauchs, Keast, and Yousefpour 2011, Lauchs, Keast, and Chamberlain 2012, Morselli 2001), it does not follow that an association can be proven to be a criminal organisation.

The definitions of 'participant' are reliant on the organisation having a formal and fixed structure like a club or a gang. This definition would work on a mafia model of formal membership and hierarchical structure, but such groups are very rare and may not exist in Australia. Policing agencies have finally recognised that most organised crime is conducted by loose networks of individuals who come together to participate in the activity that would be defined as organised crime (UNODC 2002). To use an analogy from popular culture, most organised crime groups look more like *Oceans 11* than *The Godfather*. The Bill is well positioned to incorporate the organisations characteristics and style of membership of the latter and not the former.

The definition of participant relies on recognised 'membership', office holders and self-identification with an "entity". I would argue that the 'organisation' in Oceans 11 is not an entity, nor is it a group that one would belong to or have membership of. It is an ad hoc ongoing enterprise for crime whose membership is fluid. Even the core members may not exclusively act with the other members of the enterprise. It would therefore, not be possible to prove that a person is a member of such an organisation. Rather it would only possible to prove participation with the others in a criminal act. Even the proposed s.138(2)(f) "whose conduct in relation to the entity would reasonably lead

someone else to consider the person to be a participant in the entity" would be insufficient. While this is broader and relying on a reasonable person test, still requires an "entity". This framework only works if the group is a declared criminal organisation, for example, under s210. However, as I have already discussed and the courts have determined, it is not possible to declare a nameless entity – naming it is artificial and the proposed participants can deny any knowledge of such an entity. Thus the Oceans 11 loose network would not be covered by this provision.

OMCG

The limitations on wearing paraphernalia from clubs is based on ministerial satisfaction that the "wearing or carrying" of the prohibited items would cause "members of the public to feel threatened, fearful or intimidated" or increase the chance of violence. Traditionally the primary cause of violence between clubs is territorial trespass with a view to provoking confrontation. This has not been the key issue in the major public acts of violence in recent years due to a change in behaviour. Clubs now respond with tit-for-tat acts of revenge involving firearms or ambush. Two significant ambushes were the Rebels attack on the Bandidos riding near Ningi (*Hines v Rauhina* [2010] QDC 299) and the Bandidos attack on Jacque Teamo in Broadbeach (*The Queen v Brown* [2013] QCA 337). These events can have collateral damage on members of the public and, in the case of the shooting at Robina (*R v Graham* [2015] QCA 137), potentially have fatal results.

There have also been acts of intimidation based on perceived slights of honour, such as the Black Uhlan former President, Liborio Di Vita, attacking a lifeguard for telling his girlfriend to remove her dog from a flagged area of the beach (Fineran 2013). Others have been entirely random such as Nick Forbes of the Finks, and an associate, who randomly attacked passers-by in the Broadbeach Mall in 2008 (Swanwick 2009).

Only two of these events involved the offenders wearing their colours. Limiting the public wearing of colours or other club paraphernalia can reduce public fear. But it will not eliminate it as many modern bikies have their affiliations tattooed on the faces and necks, and they use the 'power of the patch', the public fear of the club's name, to intimidate others. Thus a ban on colours is a positive step, which is also being introduced in Germany (Overdorf 2014), but it will not eliminate public intimidation.

As has been discussed, it could be said that bikies account for a miniscule amount of the acts of public violence in Queensland. However, the manner in which they conduct this violence puts others at risk. The shooting between two Bikies in Robina left an innocent woman seriously injured (Fraser and Edwards 2012). There have been many drive by shootings in South East Queensland as well as fire bombings associated with inter-club violence. And this is not a purely recent change in practice. In 1997, the Odin's Warriors and Outlaws had a shoot-out near Mackay. Numerous participants were wounded, 53 people arrested and 60 spent cartridges found. None of those arrested were successfully prosecuted, presumably because of the participants refusal to cooperate with police (Waters 2013). Even earlier, in 1975 the, Norsemen and Gorgons ambushed the Black Uhlans at their clubhouse near Lang Park, firing 50 shots (Dixon 2014).The public were lucky that there were no bystanders hurt in either of these clashes. The violence is not limited to Queensland and the activities in other states can overflow to Queensland. This violence does not have to, and probably

does not, relate to battles over organised crime. They are a by-product of OMCG territorial culture. Assuming this culture has not changed, then a return of traditional clubs will lead to a return of public violence.

Ultimately, there is too little research on OMCG in Queensland or Australia. I and others are trying to rectify this but it will take a long time. Until we have detailed knowledge of what OMCG members do and why they do it, it is difficult to say that any program will protect the public from any form of crime associated with the clubs. We need research into:

- Crimes committed and access to court judgments, which are not publicly available in Queensland;
- More information on the history of clubs especially for the 1970s-1990s;
- Analysis of the minority who commit serious crime with a view to profiling; and
- Comparison with equivalent crimes by non-OMCG members.

As a final point, it is unclear why the new regime would continue with the 26 declared clubs but not include well recognised clubs of a similar nature such as Satudarah and the Mongrel Mob who are both now resident in Queensland. The Mongrel Mob Australia Facebook page gives their address as 13 Mongrelism Road, The Gold Coast, and states on May 17, 2015: "PLAYING IT SMART & KEEPN IT IN STEALTH MODE UNTILL ITS TIME TO LET OUR DOGG SOILDIERS INTO PUBLIC!". While it is understandable that the VLAD clauses are to be phased out, it would be prudent to add to the list.

Excessive Penalties for Coercive Hearings

Accelerated sentencing, where the maximum penalty increases for each subsequent repeat of the same offence, is extreme. For each refusal to cooperate with the Crime and Corruption Commission the punishment increased from 10 years, to 14 years and a potential life sentence for three refusals. It seems disproportionate and cruel punishment that a person can get an equivalent sentence as premeditated murderer for not answering the CCC's questions. However, the harm of these provisions exceeds the punishment itself.

While a person can apply to the Supreme Court to have these convictions set aside on the basis that they did not participate for fear of reprisal (s55), this is an extremely expensive process. First, it only happens after conviction; it does not appear to be a defence to the charge nor a reason for refusal at the time of the notice to attend before the CCC. The person will have legal expenses accumulating probably from the time of the summons to the conclusion of the application. This process could take well over 12 months to conclude, during which time further refusals will incur even higher penalties. Thus on top of suffering fear from reprisal from organised crime groups, the person suffers the stress of charge, trial and conviction (and probable imprisonment), as well as the expense of legal representation and public stigmatisation. These expenses will not be met by the government and there is no provision for compensation for psychological harm in the interim. In fact, the Bill proposes a new section 440 which closes any option for an action against the State.

These provisions punish those who, the Bill recognises, have committed no crime.

Mandatory Sentencing

Mandatory sentencing still exists under the new Bill. Courts "must" give a term of imprisonment to a convicted serious criminal who is a participant in a criminal organisation – a circumstance of aggravation under the proposed s161Q of the *Penalties and Sentences Act 1992*. Under s161R, the person *must* spend at least seven years in prison, and, once released, *must* be subject to an Organised Crime Control Order (which are discussed below). If mandatory sentencing is abhorrent then mandatory minimums are also abhorrent. Both remove the discretion of the courts and undermine just sentencing.

These sentencing outcomes can only be reduced if the person cooperates with police. Given the Queensland Police Service argument that the coercive power of the aggravated sentencing does lead to bikies 'rolling over' and therefore, produces actionable intelligence, and assuming this is a valid use of sentencing, there is no reason why the aggravated sentences need to be mandatory. Allowing judges a range while still qualifying a person for an aggravated sentence could produce the same outcome without Executive interference in the judiciary.

Control Orders

A further issue is the resource intensiveness of monitoring people subject to control orders (s279). These orders can include "any conditions" deemed reasonable to protect the public. While these powers are reflective of the current powers under the Bail Act, they raise two issues.

First is the power to apply discretionary control orders based on a balance of probabilities test is excessive and should be removed. These orders reduce freedom based on predictions of future conduct rather than proven criminal activity. They are not restricted in their scope with "any conditions" being able to be given in an order. As such they far exceed any of the freedom of association provisions of the VLAD laws that these changes are designed to correct.

Further, "discretionary control orders" can apply if the court is satisfied a person is a criminal participant, or has been convicted of habitually consorting, and, the court thinks that the order is needed to protect the public. These orders can last up to five years with potential extensions. Again this seems excessive and pre-emptive. The test is a reasonable person test rather than a criminal standard of proof and is based on speculation. A limitation on movement and association based on speculation of potential harm is not just. While this precedent has been set by terrorism laws, there was a presumption at the time that they were a special case that would not be emulated in other circumstances (Anaian-Welsh and Williams 2014, Williams and Godson 2002). This is especially egregious given that they will probably not produce a public benefit.

The control orders probably cannot be enforced. It is not clear how many people may be subject to control orders or if there has been any projection of this number. Assuming that between 12 to 15 officers are needed to monitor the activities of offenders, both in public and online, and over the next few years, there could be at least 2000 potential offenders needing monitoring, then up to 30,000 officers would be needed to make these provisions function. This is clearly not going to happen. At best breachers will be found on an ad hoc basis as their movement overlap with police operations in much the same manner as parole violations and outstanding warrants.

Thus the orders fail a cost-benefit analysis test; they cannot provide the protection for the community because the resources are not available, but they provide unjustifiable restrictions on individual liberty, especially when they can be applied without conviction.

Criminal Intelligence

The use of criminal intelligence will still be allowed under the Bill.

Information is Criminal Intelligence if its disclosure "could be reasonably expected to – (a) prejudice a criminal investigation; or (b) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or (c) endanger a person's life or physical safety." (s68) it is entirely proper that this information should be protected. The issue is whether this information can be used to penalise or convict a person when they do not have the opportunity to contest the evidence.

Criminal intelligence is still allowed for monitoring compliance at various points of the Bill, for example, s251. There is no issue here as the criminal intelligence is not used for refusal of a license or to convict an individual.

There are various points in the Bill in which an "information-sharing arrangement" can occur which replaces the use of criminal intelligence. However, criminal intelligence can be shared under these arrangements. This is explicitly allowed as clauses are provided that prevent its use for any purpose other than monitoring compliance, for example, see s349 which amends the *Racing Integrity Act 2016*. It is not a huge stretch of the imagination that if this information is shared it will influence decision making beyond just monitoring. It may not appear in the reasons given to an applicant for a licence, and may weaken the decision if it is appealed, but it again places the burden on the member of the public to take action to rectify a situation they should never have been subject to in the first place.

Consorting Laws

The new offence of being a habitual consorter create offences where no harm exists, but only the speculation of potential criminality.

Under s141 of the Bill a 'recognised offender' is: an adult who has a recorded conviction, other than a spent conviction, for a relevant offence (whether on indictment or summary conviction). A 'relevant offence' (again under s141) is a serious of violence offences including riot and assault, as well as, "an indictable offence for which the maximum penalty is at least 5 years imprisonment, including an offence against a repealed provision of an Act".

Consorting is "seeking out, or accepting, the other [criminal] person's company" (s141) regardless of whether the purpose relates to criminal activity. Exceptions are provided for people mixing with relatives, going to work, school, a medical centre, etc. But they do not exclude academic research or media interviews. There is a broad provision relating to "conduct in lawful employment" but it is not clear whether that simply has a narrow meaning of working in the same establishment as the recognised offender, or whether it would be read broadly as a person meeting with the recognised offender as part of that person's lawful employment. It is also not clear that research with offenders

is regarded as anyone's lawful employment. Given that other professions, such as social workers, are explicitly named in the section, there is a real possibility that the term would be interpreted narrowly. The Explanatory Memorandum already narrows the interpretation by stating that the exceptions only apply to activity that "is necessary for participation in civic life" (p10) – something that probably is not wide enough to include research.

A consorter can be warned by a police officer. If the consorter then completes two meetings with at least two recognised offenders, they become a 'habitual consorter' under the new s77B of the *Criminal Code* – an offence punishable by 300 penalty units or 3 years imprisonment.

Note that the consorting does not have to be in person, but includes on social media. The Police Commissioner confirmed the other day that it would go so far as to include texting.

This could have a serious effect on criminological research in Queensland. I am certain that this is a product of poor planning rather than a government plot to stop research, but it is still very serious. The potential for a charge would certainly close down any ethics approval for qualitative research with recognised offenders.

In addition, the onus is on the person charged with consorting to prove that they fall under one of the exceptions. Once again the person will have to incur thousands of dollars of legal fees to rescue themselves from this provision. They will go through months of anguish and will not be compensated.

Police will have the much greater powers to stop a person they "reasonably suspect has consorted, is consorting or is likely to consort". Police can demand a person's ID and give them an official warning as a potential habitual consorter. They can also search them without a warrant. This is justified on the circular argument that "there may be something the person's possession relevant to the act of consorting" (Explanatory Memorandum p23). The searches are further justified by the bizarre reasoning that the "power to detain is important to assist police in establishing whether any of the defences to consorting" (Explanatory Memorandum p24) may apply; a defence a person could not use until they appear before a court. This is simply bizarre. Even if an officer determined that a person had a valid excuse at the time and used their discretion to not provide a warning, this is an excessive power to stop and search.

Finally, a person found guilty of Habitual Consorting can be subject to a control order if "the court considers that making the order is reasonably necessary to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity"(proposed s161X). Having been convicted of a crime of consorting with criminal regardless of criminal intent, it seems extreme that you could also have your freedom of association limited. While the High Court noted in *Kuczborski v The State of Queensland* ([2014] HCA 46) that there was no freedom of criminal association, that does follow that association should be prevented because of the risk of criminal association.

Public Safety Protection Orders

A *public safety order* prevents a person or group from entering, attending, remaining or doing certain things in a premises, at an event or in a stated area (s267). These orders can last for 7 days,

and if needed can be obtained with short notice, and bypass a normal process of having to apply to a magistrate for the order. There seem to be no criteria for qualifying as the respondent of such an order. This is not associated with organised crime of OMCG but the general public.

A *restricted premises order* can be obtained on the basis that a police sergeant "reasonably suspects that one or more *disorderly activities* have taken place on the premises and are likely to take place again". Disorderly activities must be both antisocial and criminal. However, simply having a convicted serious offender present or a person who has been warned for consorting, is sufficient to meet this test. Police can search the location without a warrant and the "owner and/or occupier" may be subject to imprisonment. Further the police can apply for a search warrant of any premises where they "reasonably believe" disorderly activities are taking place or may take place. The allocation of this power to the unreviewed level of a sergeant expands the likelihood that the power could be abused. This statement is not a reflection on the quality of police sergeants per se, but the greater the delegation the greater the chance of intentional or unintentional abuse.

The best part of restricted premises orders is the nanny state aspect. Police can seize any prohibited items they find including alcohol, drugs, firearms, explosives etc. But also "anything that is capable of being used inside premises to contribute to or enhance the ambience of the premises in support of the sale or consumption of liquor or drugs or entertainment of *demoralising character*" (emphasis added) including pool tables and stripper poles. All these stripper poles are forfeited to the State.

I cannot find the origin of the demoralising character provision. It is not part of the Byrne or Wilson reports. It seems a particularly puritan and anachronistic provision that has basis in crime prevention. I would recommend that it be removed as having no purpose other than the policing of public morals; a concept that many hope disappeared with the Bjelke-Petersen era. This is especially so as the items in question are legally available and used in legitimate entertainment.

Finally there are fortification removal orders to force people to take down "excessive fortifications being erected on premises that are being used for criminal activity". It is bizarre that you would allow crime to continue long enough on a premises to need a fortification removal order. If the crime can be proven to be occurring then police should intervene and end the activity. Police can also require anyone associated with any of the above orders to provide their identification.

The combination of these powers and their ability to be exercised prior to review by a court is excessive and provides little support for reducing crime while increasing the potential for abuse and public harassment. This is particularly the case in relation to small communities.

Indigenous and other remote communities

The effect is even greater in indigenous communities. It is possible that the Habitual Consorting offence could become endemic in these communities as the close proximity of the community members could lead to unavoidable social interaction by members "seeking out, or accepting, the other person's company" (s141). While the Bill recognises the complex nature of kinship in Indigenous communities, it does not accommodate life in small remote communities. Given the disproportionately high rate of conviction for serious offences that would qualify a person as a recognised offender, these laws will exacerbate the consequences of over representation in the justice system by members of the indigenous community. The same could be said for residents of all small, remote communities in Queensland. In a town with limited social institutions, it will not be likely that all townsfolk could, or would want to, avoid contact with recognised offenders.

The problems of the public safety orders are exacerbated by the control orders. Not only will any terms of the orders effectively isolate a person in the small community, but there will never be sufficient police resources to effectively supervise a person subject to an order.

Final points

There is some inconsistency in the Bill. Why is a "serious criminal activity" an indictable offence with at least a 7 year penalty but a recognised offender qualifies with an offence with a maximum sentence of 5 years? Further under the amendments to the *Motor Dealers and Chattel Auctioneers Act 2014*, a serious offence related to those "punishable by 3 or more years imprisonment" (s.255).

Research

The entire debate on OMCG has taken place without any data on the nature of the clubs, their violent or organised crime activities. The data used in the two reports is either guess work, unreliable or entirely strategic reviews. Yet the orders proposed in this Bill are focused on individuals and their behaviour. We need more quantitative and qualitative data to understand the phenomenon of both OMCG and organised crime. We have the skills to do so but lack the cooperation between government and academia to get the work done. Once serious research has taken place we will be in a better position to develop effective, balanced policy.

Anaian-Welsh, Rebecca, and George Williams. 2014. "The new terrorists: the normalisation and spread of anti-terror laws in Australia." *Melbourne University Law Review* 38 (2):362-408.

Australian Crime Commission (ACC). 2013. "Outlaw Motorcycle Gangs." Australian Crime Commission, accessed 7 August 2014. www.crimecommission.gov.au/publications/intelligence-products/crime-profile-fact-sheets/outlaw-motorcycle-gangs.

Australian Harley Riders (AHR). 2012. Australian Motorcycle Club Register. Australian Harley Riders.

Barger, Ralph, Keith Zimmerman, and Kent Zimmerman. 2001. *Hell's Angel: The Life and Times of Sonny Barger and the Hell's Angels Motorcycle Club*. Great Britain: Fourth Estate.

Byrne, Michael. 2015. Queensland Organised Crime Commission of Inquiry. Brisbane: Queensland Government.

Condon, Michael. 2012. *Originating application for a Criminal Organisation Declaration pursuant to the Criminal Organisation Act 2009*. Brisbane: Queensland Police Service.

Dixon, Scott. 2014. "Bikie Blood Spilt." *The Courier Mail*, 25 May 2014.

Fineran, Leah. 2013. "Liborio Di Vita bashed Gold Coast lifeguard who told his girlfriend not to walk her dog through flagged area at North Burleigh beach." *Gold Coast Bulletin*, 8 November 2013.

Fraser, Andrew, and Harry Edwards. 2012. "Cops blitz bikies as gang wars go north - Innocent woman in hospital." *The Australian*, 30 April 2012.

Lauchs, Mark, Andy Bain, and Peter Bell. 2015. *Outlaw Motorcycle Gangs: A theorectical perspective*. Houndsmill, UK: Palgrave Pivot.

Lauchs, Mark, Robyn Keast, and Daniel Chamberlain. 2012. "Resilience of a corrupt police network: the first and second jokes in Queensland." *Crime Law and Social Change* 57 (2):195-207. doi: 10.1007/s10611-011-9337-y.

Lauchs, Mark, Robyn Keast, and Nina Yousefpour. 2011. "Corrupt police networks: uncovering hidden relationship patterns, functions and roles." *Policing & Society* 21 (1):110-127. doi: 10.1080/10439463.2010.540656.

Mihailovic, Boris. 2014. *At the Altar of the Road Gods*. Sydney: Hachette.

Morselli, Carlo. 2001. "Structuring Mr. Nice: Entrepreneurial opportunities and brokerage positioning in the cannabis trade." *Crime, Law and Social Change* 35 (3):203-244.

Overdorf, Jason. 2014. "Berlin bans Hell's Angels logo." *Global Post*, 18 June 2014.

Quinn, James F, and Craig J Forsyth. 2011. "The tools, tactics and mentality of outlaw biker wars." *American Journal of Criminal Justice* 36 (3):216-230.

Swanwick, Tristan. 2009. "Bikie gang associate jailed after bashing eight people in booze rampage." *The Courier Mail*, 27 October 2009.

United Motorcycle Council Queensland (UMCQ). 2013. New Queensland Laws- Dangerous & Undemocratic. Brisbane.

United Nations Office on Drugs and Crime (UNODC). 2002. Results of a Pilot Survey of Forty Selected Organized Criminal Groups in Sixteen Countries. Vienna: United Nations Office on Drugs and Crime.

Veno, Arthur, and Edward Gannon. 2009. *The Brotherhoods*. Sydney: Allen & Unwin.

Vogler, Sarah, Steve Wardill, and Jason Tin. 2015. "Acting Police Commissioner Ross Barnett denies that pedophiles flourished during bikie war." *The Courier Mail*, 3 November 2015.

Waters, Kim. 2013. "What happened when bikie hell broke loose in Mackay." *Daily Mercury*, 5 October 2013.

Williams, Phil, and Roy Godson. 2002. "Anticipating organized and transnational crime." *Crime. Law and Social Change* 37:311-355.

Wilson, Alan. 2016. Report of the Taskforce on Organised Crime Legislation. Brisbane: Queensland Government.