

Australia's Regime of Biekie Legislation

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Introduction

Australia has seen over a decade of legislation designed to address the perceived problems associated with Outlaw Motorcycle Gangs (OMCG). They are designed to combat the criminal activities associated with these groups, such as drug trafficking, violent crime, and other illegal enterprises. This legislation often referred to as “anti-biekie laws” aims to achieve this through reducing the ability of club members to display their patches and associate in public. Further, they are limited in their ability to obtain licenses for firearms or to work in fields traditionally associated with these clubs, such as security services and tattoo parlours. While there is some evidence that this has reduced the public fear of intimidation by these clubs, there is no data on whether it has reduced criminality by club members. The history of this legislation has also been coloured by political manoeuvring by politicians with the Queensland government extending the legislation to all “organised crime groups” and the Australian Capital Territory government refusing to ever bring in any form of legislation of this type.

The success of the Queensland legislation led to the development of similar legislation across Australia as was predicted by some academics (Anaian-Welsh & Williams, 2014). This can be partly explained by the displacement of members across states, especially from Queensland, as the legislation has taken effect, prompting other jurisdictions to introduce legislation as a deterrence.

The legislation varies by state and territory. New South Wales's Crimes (Criminal Organisations Control) Act 2012 allows for the declaration of an organization as a criminal group and the imposition of control orders on its members. These control orders can include restrictions on association, movement, and employment.

Queensland has a very extensive range of legislation. The Vicious Lawless Association Disestablishment Act 2013 (VLAD) replaced earlier unworkable legislation and was the first such legislation to obtain High

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Court approval. It imposed additional penalties for members of declared organisations who commit serious offences and included provisions for declaring organizations and making it an offence for members to gather in public. This Act and related legislation were reviewed after a change of government in 2016 when the new government commissioned a review known as the Taskforce on Organised Crime Legislation. This review found that while there was a perceived decrease in visible activities of outlaw motorcycle gangs, there were significant issues with the legislation's impact on civil liberties and potential overreach. The Taskforce recommended several changes to ensure the laws were more focused and proportional. The subsequent Serious and Organised Crime Legislation Amendment Act 2016, removed some spiteful components of the former legislation but introduced new provisions extending the application of the act beyond OMCG (O'Sullivan, 2019). The Tattoo Parlours Act 2013 requires the licensing of tattoo parlours and operators, aiming to prevent OMCGs from using these businesses as fronts for illegal activities.

In Victoria, Anti-Fortification Laws were introduced as part of broader anti-gang legislation, these laws give police powers to remove fortifications from properties used by bkie gangs, which are often used to hinder police raids. The Control of Weapons and Firearms Acts was amended to increase penalties for members of declared criminal organisations who carry firearms.

The South Australian Serious and Organised Crime (Control) Act 2008 faced High Court challenges after it was first introduced. The current version allows for the imposition of control orders on members of organised crime groups and includes provisions that prevent members from entering specific areas and from associating with other known criminals.

The Western Australian Criminal Organisations Control Act 2012 is similar to that of other states. This act allows for declaring organizations as outlawed and imposing control orders on members. It now goes beyond these to prohibit the display of club tattoos. In the Northern Territory, the Serious Crime Control Act 2009 provides for control orders and other measures to disrupt the activities of organised crime groups.

While Tasmania and the Australian Capital Territory have considered similar legislation, their approaches have been less severe compared to other states. For example, Tasmania banned public display of club colours for six clubs (Tasmania Police, 2020).

These individual state acts are supported by federal legislation that provides police with additional powers, including increased penalties for



organised crime-related offences and enhanced measures for dealing with crime proceeds.

Critiques

The legislation targeting OMCGs has faced criticisms over the years, focusing on concerns about civil liberties, effectiveness, and potential for abuse. These criticisms have come from civil liberties groups, academics, and the OMCG community. The latter formed the United Motorcycle Council (UMC) in each state to fight the laws. The Queensland UMC put together a 78-page submission to review the VLAD laws (UMCQ, 2015).

Academics note that these laws are a continuation of laws that justify the intrusion on human rights. Such laws were first applied to sex offenders, then terrorism (using the danger of post-9/11 events), and finally bikies (Lynch, 2009; McGarrity, 2012). The further expansion of these anti-bikie laws to 'organised crime' shows a slippery slope of gradual erosion of the rule of law in Australia (Morrissey, 2014; Williams, 2016). This theme of *hyper-criminalisation* – a form of special pleading where the rule of law can be overridden for exceptional cases – does not have a natural boundary and can be engaged for political purposes whenever needed in the future (McNamara & Quilter, 2016).

Critics, including the clubs, argue that anti-bikie laws often infringe on civil liberties, including the right to association, freedom of expression, and the presumption of innocence. The UMCs contend that these laws unfairly target members based on their association with a motorcycle club rather than any criminal behaviour. This is a valid argument as there is an unsupported assumption that the groups are criminal organisations rather than organisations with criminals in them (Lauchs, 2019; Lauchs & Staines, 2019). It can be argued that like any other group, motorcycle clubs have both good and bad individuals. Generalising about the nature of motorcycle clubs and making incorrect assumptions about their members' involvement in criminal activities. This is discussed in the literature as 'pre-crime' or the perceived necessity to criminalise activity that may lead to crime (Dyer, 2015; McCulloch & Pickering, 2009; Zedner, 2007) One researcher studied parliamentary debates on this type of legislation and found that human rights were not given due consideration in formulating legislation (Grenfell, 2016).

These laws enable significant police powers that can be applied based on membership or association with certain groups rather than specific

criminal actions. Clubs and civil liberties groups claim this can lead to misuse and overreach. They argue that such powers allow for arbitrary and discriminatory enforcement, where individuals are targeted simply for their appearance or for being part of a motorcycle community. This can be seen through media representations of offenders as having an 'association with OMCG', a completely undefined term that could include anything from direct criminal participation to having once been seen in a photograph with a bikie.

There are also concerns about the erosion of procedural fairness and the rule of law. The laws often bypass traditional legal protections such as the presumption of innocence and due process, allowing for punitive measures based solely on membership in certain groups. One aspect of these powers is the use of 'criminal intelligence', data collected by policing agencies that can be used to make judgements about defendants but regarded as sufficiently secret that it is not shared with the defence, and remains untested in court (Martin, 2014).

Furthermore, this leads to members being unfairly stigmatised as criminals, irrespective of their individual actions. Civil liberties groups also highlight the stigmatisation and potential discrimination that can arise from these laws. They point out that individuals associated with motorcycle clubs may face unjust treatment in various aspects of life, based solely on their association. This broad-brush approach leads to discrimination in their daily lives, affecting employment, social interactions, and even access to banking and insurance services. The latter effects are made explicit in ancillary legislation controlling their activity in certain businesses and access to licenses. The limitations of movement and association have a flow-on effect of ending charitable activities, including fundraising for various causes by restricting their ability to assemble and organise events, thereby negatively impacting their community contributions (UMCQ, 2013).

The legislation is sometimes criticised for its broad and vague definitions of what constitutes a criminal organisation or participation in such a group. This can lead to legal challenges and concerns about the potential for wrongful application of the law to individuals who are not involved in criminal activities. Consequently, there is concern that these laws affect individuals who are members of motorcycle clubs but are not involved in criminal activities. The wide net cast by these laws can lead to non-criminal members facing the same restrictions and stigma as those actively engaged in unlawful acts. However, the vagueness has also supported defendants as they have won legal challenges based on the



difficulty of establishing that criminal organizations exist (McMahon & Emery, 2019).

There is a deep-seated belief among many motorcycle club members that the legislation not only infringes on their rights but also misrepresents their culture and contributions to society. They advocate for a more nuanced and fair approach to law enforcement that targets actual criminal behaviour rather than association with a group. Clubs also claim that the laws are ineffective and misdirected, arguing that they do not actually reduce crime but rather push it underground or into other areas. They suggest that a focus on community engagement and addressing socio-economic issues would be more effective in reducing crime (UMCQ, 2015).

Motorcycle clubs have often raised concerns about the legality and constitutionality of the anti-bikie laws, arguing that they contravene the Australian Constitution. Several aspects of the anti-bikie laws have been subject to legal challenges on constitutional grounds. Legal challenges have been mounted in several states on these grounds, though with mixed outcomes.

For instance, in 2013, certain provisions of Queensland's Vicious Lawless Association Disestablishment (VLAD) Act were challenged; however, they were largely upheld by the High Court. However, in practice, these cases have led to refinement of the legislation in response to High Court scrutiny to ensure their validity, rather than their removal.

There is a risk that the extensive powers in the surviving versions of the legislation could be misused, leading to abuses of authority. The potential for overreach by law enforcement agencies can undermine public trust and lead to grievances against the police and government. In Victoria, a coalition of civil liberties groups noted the lack of meaningful oversight in the 2023 proposed legislation (Australian Lawyers Alliance, 2023). There were concerns raised in Queensland about whether the focus on motorcycle gangs diverts law enforcement resources from other serious crimes. Critics argue that the singular focus on OMCGs may not be the most efficient use of police resources (Byrne, 2015; Wilson, 2016).

In summary, while the intent behind the various anti-bikie laws is to curb organized crime and enhance public safety, the implementation and broader impacts of these laws are contentious. It is difficult to maintain the balance between targeting crime and preserving fundamental legal rights and freedoms. There is a need for careful evaluation and possibly

recalibration of the laws to ensure they are both effective and fair. As we will see, the lack of evaluation has not limited claims of their success.

Did They Work?

There is no data on whether the overall effectiveness of the laws deterred organised crime by either OMCG members or other criminals in the community. In fact, there is debate over whether these measures simply push criminal activities deeper underground or into other less-monitored groups, rather than genuinely reducing crime. Evaluations of the effectiveness of anti-bikie laws in Australia have been mixed and somewhat limited, primarily due to the challenges in directly measuring their impact on organised crime and very vague strategic goals justifying the passage of the legislation. The reviews tend to focus on procedure and unintended consequences, rather than on the outcome of reducing organised crime. Some evaluations and reviews have been conducted at the state level, and they provide varied conclusions.

Queensland conducted two reviews of the VLAD laws (Byrne, 2015; Wilson, 2016) but both were mired by terms of reference coloured by political agendas. They led to new legislation which has not subsequently been evaluated. In New South Wales, periodic reviews of the Crimes (Criminal Organisations Control) Act have been carried out. These reviews generally support the continuation of the legislation but also call for amendments to enhance procedural fairness and to ensure that the laws are used appropriately, particularly in relation to non-criminal members of motorcycle clubs. South Australia has reviewed its legislation multiple times, with reports focusing on the balance between police powers and individual rights. These reviews often emphasise the need for clear guidelines on the application of the laws to prevent misuse. They also note, however, that the laws are badly written and the procedures not thought through, making their application extremely difficult. As one South Australian review found:

SAPOL and the DFF have indicated that the gathering and leading of evidence capable of satisfying the requirements of the above section and proving that an organisation, such as an outlaw motorcycle club, is criminal, is an arduous time and resource consuming task. Weeks of preparation are said to be involved, plus lengthy periods in court adducing the necessary evidence (Smith, 2018, p. 12).



Academic studies are rare (Ayling, 2021; Goldsworthy, 2016), especially as the laws have shifted from the front pages. This is unfortunate as we needed ten years of data to make effective evaluations. Interestingly, the only independent review of policing of OMCG is by the Australian Capital Territory government which does not have proscriptive bikie legislation (Goldsworthy & Brotto, 2019).

Media and public scrutiny also serve as informal evaluations. Reports often focus on high-profile cases where the laws have been applied, sometimes leading to public debates about their fairness and effectiveness. These are not quality evaluations of policy but are closer to hyped stories of crime or human rights infringements, often uncritically reporting over-confident claims by police (Hastie, 2024).

Nonetheless, the laws are popular amongst legislators. Politicians who support anti-bikie laws in Australia often cite two reasons to justify these measures: improved public safety and the suppression of organised crime. Politicians often argue that anti-bikie laws are necessary to protect the public from the violence and crime associated with OMCGs. They point to incidents of violence, drug trafficking, and other criminal activities linked to these groups as justification for strong legislative measures, but do not provide proof that the crimes that formed the justification were reduced after the laws were passed.

The laws were meant to disrupt the activities of organised crime networks by imposing strict controls on members of these groups, including restrictions on their movement, association, and activities. Further, they claim that the associated penalties are a significant deterrent to both current and prospective members of outlaw motorcycle gangs. However, there are no evaluations that test these claims and it is difficult to imagine an evaluation technique that could isolate these variables. Conversely, police assert that anti-bikie laws provide law enforcement with the necessary tools to effectively tackle the complex and secretive nature of organised crime groups and that the laws are crucial tools that help them combat organised crime more effectively. They do this by providing powers that allow for the targeting of the structured and clandestine nature of OMCGs, which can be difficult to penetrate with standard law enforcement methods. Traditional laws are supposedly insufficient to deal with the sophisticated methods employed by these groups and the new laws provide an additional 'tool in the toolkit'. Endorsements from police and law enforcement agencies are frequently cited by politicians to bolster the case for these laws. They reference statements

from police officials who report that the legislation aids significantly in their efforts to combat organised crime and is often demanded by senior police in jurisdictions that lack such laws (Lauchs, 2021).

Politicians in favour of the legislation often speak about the need to protect communities from the infiltration and negative influence of bikie gangs, particularly in local businesses and social spaces. They reinforce this argument by increasing the severity of the controls and penalties. State Premiers have competed to produce the 'harshest' bikie laws in the nation with Western Australia recently banning club tattoos (Hastie, 2021). There is a noticeable disappearance of visible bikie activity in states that ban club colours, such as Queensland, as well as the absence of large groups of club members riding in packs. And this may be the one factor that can be supported.

Law enforcement often stresses that these restrictions on association disrupt the criminal operations of motorcycle gangs by making it harder for members to meet, plan, and conduct illegal activities. This is the return of the old 'consorting' laws of the early nineteenth century. Restrictions on gatherings and association between known members hinder these groups' ability to organise and maintain cohesion. Police claim that these laws lead to safer communities by reducing the visible presence and influence of bikie gangs, which are often associated with violent behaviour and drug distribution. They suggest that the legislation helps deter public acts of violence and other criminal behaviours that can intimidate or harm civilians. They suggest that the harsh penalties and restrictions imposed by the legislation serve, not only to deter crime but as a deterrent to joining or remaining in these gangs. The prospect of being subjected to control orders or increased surveillance makes gang membership less attractive.

In summary, the laws are seen as part of broader strategies to reduce organized crime rates overall. Police appreciate the preventive aspect of the legislation, which allows them to act before crimes are committed. By using intelligence to impose restrictions on individuals associated with criminal activities, they can potentially prevent crimes from occurring rather than just responding to them. By targeting the more visible elements of organized crime, such as OMCGs, police believe they can also impact other related criminal activities, including drug trafficking and illegal firearms possession. However, there is no proof this is true. Nonetheless, they think the specific provisions aimed at bikie gangs give police the confidence and legal backing to pursue these groups aggressively.



Conclusion

In Australia, legislation aimed at OMCGs varies across states, primarily focusing on curbing their criminal activities and public intimidation. Key laws include the Vicious Lawless Association Disestablishment Act (VLAD) in Queensland and similar laws in other states that impose control orders and restrict public gatherings of gang members. While these laws are intended to enhance public safety by reducing the visibility and operations of OMCGs, they drove significant debate regarding their impact on civil liberties, effectiveness, and potential for misuse.

Clubs, lawyers, and civil liberties groups argue that these laws often infringe on the rights to association and freedom of expression, and target individuals based on membership rather than actual criminal activity. This has led to concerns about stigmatisation and discrimination in various aspects of life, from employment to social interactions. Additionally, the broad definitions within these laws raise issues of legal clarity and the potential for wrongful application.

There is also a notable absence of conclusive data on the laws' effectiveness in reducing organised crime, with some arguing that these measures may simply push criminal activities underground. Furthermore, the expansion of such legislation to other 'organised crime groups' demonstrates a slippery slope of increasing government overreach.

Thus, while anti-bikie laws intend to dismantle the criminal networks within OMCGs, their implementation raises critical questions about the balance between crime suppression and the preservation of fundamental legal rights. The ongoing debate demonstrates the need to take a decade of data from across Australia for evaluation, and subsequently, the careful reassessment and possible recalibration of these laws to ensure they are both just and effective.

Finally, the laws can be seen as an opportunity lost for more constructive policy development. None of the states have engaged in dialogue with the UMCs. Similarly, the UMCs have not presented alternatives to address the concerns of the community. One potential outcome could have been giving clubs the option to expel members who engaged in serious criminal activity. This would have solved the issue of stigmatisation and reinforced the argument by the clubs that such activity was not part of the culture of the clubs. Whether this would have been feasible is another question, but, notably, neither side of the argument sought common ground. The clubs have at least the argument that they were the target of allegations

and do not need to accommodate others' demands but the governments could have sought some alternative response.

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