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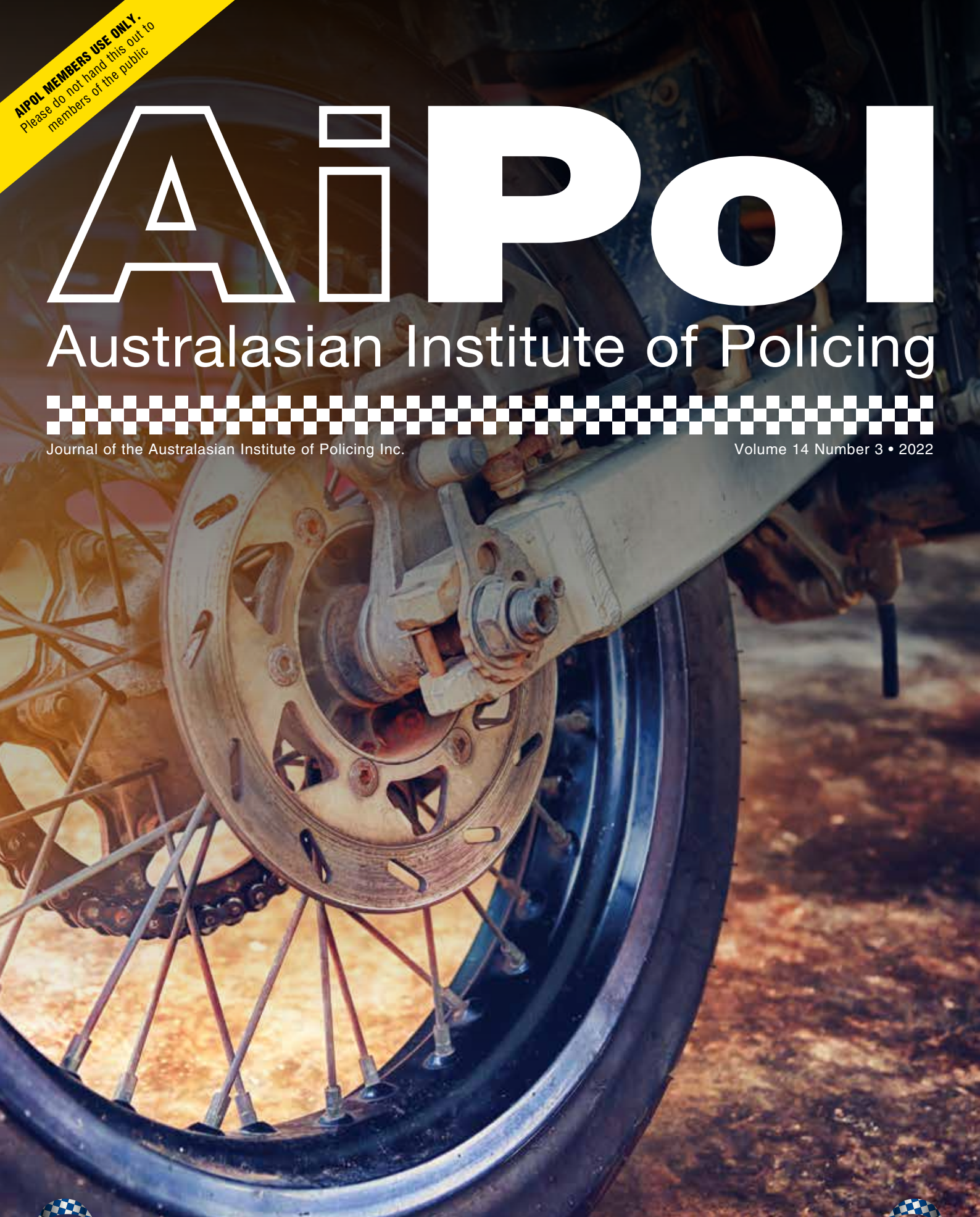
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National Police Remembrance Day

SEPTEMBER 29, 2022





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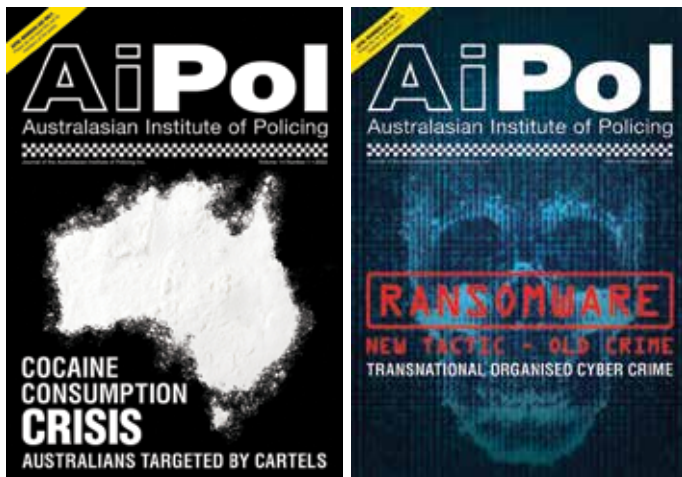
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Editorial

DR AMANDA DAVIES

Editor, Assistant Professor Policing and Security at the Rabdan Academy, Abu Dhabi



The common theme threaded through articles in this edition, is that it will take a genuine, collaborative Australia wide and beyond ... sustained effort beyond rhetoric, to achieve impact on the levels of OMCG crime.

Welcome to the September 2022 issue of AiPol. This focus of this issue is timely with significant movement underway to develop and progress effective legislation to support the work of police on the front line and police prosecutors in the fight against Organised Motorcycle Gang criminal activity. As referred to in several articles in this edition, and in particular the article *Bikie gang safe havens and hideouts around the world*, no longer is the issue within Australian shores.

This edition offers a comprehensive overview of the current situation with OMCGs in Australia and our near neighbours. As discussed by AiPol President Jon Hunt-Sharman and referred to in the NSW Premier release (23 June 2022), the article by Cathy Haenlein and colleagues; and the article by Christopher Dowling and Anthony Morgan, it is timely for legislators to consider legislation and police powers with potential for more robust disruption to the criminal activities of OMCGs. As witnessed with

the ANOM Ironside operations, it takes a collaborative comprehensive police/law enforcement approach across states, territories, and international support if there are to be significant successful levels of arrests, dismantling and mitigation of criminal networks and activities.

Whilst there are those in the community who would be well aware of OMCG activities as perpetrators, victims, law enforcement and judiciary, in many respects the advent of Covid-19 and the subsequent lockdown regulations across multiple countries brought to the forefront of the public the reality of the extent of OMCG criminal activities particularly cyber based crime. Media reporting has assisted in disseminating information about such activities and the law enforcement/policing success stories in exposing and capturing key OMCG members. An important point to highlight here is the value in educating the public about OMCGs and activities to assist in mitigating resistance to amended or develop new legislation designed to aid

in reducing to a point of eradication, the existence and consequences of OMCG activities.

The common theme threaded through articles in this edition, is that it will take a genuine, collaborative Australia wide and beyond i.e. Interpol, multi-country police/law enforcement and judicial/legislative agencies, sustained effort beyond rhetoric, to achieve impact on the levels of OMCG crime. The optimum outcome would be for legislation that is able to cater for all criminal based activities, however, as history has taught, when one door closes another door, tunnel and route is found by those intent on illegal activity, activity which can create catastrophic harm and destabilize communities.

May I commend this edition to you, it aims to provide a very comprehensive view of the status of the OMCG criminal activity, the legislative gaps and potential legislative resolutions towards reducing crime and increasing community confidence in government and community safety.



National Police Remembrance Day is on September 29 and is the day set aside to honour police who have lost their lives whilst protecting and serving their community.

In these uncertain times when the risks faced by those who serve on the frontline are greater than ever before, it's imperative we honour the fallen.

Jon Hunt-Sharman

Jon Hunt-Sharman
President, Australasian Institute of Policing



ORGANISED CRIME & OMCGs:

Time to consider strengthening Commonwealth laws and taking the fight off shore

President's Foreword

JON HUNT-SHARMAN

President, Committee of Management, Australasian Institute of Policing

In April this year, the Australian Criminal Intelligence Commission estimated that the cost of serious and organised crime in Australia in 2020–21 to be between \$24.8b and \$60.1b.

Fortunately, the newly appointed Attorney General, the Hon. Mark Dreyfus QC, MP, has a detailed knowledge and understanding of the impediments law enforcement have in regards to organised crime, including Outlaw Motor Cycle Gangs (OMCGs). He was Attorney General in 2013, Special Minister of State 2013, and shadow Attorney General from 2013–2022. During that time he has played an integral part in enhancing Commonwealth laws in relation to combating organised crime, including OMCGs.

The Australasian Institute of Policing (AiPol) advocates that the Commonwealth Government should now consider strengthening Commonwealth laws to:

- rectify the weaknesses of the current "Unexplained Wealth" provisions within the *Proceeds of Crime Act 2002 (Cth)*, through collaboration with its international partners;
- target Australian organised criminal enterprises, including OMCGs and their individual leaders, who have relocated offshore to continue illicit operations whilst avoiding arrest and prosecution;
- amend the *Criminal Code Act 1995 (Cth)* to provide Australian law enforcement greater powers to disrupt and dismantle Australian organised criminal organisations, including OMCGs.

The significant role OMCGs play within transnational, serious and organised crime environment has once and for all been exposed by the Australian Federal Police (AFP) led Operation Ironside, in contrast to a number of academic reports over the years that have tended to down play OMCG involvement in organised crime.

Australian law enforcement has been aware that over the last decade OMCGs have been strengthening their position as mayor players within transnational and domestic organised crime and the evidence is now being displayed before the Courts, both domestically in Australia and overseas, as a result of Operation Ironside. The evidence before the Courts is also validating the view by law enforcement that OMCGs are now operating in multiple criminal markets and across jurisdictions. This should not come as a surprise as these concerns have been raised and identified for some time.

For example, in 2009 the Parliamentary Joint Committee on the Australian Crime Commission warned:

"As elsewhere, a shift has been detected away from strongly hierarchical crime groups based on ethnicity, place or activity towards more flexible, entrepreneurial groups that are open to instrumental associations across

ethnicities and that operate in multiple criminal markets and across jurisdictions. Sometimes these 'networks' are temporary partnerships between individuals or groups for the specific purpose of taking advantage of criminal opportunities as they arise. OMCGs, for instance, have begun to include members of non-Caucasian origins, particularly Lebanese and Pacific Islanders, and to do criminal business with groups such as Chinese organised crime".

(Parliamentary Joint Committee on the Australian Crime Commission Inquiry into the legislative arrangements to outlaw serious and organised crime groups 2009).

Over a decade later, in May 2021, the Australian Criminal Intelligence Commission (ACIC) Chief Executive Officer, Mike Phelan APM, warned:

"According to Australian Criminal Intelligence (ACIC) assessments, there is a network of Australian national organised crime entities, largely based offshore, that is likely one of the most significant serious organised crime (SOC) threats impacting Australia.

This network has been referred to as the 'Aussie Cartel'. We use the term 'cartel' as they exhibit cartel-like behaviours—they have similar criminal

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intent, collaborate for mutual benefit, minimise competition between each other and seek to increase profit and influence. They don't call themselves a cartel.

The 'Aussie Cartel' is a network of independent operators and syndicates who join forces in an ongoing manner to share capabilities and invest in each other's criminal activities.

Many of the Aussie Cartel members are Australian Outlaw Motorcycle Gangs (OMCG) and they have significant influence over the OMCGs in Australia. Their reach extends into all state and territories and internationally, and their criminal threat also presents major threats to the integrity of our justice system and other government institutions.

Our intelligence assessments support this collaborative effect, particularly between the Comancheros and the Hells Angels, including offshore members. These larger OMCGs interoperate and in some cases control smaller clubs to leverage their onshore distribution networks and offset risk.

Individually these criminal entities and syndicates are bad news for Australia, but the way in which they collaborate further heightens the threat they pose.

Over the last few years, the 'Aussie Cartel' likely imported more meth and cocaine into Australia than any other group. These imports were worth billions of dollars. These importations wreak havoc on Australian communities. The implications of increased of meth usage within our communities include catastrophic levels of drug use, murder and physical violence, health and social degradation, financial loss, exploitation and the full array of volume crimes.

These offshore criminals do not just use encrypted communication devices, hardening their communications from interception, they specifically financed and facilitated the introduction of some of these devices to the Australian domestic criminal environment. They import illicit drugs through 'doors'—access points at our border facilitated by corrupt public and private sector employees—minimising the chances of interdiction.

They use professional international money laundering organisations to transfer their vast sums of cash into 'safe' offshore locations.

Their resilience is enabled by professional advisors (legal and financial), and their ability to corrupt at levels is far beyond our level of comfort and the use of electronic countermeasures.

These criminals started their criminal activity at home. They were actively targeted by law enforcement over many years and our environment forced them to move to Europe, Asia and the Middle East—often in places that have been traditionally difficult to reach by our law enforcement.

For example, the national commander of the Hells Angels—Angelo Pandelli is offshore.

Unfortunately, their offshore location has only increased their threat. Their resilience had risen, and their connections with offshore supplier groups and money laundering controllers has strengthened.

It's important to note that the 'Aussie Cartel' aren't the only criminal network that poses a threat, there are others. But we consider their wide-ranging criminal impact and influence, their wealth, ability to corrupt and their extreme resilience as a threat to the integrity of our justice system and Government institutions as well as every day Australians."

(Media statement: Network of Australian national organised crime entities 26 May 2021)

In July 2022, the Australian Federal Police (AFP) also advised the public that:

"The AFP alleges that OMCGs are responsible for trafficking tonnes of drugs into Australia each year. Off shore OMCGs are sourcing methamphetamine, heroin, cocaine, for OMCGs and other organised crime groups in Australia. ... Australian OMCGs have expanded their influence , particularly in South East Asia, over the past 10 years, to ensure better control over their illicit supply chains, trafficking corridors and money laundering networks. Physical borders are no longer an impediment to these groups so that's why its vital that we collaborate with our international partners to ensure we can counter the impact of illicit drugs, firearms and dirty money."

(AFP media statement 11 July 2022)

This change of modus operandi of leaders of the OMCG's and other organised crime groups, to conduct their operations from overseas, calls for a heightened, more direct and coordinated effort by the Commonwealth Government, in collaboration with its international partners, to move the fight offshore!

Working within the Australian Constitution

Under the Australian Constitution (*Constitution*), general criminal law and laws of criminal procedure are the responsibility of the states and territories, and the Commonwealth Government does not have a specific legislative mandate over crime.

The Commonwealth Government, has the power to make criminal law in those areas that are assigned to it by the Australian Constitution. These include the specific areas articulated under s.51 of the *Constitution*, which includes *customs, trade, external affairs, fisheries, quarantine* etc.

The Commonwealth's 'external affairs' power under s 51(xxix) authorises the Commonwealth Government to enter into international treaties and conventions. It then has the power to pass legislation giving effect within Australia to its obligations under those international treaties and conventions.

For example, Australia signed the *Convention against Transnational Organised Crime* in Palermo on 13 December 2000. The Convention entered into force in Australia on 26 June 2004.

Another example, the Commonwealth enacted offence provisions in relation to people trafficking into the *Criminal Code 1995 (Cth)* using its external affairs power.

Under s.51 (xxxvii) the state governments can also refer their powers to the Australian Parliament to enable the Commonwealth government to enact legislation. For example, the Commonwealth has used the source of power under s.51 (xxxvii) to enact various aspects of its anti-terrorism legislation.

State governments can refer the power to the Commonwealth to enact national serious and organised crime legislation and national proceeds of crime legislation under section 51 (xxxvii) of the Constitution, if there is the political will.

Transnational, Serious and Organised Crime is a National Security Threat

On 4 December 2008 Prime Minister Kevin Rudd delivered Australia's inaugural National Security Statement (NSS). This declared officially for the first time that transnational and serious and organised crime was a security threat to the nation. He foreshadowed clarification of the role of the Commonwealth in combating serious and organised crime.



In April 2009, the Standing Committee of Attorneys-General (SCAG) agreed to a set of resolutions for a national response to organised crime.

In June 2009 the Attorney General, the Hon. Robert McClelland AO, introduced the *Crimes Legislation Amendment (Serious & Organised Crime) Bill (No.1)*, which implemented the Commonwealth's commitment as part of the national response to enhance its legislation to combat organised crime. Of importance, it introduced "joint commission of criminal offence" and strengthened the criminal asset confiscation scheme by introducing, to the extent possible, *Unexplained Wealth* provisions within the *Proceeds of Crime Act 1995 (Cth)*. However, the *Unexplained Wealth* provisions still required a connection between the unexplained wealth and a criminal offence due to Constitutional constraints, unlike the Western Australia and Northern Territory legislations where the "pure" *Unexplained Wealth* provisions, do not require a link to a predicate offence.

In September 2009 the Attorney General the Hon. Robert McClelland AO, introduced the *Crimes Legislation Amendment (Serious & Organised Crime) Bill (No.2)* which introduced offences into the *Criminal Code 1995 (Cth)* to target persons involved in serious and organised offences, including:

- 390.3 Associating in support of serious organised criminal activity;
- 390.4 Supporting a criminal organisation;
- 390.5 Committing an offence for the benefit of, or at the direction of, a criminal organisation;
- 390.6 Directing activities of a criminal organisation.

In March 2012, the Parliamentary Joint Committee on Law Enforcement (PJC-LE) conducted an *Inquiry into Commonwealth unexplained wealth legislation and arrangements* and made four key recommendations to rectify and strengthen the *Unexplained Wealth* Provisions by removing the link to a predicate offence:-

Recommendation 14

4.45 The committee recommends that the Commonwealth Government take the lead in developing a nationally consistent unexplained wealth regime.

Recommendation 15

4.67 The committee recommends that the Commonwealth Government seek

a referral of powers from the states and territories for the purpose of legislating for a national unexplained wealth scheme, where unexplained wealth provisions are not limited by having to prove a predicate offence.

Recommendation 16

4.88 The committee recommends that the Commonwealth Government actively participate in efforts to establish international agreements relating to unexplained wealth.

Recommendation 17

4.96 The committee recommends that the Commonwealth Government create and commit to a plan for the development of national unexplained wealth scheme including the following elements:

- identification and implementation of short-term measures including cooperation with states with existing unexplained wealth legislation;
- negotiation with States and Territories to create or improve supporting mechanisms such as equitable sharing programs and mutual assistance agreements;
- development of agreed guiding principles around unexplained wealth; and
- a final objective of achieving a referral of powers from States and Territories to enable the Commonwealth to legislate for an effective and nationally consistent unexplained wealth scheme.

In 2013, Attorney General, the Hon Mark Dreyfus QC, tried to persuade the states and territories through the Council of Australian Governments (COAG), to refer powers to the Commonwealth to enable it to legislate national anti-gang laws and legislate national *Unexplained Wealth* laws. Unfortunately COAG did not support a referral of powers for this purpose.

In 2018, eventually, the Commonwealth achieved the first three dot points of Recommendation 17 (above).

In 2018 amendments to the *Proceeds of Crime Act 2002 (Cth)* created a National Cooperative Scheme on *Unexplained Wealth*, aimed at enhancing the ability of the Commonwealth, state and territory law enforcement agencies to trace, identify and seize assets that cannot be connected to a lawful source. The scheme currently applies to New South Wales, Australian Capital Territory and the Northern Territory.

The final objective (dot point four of *Recommendation 17*) of achieving a referral of powers from states and territories to enable the Commonwealth to legislate for an effective and nationally consistent *Unexplained Wealth* scheme has not been achieved to date.

The referral of powers to the Commonwealth to enable it to legislate national *anti-gang* laws has also not been achieved.

Law Enforcement Working Within Constitutional Constraints

The Constitutional constraints and subsequent lack of legislative referral of powers by the states, led to utilisation of a national framework with agreed goals, and where possible implementation of similar legislation in each state and territory, to address organised crime and participation in organised criminal groups.

Although anti-organised crime legislation remained the primarily responsibility of the states and territories in Australia, this collaborative national approach is delivering significant results both domestically and internationally.

For example, in July 2016 the ACIC was established. It is an example of the national approach to tackle both transnational and domestic organised crime, through collating, analysing and disseminating high quality criminal intelligence product to all policing jurisdictions.

The ACIC provides strategic criminal intelligence assessments and advice on national criminal intelligence priorities and conducts investigations and intelligence operations into federally relevant criminal activity.

In 2020 there was a Special ACIC Operation focusing on serious and organised crime committed by OMCGs. The use of the ACIC's coercive powers was effective in collecting information and intelligence to examine structures and links fundamental to organised criminal activity. This helped state and territory police identify and take action against a range of OMCG criminal enterprises, which had previously proved highly resilient to traditional law enforcement methods.

The success of the Special ACIC operation led to National Task Force Morpheus (Morpheus). Morpheus is

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ongoing and is a joint law enforcement initiative through which all Australian state and territory police, the Australian Federal Police National Anti-Gangs Squads and other Australian Government agencies, collaboratively target the highest threat outlaw motorcycle gangs (OMCGs) operating across Australia's domestic and international borders.

During 2019 to present, the Australian Federal Police (AFP) led Operation Ironside has resulted in:

- 383 offenders charged;
- 2341 offence count;
- 6339kg illicit drugs seized;
- 774 search warrants executed;
- 147 firearms/weapons seized; and
- \$55.5million dollars cash seized within Australia.

This collaboration with state and territory police is ongoing with intelligence gained leading to further ongoing arrests and prosecutions for state and federal offences, seizure of drugs and weapons and restraining of assets.

Operation Ironside internationally has also led to:

- 993 suspects arrested;
- \$58m+ (USD) currency and crypto currency seized;
- 220 firearms seized; and
- 53 + tons illicit drugs seized.

Collaboration with the FBI, Europol, Interpol, and other international policing organisations is ongoing, with intelligence gained leading to further ongoing arrests, prosecutions and seizure of drugs, weapons and assets internationally.

However, the downside of this international and national collaborative approach to disrupting OMCGs is that key leaders of these organised criminal enterprises, often referred to as the "Aussie Cartel" have relocated overseas and are running operations from 'safe havens'. They have relocated to Asia, Europe and the Middle East. This has unfortunately made them even a greater threat. Their resilience has increased and their connection to offshore supplier groups and money laundering controllers has strengthened.

For example the National Commander of the Hells Angels - Angelo Pandelli is offshore.

(ACIC media statement 26 May 2021)

Another example is Mark Buddle. In 2017 the Comanchero President and Commander of the Australian arm

of the Comanchero Bikie Club, fled overseas and after being identified in Dubai, fled from Dubai to Turkey and was only recently arrested in Cyprus and extradited to Australia where he has been charged with the importation of over \$40m worth of drugs into Australia in 2021, based on evidence obtained through AFP operation Ironside. He is reported to have a personal wealth of over \$100m dollars.

Another example, Comanchero and alleged drug kingpin Hakan Ayik, also identified through operation Ironside, is now believed to be living in Turkey. He allegedly has an estimated net worth of \$1.5 billion.

Baris Tukel, an ex-Comanchero sergeant-at-arms and Duax Ngakuru, the former Comanchero Australian president are also both believed to now be in Turkey.

Australia now has approximately 38 OMCGs with around 4,700 'patched' members and 1000 prospects; some of these OMCGs having links to overseas OMCGs.

(Australian Criminal Intelligence Commission (ACIC) September 2020 Assessment)

AiPol respectfully suggests that the Attorney General, the Hon. Mark Dreyfus QC, consider the following reforms:

Rectifying the weaknesses of the current "Unexplained Wealth" provisions within the Proceeds of Crime Act 2002(Cth)

"Insanity is doing the same thing over and over and expecting different results."
—Albert Einstein.

It appears that successive Australian governments from 2012 to 2022 have focused on *Recommendations 14, 15, and 17* of the JPC-LE *Inquiry into Commonwealth unexplained wealth legislation and arrangements* report, at the detriment of *Recommendation 16*.

4.88 The committee recommends that the Commonwealth Government actively participate in efforts to establish international agreements relating to unexplained wealth.

Recommendation 16 if acted upon by the Commonwealth Government, will rectify the weaknesses of the current Unexplained Wealth provisions, without requiring referral of powers from the states.

A treaty, made with the object of enhancing cooperation on organised crime should allow the Commonwealth to enact 'pure' *Unexplained Wealth* provisions, particularly when supported by *Article 13 International cooperation for purposes of confiscation* and *Article 34 Implementation of the Convention of the United Nations Convention Against Transnational Organised Crime*.

It is important to note that the United Nations *Convention Against Transnational Organised Crime*, of which the Commonwealth is a signatory, states: *Article 12 Confiscation and seizure*

...
7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

Article 13 International cooperation for purposes of confiscation

...
9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this Article.

Article 34 Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention...

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

AiPol considers that 'pure' *Unexplained Wealth* provisions could also be supported by this current multilateral treaty framework.

Dr Andreas Schloenhardt, University of Queensland, has previously stated:

"Australia has signed the Convention against Transnational Organised Crime but it is not certain whether the implementation of the Convention rests

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with the Commonwealth or the States or Territories. In the past, especially in Commonwealth v Tasmania (1983) 46 CLR 625, the High Court applied a very broad reading of the Commonwealth external affairs power, suggesting that the Federal Parliament can legislate on any criminal law issue arising out of international treaties signed by the Federal Government."

AiPol considers that the current framework of multilateral treaties including the *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, the *United Nations Convention against Corruption*, and the *United Nations Convention against Transnational Organised Crime* and a *bilateral agreement* with Ireland would provide a sufficient basis for the Commonwealth Government, under the external affairs power in s 51(xxix) of the Constitution, to correct the limitations of the current *Unexplained Wealth* provisions of the *Proceeds of Crime Act 2002 (Cth)*.

AiPol recommends that the Commonwealth Government seek a bilateral treaty with Ireland or another nation which has 'pure' *Unexplained Wealth* provisions, not linked to a predicate offence.

Targeting Australian organised criminal enterprises, including OMCs and their individual leaders, who have relocated offshore to avoid arrest and prosecution;

In December 2021 the Australian Parliament amended the *Autonomous Sanctions Act 2011 (Cth)*. It modernised Australia's autonomous sanctions legislation by creating a framework to facilitate the establishment of new *thematic sanctions* regime to enable Australia to respond flexibly and swiftly to a range of situations of international concern.

Should a person or entity meet the required listing criteria under the *thematic sanctions* regime, they can be sanctioned regardless of where the relevant conduct occurred.

The amendment inserted a new *Objects* clause into the Act which sets out a non-exhaustive list of matters autonomous sanctions may address. The new *Objects* clause sets out a

broader range of themes that sanctions may address, including activities undermining the rule of law and good governance, malicious cyber activity, and serious violations of international humanitarian law. The list is non-exhaustive and illustrative, and indicates the kinds of new *thematic sanctions* regimes that could subsequently be established under regulations.

Identifying these categories of *thematic sanctions* in the *Objects* clause also brought the Commonwealth into line with key likeminded partners including the United States, the United Kingdom and Canada, all of which are increasingly using *thematic sanctions* to respond flexibly to issues of international concern, regardless of geographic location.

The Regulations provide the specific criteria under which a person or entity can be sanctioned under these new *thematic sanctions* regime, should the Minister for Foreign Affairs assess - after appropriate consultation - that it is in Australia's national interest to do so.

On 15 December 2021 US President Biden, in his Executive Order, *utilised thematic sanctions* to target all property and interests in property of a number of designated individuals and entities involved in transnational and organised crime.

The Biden Administration Fact sheet that date noted that:

"Drug trafficking organizations are among the most significant and well-resourced transnational criminal threats facing the United States as well as key allies and partners.

These organizations often operate like international conglomerates, with their growing infiltration of commercial and economic activity fundamentally threatening free markets and financial systems critical to the stability and efficiency of the global economy. Their activities include large-scale corruption and violence, which undermine the rule of law and imperil democratic government.

While in the past these organizations generally had more hierarchical kingpin-style structures, with clearly identified leaders and chains of command, they have become increasingly diffuse and decentralized. Financial facilitators and enablers who advance the malign aims of drug traffickers often no longer have even informal associations with the leadership of drug trafficking networks...

Because the structure and tactics of drug trafficking organizations have changed, the Administration is modernizing and expanding the U.S. Government's ability to target these organizations, their enablers, and financial facilitators through sanctions and other related actions..."

It can be argued that the United Nations *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, the United Nations *Convention against Transnational Crime*, the *National Security Statement* by Prime Minister Rudd, and the recent use of *thematic sanctions* against transnational and organised crime designated individuals and entities by the US President Biden, clearly demonstrates that transnational, serious and organised crime is of international concern, undermines the rule of law and is a threat to Australia's national interest.

AiPol recommends that the Commonwealth Government consider using its *thematic sanctions* regime to target known criminals and their financial assets, who are wanted for transnational, serious and organised criminal activity negatively impacting on Australia's interests.

Amending the Criminal Code 1995 (Cth) to provide law enforcement greater powers to disrupt and dismantle Australian organised criminal enterprises, including OMCs.

Section 390 of the *Criminal Code 1995 (Cth)* provides a number of offences relating to organised Criminal organisations.

There is an opportunity for further amendments to Section 390 to enable a court to impose *Control Orders* on persons who have been convicted under Section 390.

A number of international and Australian jurisdictions have attempted to limit the ability of organised crime group members to associate with each other through the use of *Control Orders*. There are numerous forms that such orders take, however, on the whole they:

- are made by courts;
- are made against individuals;
- contain restrictions on the activities that the individual may take part in, the places they may visit, the people they may associate with, or other orders designed to prevent them from committing criminal offences; and
- specify that a breach of an order is a criminal offence.



Control Orders may be made post-sentencing, or without a criminal conviction. The UK has adopted the former approach, and has made Serious Crime Prevention Orders against people convicted of serious crimes.

Legislative amendments could be considered, similar to *Part 9D (Serious and Organised Crime), Div 3 (Control Orders) of the Penalties and Sentences Act 1992 (Qld)*.

The purpose of the legislation is to enable the Court to issue a *Control Order* to prevent, restrict or disrupt a person's involvement in serious crime. It can be made when a person who participated in a criminal organisation is being sentenced for particular offences. The *Order* can impose conditions that restrict the person's movement, association, employment or other activity, and can last for up to 5 years.

The court has discretion as to the types of conditions it can impose under a *Control Order*. Conditions can include:

- Stopping the person associating with another or others;
- Stopping the person from going to a place or type of place;
- Prohibiting the person from having certain things;
- Restricting the means by which the person communicates with others;
- Prohibiting possession of weapons; and
- Prohibition on working in certain industries.

It should be noted that in August 2009, the Parliamentary Joint Committee on the Australian Crime Commission (PJC-ACC)

in its report *Inquiry into the legislative arrangements to outlaw serious and organised crime groups* reported:

"The committee heard that control orders can be an effective means of preventing organised crime gang members from committing offences, and particularly for breaking the cycle for more junior gang members. The Commonwealth Attorney-General's Department said:

In general terms, civil orders might be effective in preventing crime as they allow the conduct of certain persons, such as those involved in criminal activity, to be monitored and restrained with the aim of preventing them from engaging in criminal conduct. Other civil orders allow for the continued detention or supervision of certain convicted persons, once again with the aim of preventing the person from engaging in criminal conduct. These types of civil orders may have a deterrent effect, but this can also be said of criminal laws. Generally, the breach of these types of civil orders is subject to criminal sanction.

Of the approaches examined by the committee, the UK's Serious and Organised Crime Prevention Orders (SPCOs) seem to be an effective way of managing the activities of known criminals. One of the key advantages of SCPOs is that they can be targeted to specific individuals, and do not attract many of the concerns about criminalising entire groups. However, the committee is also cognisant of the costs of monitoring such orders, and for that reason considers that the orders would really only be cost-effective for use against the most high-risk criminals.

The committee considers that such an approach may have significant benefits if applied in Australia and urges that further consideration be given to implementing SPCOs in Australia."

The Commonwealth Government could consider such a scheme enabling the court to impose Orders on persons who have been convicted under the *Criminal Code 1995 (Cth)* for serious offences. For example, for the purpose of the scheme, it could designate specific serious offences within the broad offences:

Part 9.1 - Serious drug offences

Part 9.2 - Psychoactive substances

Part 9.4 - Dangerous weapons

Part 9.9 - Criminal associations and organisations

Part 10.2 - Money laundering

Both the Queensland legislation and the UK legislation have the desired effect of preventing, restricting or disrupting a person's continued involvement in serious crime.

AiPol recommends the amendments to the *Criminal Code 1995 (Cth)* to include Control Orders/ Organised Crime Prevention Orders to assist in disrupting and dismantling Australian organised criminal enterprises, including OMCGs.

Although some might think that the suggested reforms may infringe on civil liberties, clearly transnational, serious and organised crime is a national security threat and the Commonwealth Government should consider using all its lawful powers under the Australian Constitution to mitigate this real and imminent threat to our society.





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Comanchero bkie Maher Aouli's waterfront mansion among assets to be seized by police

Police have applied to seize Maher Aouli's assets including a Gold Coast waterfront mansion and a \$400,000 Mercedes after he was charged over a 178kg cocaine haul.

August 8, 2022

BY JANET FIFE-YEOMANS

A Comanchero bkie arrested over a \$64 million cocaine smuggling operation is set to lose his real estate portfolio and his \$400,000 Mercedes SUV as the Australian Federal Police seeks to seize them under proceeds of crime laws.

The police have applied to seize Maher Aouli's homes including a Gold Coast waterfront mansion after he was charged over the 178kg cocaine haul seized in Belgium which was destined for Newcastle.

Aouli, 41, was refused bail last year.

His arrest in June last year came as part of Operation Ironside, the international ANOM sting set up by the AFP and FBI which used an encrypted subscription-based messaging app which suspects believed protected their communications when in fact it let them all be monitored.

As part of its targeting of criminal assets, the AFP has orders seizing his property in Terry Street, Connells Point which he bought for \$1,540,000 in 2016. He has since torn down the original cottage and rebuilt on the site.

His second home is on the waterways at Oyster Cove Promenade, Helensvale with a swimming pool and its own pontoon which records show he bought in 2015 for \$840,000.

Six bank accounts and the Mercedes, which is owned by one of Aouli's companies, have also been frozen by the NSW Supreme Court after Justice David Davies found there were reasonable grounds to suspect they were all the proceeds of crime.

The AFP has alleged they found a "life member" Comanchero patch when they raided his Bathurst St home in relation to the drug bust.



Ouro Do Brasil, the ship where police found \$64 million worth of cocaine allegedly on its way to Newcastle. It travelled from Brazil to Belgium.

The massive haul of cocaine was seized in Belgium last year hidden inside the sea chest of a tanker from Brazil which the Supreme Court was told was headed to Newcastle where it was to be retrieved by an elite dive team or a sea drone with robotic arms.

He has been charged with importing a commercial quantity of a border controlled drug and knowingly or recklessly directing a criminal group in relation to the Belgian shipment and also over an alleged plot to smuggle \$700,000 of cocaine into Australia using the postal system.

The AFP alleges Aouli was behind the handles "Pop Smoke" and "Tom Ford" on the ANOM platform.

Aouli remains in jail on remand with bail refused despite his family offering to put up a \$5 million surety.

The court order means he is not able to dispose of any of his wealth until further notice.

AFP Commander Criminal Assets Confiscation Stephen Fry said the AFP-led Criminal Assets Confiscation Taskforce was "relentless" in depriving

criminals of their ill-gotten wealth, taking the profit out of their crimes and disrupting future criminal operations.

"This case is one of many ongoing matters under Operation Ironside, where the AFP and state law enforcement partners continue to combat the profit motivations of the criminal business model," he said.

"No person or criminal group is beyond the reach of the taskforce. The lavish criminal lifestyle is short lived. We will take away the proceeds of your crimes, including your million dollar properties, luxury vehicles and funds in any bank accounts."

The funds from the sale of assets ultimately confiscated by the courts are placed into the Confiscated Assets Account, which is managed by the Australian Financial Security Authority (AFSA) on behalf of the Commonwealth.

These funds can then be distributed by the Attorney-General (as Minister responsible) to benefit the community through crime prevention, intervention or diversion programs or other law enforcement initiatives across Australia.

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Members of the New Zealand chapter of the Comanchero.

Bikie gang safe havens and hideouts around the world

Over the better part of the past two decades, Australian states have been tightening the screws on bikie gangs through tough laws designed to reduce their visibility in public and frustrate their activities behind the scenes.

August 8, 2022

NEWS CORP AUSTRALIA NETWORK

The laws, which can prohibit bikies from riding as “patched” members of a gang, wearing club colours in public or associating with other members of a gang, have gone some way in dismantling bikie networks and putting a dent in the numbers of patched members.

But another effect of the laws has been to push some bikies to other states or territories where anti-bikie laws either don’t exist, lack teeth or aren’t strenuously enforced.

In June, Queensland University of Technology Associate Professor Mark Lauchs told The Herald Sun, Victoria had become a safe haven for bikies fleeing tough laws in other states.

“(Victoria is) the place to go,” Prof Lauchs said.

“When laws were changed, all the hardcore bikies left Queensland and went to Melbourne,” he said.

“The bottom line is in WA, Queensland and NSW, you can’t ride around with your patch on.”

But other bikies have sought to escape the clutches of Australian authorities completely, seeking to set up shop on foreign soil.

We now take a look at the overseas destinations where some of Australia’s most wanted have sought refuge and anonymity — or have found themselves after being deported.

NEW ZEALAND

In some ways, Australia’s bikie problem has become New Zealand’s bikie problem. As New Corp’s Charles Miranda reported in June, 2021, authorities across the ditch have been forced to deal with an influx of deported members of the Comancheros, who, they said, had introduced an “unprecedented” level of criminality into the country.

According to the report, at least 1000 criminals were deported to New Zealand between 2015-2020, with an estimated 55 per cent committing crimes within two years of their arrival.

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*continued from page 17*

The gang established a New Zealand chapter and has been using its Australian network to traffic drugs, launder money and bribe police.

The outlaws, known as “Aussie 501s” after the section of the immigration act under which they were kicked out of Australia, include 20 deported members of the Comancheros, who police described as “slick” operators.

“Comanchero have an established overseas network, international control of supply lines from Europe and the Americas, established allegiances in pursuit of further business and putting aside gang rivalries, so it is a concern.”

In 2020, NZ Police, with assistance from the Australian Federal Police, seized \$20m worth of cocaine in the Port of Tauranga - the biggest bust in the country's history.

The same year, police seized \$4m worth of assets in raids on the Comanchero.

SOUTHEAST ASIA

Australian bikie gangs have been dodging authorities, and expanding their activities, in Asia for years now, with their tentacles reaching into countries including Vietnam, Indonesia, the Philippines, Laos, Thailand and Myanmar.

As The Herald Sun reported in July, increasing numbers of bikies have fled to the region in recent years, where some have become instrumental in forging ties with local drug kingpins and overseeing shipments of heroin, cocaine and methamphetamines, or precursor chemicals for the manufacturing of drugs, back to Australia.

In 2019, the paper reported, the UN warned outlaw motorcycle gangs from Australia and New Zealand were “expanding” their presence in the region “in part as a result of focused law enforcement efforts against them at home”.

As has been the case in Australia, the tussle for power and territory in Asia has led to various turf wars between rival gangs.

In 2013, members of the Hells Angels and Rebels reportedly clashed when the Rebels tried to open a bar Cambodia's south in a nightclub district understood to be a Rebels “no go” zone because the Angels operated their own bars there.

The Sunday Herald Sun reported at the time that growing competition for business opportunities - both legitimate



Bikie gangs including the Bandidos (pictured), Comanchero, Hells Angels and Lone Wolf have set up in South-East Asia.



Benjamin Neil Pitt was arrested in Dubai, extradited to Australia and charged over his alleged role in one of Australia's biggest ever drug syndicates.



Erkan Keskin.

and illegitimate - had been a source of tension between rival organisations.

But the gangs are facing a new push to evict them from their Asian bases, with Australian, Asian and European authorities convening in Vietnam in June to discuss ways to work together to smash their operations.

“These are not groups that care about the wellbeing of the communities they establish themselves in, or their members,” Assistant Commissioner Crime Command Nigel Ryan said.

“These groups are responsible for the importation and trafficking of tonnes of illicit drugs, hundreds of weapons, the laundering of millions of dollars in cash and, if they feel it is necessary, murder,” Mr Ryan said.

“The AFP will not stand for Australian criminals moving offshore and causing havoc in another country, and that's why the partnership between the AFP and overseas law enforcement agencies is so important,” he said.

DUBAI

The United Arab Emirates city of more than three million people has developed a reputation as a magnet for ex-pat gangsters from all over the world.

So much so, The Daily Telegraph reported, that in 2020 Dubai authorities took the unusual step of publicising a video, highlighting the arrest of two Sydney men linked to an alleged plan to import drugs into Australia - in a bid to send a strong message that the city would no longer be a safe haven for criminal suspects.

“They (Dubai authorities) hated the reputation in criminal circles that Dubai was safe,” a senior Australian law enforcement source told The Daily Telegraph.

“And it's pretty obvious they want the crims to know they are now not welcome there and they will help Australian police to arrest them” he said.

Police allege the two Australians, Benjamin Neil Pitt and Matthew John Battah, have links to the Lone Wolf bikie gang and were the ringleaders of one of Australia's biggest ever drug syndicates.

The pair allegedly fled Australia in 2015 amid a police investigation into the alleged importation of 2.8 tonnes into the country through Africa, Asia and Europe in 2013 and 2014.

They were arrested in June 2020 following an eight year police investigation before being extradited to Australia in September 2021.



Finks OMCg members pose for a group photo in Thailand.



**Hakan Arif, left, and Hakan Ayik, in Dubai.
Picture: Network News.**



Matthew John Battah was arrested in Dubai, extradited to Australia and charged over his alleged role in one of Australia's biggest ever drug syndicates.

Following their extradition, NSW Police Assistant Commissioner Stuart Smith alleged the pair had “set themselves up in Dubai and lived an opulent life”.

Pitt and Battah were each charged with three counts of conspiracy to import a commercial quantity of a border controlled drug, one count of conspiracy to deal in the proceeds of crime greater than \$1m and a single count of conspiracy to traffic in a commercial quantity of a controlled drug.

Both men have pleaded not guilty to all charges and will fight the accusations in court.

Mark Buddle, leader of the Comancheros and considered to be Australia's most wanted man also spent time in Dubai after fleeing Australia in 2016.

Buddle, who was arrested in North Cyprus in July and was held for several weeks in a high-security prison in Turkey, was forced to leave Dubai after video emerged of him arguing with a group of tourists at a private beach bar in 2021.

NORTH CYPRUS

After fleeing Dubai in 2021, Comancheros boss Mark Buddle went to Iraq before settling in North Cyprus, a disputed region of Cyprus considered by Turkey as the Turkish Republic of Northern Cyprus.

In a development that shocked Sydney's underworld, Buddle was arrested in July as part of a top-secret mission involving agents from Interpol and the National Turkish Coast Guard.

Buddle was swept up and whisked away to the Turkish capital, Ankara, in an operation The Daily Telegraph said was sophisticated and well-executed.

The 44-year-old has been extradited back to Australia and is now in the custody of Australian Federal Police in a secret location.

TURKEY

Several of Australia's most wanted underworld figures have sought sanctuary in Turkey, with some of them specifically known to frequent a hotel in Istanbul called The Kings Cross.

The group has been referred to as the Turkish Mafia and is believed at one time to include former Sydney Comanchero Hakan Ayik, who fled Australia in 2010.

According to The Daily Telegraph, Ayik had been credited with being the brains and a money-maker for the gang before heading overseas and, according to sources, lived in luxury in Turkey and secretly owned the hotel.

Known as “Big Hux”, Ayik was also regarded in Sydney's underworld as being one of Australia's wealthiest fugitives and a major international drug lord.

The hotel was also frequented by other well-known identities of Turkish heritage, including Hakan Arif, A. K. A “little Hux”, and Erkan Keskin, A. K. A “Eric the Wolf”, the Telegraph reported.

Arif fled Dubai in 2018 before he could be extradited to Australia to face drug importation charges after being arrested in 2017.

Keskin left Australia in late 2019 after several charges against him were dropped.

Mark Buddle also reportedly had an office at the hotel before moving back to Dubai.

As the Telegraph reported, Ayik's world came crashing down in June, 2021, when authorities made hundreds of arrests around the world as a result of intelligence they gathered via the encrypted messaging app ANOM.

Ayik played a role in introducing the app to some of the world's biggest criminal figures, believing it would allow them to carry on secret, untraceable conversations.

In fact, the app had been created by the FBI and sold to organised crime groups, allowing authorities to read every message sent via the platform.

Police allege those conversations included criminals discussing their role in murders.

In June 2021, The Daily Telegraph reported that Ayik - a marked man after his role in the global sting was exposed - had gone into hiding, leaving his wife and their two young sons behind.

Ayik's whereabouts were not known, but he was believed still to be in Turkey because international travel was too risky.

Ayik renounced his Australian citizenship and changed his name to Hakan Reis.

At a press conference in June, 2021, Australian Federal Police Commissioner Reece Kershaw said Ayik was “probably” a marked man and urged him to hand himself in.

“I think given the threat he faces, he's best off handing himself into us as soon as he can,” Mr Kershaw said. “He was one of the co-ordinators of this particular device. So he's essentially set up his own colleagues,” he said.



Targeted Sanctions and Organised Crime: Impact and Lessons for Future Use¹

CATHY HAENLEIN^{2,3} WITH SASHA ERSKINE⁴, ELIJAH GLANTZ⁵ AND TOM KEATINGE⁶

Summary

Sanctions are increasingly used to tackle a range of specific issues. These include sanctions to respond to human rights abuses, combat corruption and address malicious cyber activity. As sanctions use has broadened, the question of their application to organised criminal activity is increasingly raised. In the United Kingdom (UK), with serious and organised crime deemed a national security threat by the UK government,⁷ there is a case to add a sanctions regime to address this particular threat, alongside the existing thematic regimes covering human rights and corruption. The National Crime Agency itself has called for a legislative amendment to reference serious and organised crime as grounds for sanctions use.⁸ This project addresses that possibility.

To do so, it explores the existing evidence base on the effectiveness of sanctions as a tool to disrupt serious

and organised crime. However, little research or evaluation has been undertaken to assess the impact of sanctions against organised crime. Similarly, few past initiatives have sought to assess the lessons these experiences hold for future sanctions issuers in this space. With interest mounting in the potential use of organised crime-related sanctions, this represents a critical limitation.

The research reviews existing evidence on the use and impact of sanctions to disrupt organised crime in a range of forms and covers under-researched questions around effectiveness, unintended consequences and complementarity with other law enforcement responses. While the project focuses on jurisdictions, such as the United States (US), and international bodies, such as the United Nations (UN), with track

records of using sanctions to disrupt organised crime, implications for the UK are also explored, with a view to informing UK policy thinking on the potential establishment of an organised crime-focused sanctions regime. It additionally considers two case studies previously exposed to organised crime-related sanctions: Colombia and Libya. While more in-depth research is required, this briefing note provides an assessment of the scope of past sanctions use in connection with organised crime and existing knowledge of its impacts and effectiveness, with reference to two case studies and drawing on 29 interviews and an extensive literature review. The central research question is therefore: how have sanctions been used to address organised crime and what lessons does this practice hold for other potential sanctions users in this area?

1. For the full research paper, see Haenlein, C., Erskine, S., Glantz, E. and Keatinge, T. (2022). Targeted sanctions and organised crime: Impact and lessons for future use. SOC ACE Research Paper Number 1. Birmingham, UK: University of Birmingham.

2. Cathy Haenlein is Director of the Organised Crime and Policing research group and Senior Research Fellow at RUSI, with expertise in serious and organised crime, illicit trade, conflict and development. Cathy has a particular focus on transnational environmental crime, with regional expertise in East and Southern Africa. She is also the Chair of RUSI's Strategic Hub for Organised Crime Research, established in partnership with the Home Office, National Crime Agency, Foreign and Commonwealth Office, and Research Councils UK's Partnership for Conflict, Crime and Security.

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4. Sasha Erskine is a Research Analyst in the Centre for Financial Crime and Security Studies at RUSI, where her research focuses on sanctions and counter-proliferation finance. Sasha examines how sanctions in the United Kingdom can be effectively designed post-Brexit, considering the increasing use of thematic sanctions. Sasha's work on counter-proliferation finance examines the role of sanctions in countering nuclear activity in proliferating states. Prior to joining RUSI in 2020, Sasha worked at Chatham House, where she focused on non-proliferation and international security. She holds an MSc in Conflict Studies from the London School of Economics and Political Science.

5. Elijah Glantz is a Franco-American researcher with a special interest in informal economies and security in conflicting and post-conflict states. His research covers sub-Saharan security and transnational non-state threats. Elijah is completing his BA in Political Humanities and International Relations at Sciences Po Paris before working towards an MSc in Conflict studies at the London School of Economics. Whilst studying, Elijah interned with the Royal United Services Institute in London and co-managed IBRocket, a startup out of Station F in Paris.

6. Tom Keatinge is the founding Director of the Centre for Financial Crime and Security Studies (CFCS) at RUSI, where his research focuses on matters at the intersection of finance and security. He has a Master's in Intelligence and International Security from King's College London, where he studied the effectiveness of the global counterterror finance regime. Prior to joining RUSI in 2014, he was an investment banker for 20 years at J.P. Morgan. His research includes terrorist financing, the financial dimension of state threats, sanctions, proliferation financing, organised crime and the role of public/private partnerships to tackling financial crime.

7. HM Government (2015), Intelligence and Security Committee report. UK Government.

8. HM Government (2015), National Security Strategy and Strategic Defence and Security Review 2015: A Secure and Prosperous United Kingdom and HM Government (2021), Intelligence and Security Committee report. UK Government.



Background and contextualisation

The use of organised crime-related sanctions has remained limited to a specific set of issuers, notably the US and more recently, the UN. In the UK, the government has advanced its vision of an ambitious post-Brexit independent sanctions regime, with the Sanctions and Anti-Money Laundering Act 2018 allowing sanctions use 'in the interests of national security'.⁹ New regimes addressing human rights and corruption have emerged. With serious and organised crime deemed a national security threat by the UK government, there is a case to add a sanctions regime to address this particular threat. The National Crime Agency itself has called for a legislative amendment to reference serious and organised crime as grounds for sanctions use.¹⁰

Although extensive previous use has been made of targeted sanctions to address key aspects of organised criminality, either via specific organised crime-focused programmes, or as part of broader sanctions regimes covering countries or other thematic areas – albeit by a very narrow set of issuers – little research or evaluation has been undertaken to date to assess the record or impact of these efforts. With US-organised crime-related sanctions used over almost three decades to disrupt cross-border trafficking, the lack of a body of rigorous relevant research is a key shortcoming. Similarly, few past initiatives have sought to assess the lessons these experiences hold for future sanctions issuers in this space. With interest mounting in the potential use of organised crime-related sanctions, this represents a critical limitation.

The research identifies a number of factors that influence the effectiveness of organised crime-focused sanctions, including:

- The extent to which the host government of the sanction's target is willing to cooperate with the sanction's issuer.
- The extent to which the issuance of sanctions is embedded within a coherent broader strategic approach.
- The overarching focus of the regime within which relevant designations are made.
- The need for clear objectives when applying sanctions.
- Resourcing and engagement of key agencies in both the country of issuance and the target's host country.
- Divergent levels of vulnerability of key actors across the related illicit trade chain.

The two case studies,¹¹ Colombia and Libya, are in differing regions of the world and with different exposure to organised crime-focused sanctions. They were selected at a country level, rather than on the basis of single designations (which risk providing too narrow a picture) or the workings of entire sanctions programmes (which risk providing too broad an analysis). While Colombia tops the list of states globally for organised crime-focused sanctions on individuals and entities in its territory (with the third-highest number of relevant listings since 2016),¹² Libya's exposure is more recent and limited. Libya nonetheless has experience of listings under the UN, and under US unilateral regimes, relating to fuel smuggling, people smuggling and human trafficking. This focus differs markedly from Colombia and the US focus on narcotics-related sanctions.

Key findings

Abundant use has been made of organised crime-focused sanctions,

albeit primarily by the US, under multiple regimes, yet knowledge of their implementation, impact and merits remains scant.

- When considering organised crime sanctions imposed by the US, the authors looked at the Specially Designated Narcotics Traffickers (SDNT), Specially Designated Narcotics Trafficking Kingpin (SDNTK), Transnational Criminal Organizations regulations (TCO) and Illicit Drugs Executive Order (Illicit-Drugs-EO) regimes. In total the authors identified 2,533 designations from the SDNTK, TCO and Illicit-Drugs-EO regimes, from 1995-2021.¹³ In addition, 1,362 SDNT listings were identified, although precise data and information on some designations, press releases and statements in the case of SDNT is challenging to access. This is due to removals from the OFAC website and conflicting press releases on designations, with accurate data access not available for this regime.
- The question of effectiveness has long been grappled with as one of the most debated areas of the sanctions literature.¹⁴ Amid this literature, the authors could identify no directly relevant in-depth research in relation to organised crime-focused sanctions. This gap may be fuelled by the clear disciplinary divide between criminologists and sanctions experts. As noted by one interviewee, 'Sanctions and organised crime are two different worlds. Sanctions people are not likely to focus on effectiveness as it relates to organised crime since this is not their domain'.¹⁵

continued on page 22

9 Sanctions and Anti-Money Laundering Act (2018). UK Government.

10 HMG (2015), National Security Strategy and Strategic Defence and Security Review 2015: A Secure and Prosperous United Kingdom. UK Government and HMG (2021), Intelligence and Security Committee report. UK Government.

11 Case studies were chosen by listing all countries in which designations have been made with the primary goal of countering organised criminality, under both organised crime-focused and wider regimes. Locations were compiled using the OFAC Sanctions Search List tool, federal registers and press releases (noting that one designation may have multiple associated locations). When not explicitly stated, locations were derived from information relating to nationality, passport details, addresses and countries of origin. Cases were excluded where listings were primarily for terrorist activity, for example, with only an indirect impact or parallel involvement in organised criminality, as this research aims to inform those considering sanctions use with the primary aim of countering organised crime. Researchers limited the timeline to activity since 2016 (the start of the second Obama term), to assess sanctions use in conditions of relevance to the current security climate. Researchers omitted countries that had only experienced organised crime-focused sanctions use in 2020 or 2021, given the lack of time for their effects to be felt. From the resultant list of countries, the authors sought to select two with diverse experience in terms of geography; history of sanctions exposure; crime types in question; and regime type. Based on these criteria, Colombia and Libya were selected – countries in both Western and non-Western hemispheres with different exposure to organised crime-focused sanctions. The aim was not to conduct a comparative analysis, but to review experience in two diverse cases and assess what can be learnt.

12 US Treasury. OFAC Sanctions Search List tool. US Government.

13 Data compiled from the OFAC Sanctions Search List tool, US Treasury publications and press releases. See OFAC, 'Sanctions List Search', <https://sanctionssearch.ofac.treas.gov>.

14 Peksen, D. (2019). When Do Imposed Economic Sanctions Work? A Critical Review of the Sanctions Effectiveness Literature. *Defence and Peace Economics*, 30(6). Biersteker, T. J., Eckert, S. E., & Tourinho, M. (2016). *Targeted Sanctions: the impacts and effectiveness of United Nations action*. Cambridge University Press.

15 Authors' interview with academic C, 26 November 2021.

*continued from page 21*

- In the US, clearly defined sanctions regimes exist to target organised crime. The goals of the SDNT, SDNTK, TCO and Illicit-Drugs-EO regimes are to disrupt organised criminal networks by: prohibiting transactions with US individuals and entities (cutting off designees' access to the US financial system); denying access to property in the US; and denying US visas, among other actions.¹⁶ In the case of the Kingpin Act, for example, the stated aim is to create a 'pariah effect', deterring legitimate business from engaging in illicit activity, thus complicating criminals' efforts to launder proceeds and sustain offending behaviour.¹⁷
- In contrast, organised crime-focused designations at the UN level exist under regimes with wider goals. In the case of the Taliban, in 2001 the UN designated key individuals with narrative summaries citing both Taliban involvement and drug trafficking.¹⁸ These actions followed UN Security Council Resolutions 1267 (1999) and 1333 (2000), which recognised the links between drug trafficking and insurgent or terrorism financing.¹⁹ As such, while the regime's core objective is not to stem drug flows from Afghanistan, organised crime is targeted as a means to disrupt terrorism financing. In Libya, human trafficking and people smuggling sanctions also exist under a broader sanctions regime designed to support peace, stability and national reconciliation. Multilateral listing criteria thus show a strong concern with human rights and protection of civilians, rather than specific criteria targeted towards addressing organised crime.²⁰
- Relatedly, the US has made abundant use of regimes that cover both organised criminals and their wider support network. The SDNTK (Kingpin Act), for example, allows the targeting of significant foreign narcotics traffickers and those providing support, owned or controlled by them or acting on their behalf.²¹ This complements the US's broader approach to counternarcotics trafficking, where objectives to disrupt organised criminal networks are pursued by targeting not only the criminals but also their affiliates.
- The US has sought to use sanctions to address all forms of organised crime, whether they are directly related to narcotics trafficking or not. The TCO Executive Order declared a national emergency around the 'growing threat of significant transnational criminal organizations', whose entrenchment 'in the operations of foreign governments and the international financial system' was judged to threaten US national security.²² In this way, the Treasury's sanctioning authority was extended beyond drugs to any type of organised criminality.
- In terms of crime types, three of the four US regimes focus primarily on drug trafficking. However, SDNT, SDNTK and Illicit-Drugs-EO press releases also point to listings for enabling corruption, money laundering, assassinations and militia-style 'enforcement' activity.²³ Yet despite the SDNTK (Kingpin Act) enabling OFAC to target foreign narcotics traffickers and associates worldwide, the regime has remained focused on Latin America. Almost 75% of listings relate to designees in Mexico (946 designations – 40% of all SDNTK listings), Colombia (637 designations – 27%) and Panama (167 designations – 7%).²⁴
- The TCO programme, by contrast, has been used more broadly, including against those engaged in money laundering, extortion, fraud, corruption, wildlife, weapons, human and drug trafficking. Relatedly, the 2016 Global Magnitsky Act allowed the US to target human rights abusers globally, with 418 relevant listings to date. Here, overlaps with organised crime are clear, with crimes from corruption to money laundering, arms and organ trafficking cited in press releases.
- Regimes elsewhere touch on organised crime as part of a wider focus. For example, listings under the UK's Global Anti-Corruption Sanctions Regulations 2021 include designations in Latin America of those 'facilitating bribes to support a major drug trafficking organisation';²⁵ and the diversion of \$230 million through the fraudulent tax refund scheme uncovered by Sergei Magnitsky.²⁶
- Despite the US having multiple regimes targeting organised crime, the intention of these sanctions is not always clear and specificity of objective and purpose is often not given. As noted by one interviewee, 'it is hard to pin down exactly what the objectives of some sanctions programmes are in the first place'.²⁷ This calls into question exactly what organised crime-focused sanctions seek to achieve, in terms of objective (the policy goal issuers seek to achieve) and purpose of designations (how these seek to influence targets).²⁸

16 Government Accountability Office (GAO) (2019). 'Treasury Reports Some Results from Designating Drug Kingpins, but Should Improve Information on Agencies' Expenditures' <https://www.gao.gov/products/gao-20-112>.

17 US Committee on Foreign Affairs (2017). 'Examining the Effectiveness of the Kingpin Designation Act in the Western Hemisphere'.

18 UNSC, 'The Consolidated List Established and Maintained by the 1267 Committee with Respect to Al-Qaida, Usama Bin Laden, and the Taliban and Other Individuals, Groups, Undertakings and Entities Associated with Them', updated 3 January 2008, accessed 24 January 2022. 2001 listings citing drug trafficking include those of Abdul Ghafar Qurishi Abdul Ghani, Sayyed Ghiassouddine Agha, Abdul Razaq Akhund Lala Akhund, Zia-Ur-Rahman Madani and Abdul Salam Hanafi Ali Mardan Qul.

19 UNSC, 'Resolution 1333 (2000)', for example, calls for action to 'halt ... illegal drugs activities ... the proceeds of which finance Taliban terrorist activities'.

20 UN Security Council (UNSC), 'Security Council Committee Established Pursuant to Resolution 1970 (2011) Concerning Libya'.

21 Kingpin Act designations are categorised as Tier 1 and Tier 2. Tier 1 covers 'significant foreign narcotics traffickers' (B1 designees) and 'those playing a significant role in international narcotics trafficking' (B4 designees). Tier 2 covers the networks of B1 and B4 designees, namely individuals or entities 'materially assisting in, or providing financial or technological support for or to, or providing goods and services in support' of their activities (B2 designees) and those 'owned, controlled, or directed by, or acting for or on the behalf of, a significant foreign narcotics trafficker' (B3 designees).

22 US Treasury, 'Transnational Criminal Organizations Sanctions Program', updated 14 April 2015.

23 On narcotics-related violence, see, for example, US Treasury, 'Treasury Targets Perpetrators of Mexican Drug Trafficking Violence Tied to Los Zetas and the Gulf Cartel' 24 March 2010; on narcotics-related corruption, see US Treasury, 'Treasury Works with Government of Mexico Against Perpetrators of Corruption and their Networks', 17 May 2019.

24 Locations compiled using the OFAC Sanctions Search List tool, federal registers and press releases; US Treasury, 'Sanctions Pursuant to the Foreign Narcotics Kingpin Designation Act', updated 14 February 2022.

25 HM Government, 'UK Sanctions 22 Individuals Involved in Serious International Corruption', 26 April 2021.

26 HM Government, 'UK Sanctions Relating to Global Anti-Corruption', 26 April 2021.

27 Authors' interview with representative of government agency F, 7 December 2021.



- The authors identified a total of 603 delistings when considering the SDNTK, TCO and Illicit- Drugs EO regimes (there is insufficient data to conduct a similar analysis for SDNT). Delistings vary by administration, peaking under Obama in 2014, before declining under Trump. Delistings have since risen under Biden, with 103 under the latter as of 31 December 2021. However, reasons for delistings are not clear with multiple interviewees registering doubts over the ability of delisting data to demonstrate the desired behavioural change. Indeed, other reasons for delistings exist, ranging from deaths of individuals to administrative changes to entities.²⁹ As stressed by one, 'There is a need to look individually at delistings to see whether anything tangible has been achieved. The simple renaming of an entity could cause a delisting, then relisting. Delisting data needs to be used cautiously, in context'.³⁰
- In common with other sanctions, a key difficulty in assessing impact for organised crime-focused sanctions is that of disaggregating their effects from the range of other instruments with which they are used.³¹ Narcotics-related sanctions, for example, are commonly used within a toolkit of interlocking counter-narcotics programmes and policies – across which isolating the impact of any single tool is challenging. More fundamentally, with sanctions not designed for use in isolation, the utility of isolating their effects is unclear. Beyond this, other factors inevitably affect the ability to assess the impact of designations, from shifts in policy to data reliability.
- The authors found that the practicality of using individual sanctions designations to address organised crime, alongside incorporating traditional law enforcement mechanisms, remains challenging. As stated by Prezanti, 'unlike criminal prosecutions, the punitive arsenal of sanctions is limited to asset freezes and immigration bans'.³² As such, it is crucial to ensure that the sanctions designations and law enforcement actions take place in parallel, without sanctions precluding longer-term criminal justice outcomes.³³ The Cali and Rosenthal cases are cited as examples of how this has been done successfully, with numerous sources describing the extent of coordination, prior to designation, between relevant US agencies.³⁴ Related is the importance of equipping agencies with the necessary resources to sufficiently implement sanctions and coordinate action with law enforcement. In the US, concerns surround not only capacity for evaluation but also core capacity for the pre-designation work required, from target identification to assembly of evidentiary packages.³⁵ This reflects wider fears that growth in sanctions use across the board has not seen the resourcing uplift needed.
- When coordination with law enforcement is achieved, however, the results are positive. In the words of one interviewee, 'OFAC has become a large arrow in the DEA quiver'.³⁶ Echoing this, the Kingpin Act is cited as offering 'an effective law-enforcement tool, not just a sanctions tool', with reports of 'coordinated OFAC sanctions coupled with enforcement takedowns... [having] become a major weapon in DEA's ability to disrupt and dismantle major foreign drug trafficking organizations'.³⁷
- In Colombia, interviewees stated that a lack of research and access to OFAC data on circumstances around delistings limits the ability to analyse use. While much anecdotal evidence exists, particularly on historic cases, an in-depth, comprehensive study of recent sanctions use in Colombia is required. In Libya, interviewees were roundly sceptical of the impact of organised crime-focused sanctions, citing lawlessness and corruption in Libya as a key impediment to the implementation of sanctions.

Implications

With these factors and the broader findings of the research in mind, this briefing note concludes with a set of considerations for other potential sanctions users in this space.

- Individual sanctions issuers (such as the UK) need to identify where they might have maximum impact in this space and target sanctions use accordingly.
- Sanctions issuers need to establish where an organised crime-related regime would fit within their broader strategic and policy approach to countering organised crime. How would this tool be used strategically and how exactly would it complement other instruments (for example, in the case of the UK, tools such as unexplained wealth and asset freezing orders)?

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28 Giumelli, F. (2016). 'The Purposes of Targeted Sanctions', in Biersteker, Eckert and Tourinho (eds), Targeted Sanctions.

29 Authors' interview with academic A, 18 November 2021; authors' interview with representative of government agency F, 7 December 2021; authors' interview with representative of NGO C, 10 December 2021.

30 Authors' interview with representative of government agency F, 7 December 2021.

31 Authors' interview with former representative of government agency A, 2 December 2021, and former representative of government agency E, 7 December 2021; Biersteker, T. J., Eckert, S. E., & Tourinho, M. (2016). Targeted Sanctions: the impacts and effectiveness of United Nations action. Cambridge University Press.

32 Prezanti, A. (2020). Sanctions: A New UK Tool Against Organized Crime? Global Initiative Against Transnational Organized Crime (GITOC), 10 August 2020. <https://globalinitiative.net/analysis/sanctions-uk-oc/>.

33 Haenlein, C. (2020). Disrupting Serious and Organised Crime: What Role for UK Sanctions? RUSI Strategic Hub for Organised Crime Research. <https://shoc.rusi.org/blog/disrupting-serious-and-organised-crime-what-role-for-uk-sanctions/>.

34 US Committee on Foreign Affairs, 'Examining the Effectiveness of the Kingpin Designation Act in the Western Hemisphere'.

35 Authors' interview with representative of government agency F, 7 December 2021; authors' interview with former representative of government agency D, 16 December 2021; US Committee on Foreign Affairs, 'Examining the Effectiveness of the Kingpin Designation Act in the Western Hemisphere'.

36 Authors' interview with former representative of government agency D, 16 December 2021.

37 US Committee on Foreign Affairs, 'Examining the Effectiveness of the Kingpin Designation Act in the Western Hemisphere'.



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- Potential issuers of organised crime-focused sanctions need to understand and set clear criteria for prioritisation to guide use. Clarity must be established on what these criteria would be. For example, would they only cover harm to the sanctioning country's interests, or particular crime types? Or would they be applied more broadly to support international community responses to third country security threats as part of efforts to support the stabilisation of other countries and regions?
- Potential issuers need to consider where the burden of a new sanctions regime on organised crime would fall, in terms of the additional work and resource requirements, and would need to ensure sufficient capacity is available to administer the resulting burden. In contrast to most other sanctions regimes, organised crime-related sanctions will need to be supported by law enforcement, rather than ministries of finance or foreign affairs. For example, would the UK's National Crime Agency have the necessary skills, expertise and capacity to maximise the impact of such a regime? Potential issuers will also need to ensure they establish effective crossdepartmental collaboration, to avoid sanctions undermining broader and longer-lasting law enforcement processes and outcomes.
- Connected with the previous point, potential issuers need to ensure that sanctions (as a reactive tool) are used alongside or as part of a broader, more holistic response that addresses drivers and root causes of organised crime. For the UK, how would the development and use of such a regime fit with overseas development aid and development approaches, and how can coherence be assured so that all policy tools are complementary and working to the same ends?
- A review of existing thematic sanctions regimes should be undertaken to determine whether organised crime-focused sanctions would best be incorporated within existing regimes or whether new legislation creating a dedicated, new regime is required. While it might be possible to add an organised crime dimension to existing regimes, it may be more appropriate to create a dedicated regime that aligns with the ambitions of the NCA and can be used exclusively for targeting organised crime. If a separate regime is created, consideration should be given to the interaction of a new regime with existing corruption, cyber and human rights regimes. Specific thought should be given to the messaging, symbolic value, flexibility and coherence of a new regime.
- Furthermore, potential issuers need to consider the role of state versus non-state actors in organised criminal activity, and how any new organised crime-focused regime would navigate this nexus. With state actors acknowledged as key perpetrators and enablers of organised criminal activity in a range of areas, clarity on this question is crucial and closely linked to how any new regime should be designed and deployed, alongside assessing and handling political ramifications and sensitivities.
- Potential issuers will need to ensure that any new organised crime-focused sanctions programme has a clear purpose and is not merely symbolic, providing an easy option that allows governments to demonstrate that 'something is being done', but with no actual effect. Given that sanctions use is practically easier in many ways to pursuing law enforcement and criminal justice processes, issuers need to ensure that a new organised crime-related regime does not become an easy fallback option that avoids the more challenging resource-intensive work required to bring targets to justice.
- Unilaterally or multilaterally coordinated organised crime-focused sanctions across unilateral issuers may offer an alternative to the gridlock in the UN Security Council with regard to sanctions use. Unilateral issuers could fill this gap, to a degree, to ensure that sanctions remain a tool to deploy, when appropriate, against serious and transnational organised crime groups and individuals, even in the absence of Security Council consensus.
- And finally, as the menu of thematic sanctions regimes expands, careful attention must be given to due process concerns associated with increased use of individual sanctions designations to ensure that they are not used to erode the rule of law. Furthermore, due process protections must go beyond delisting and should also involve consideration of listing procedures, including considering the introduction of arrangements such as an Office of the Ombudsperson, as the UN Security Council has already done.



Victoria Police repeatedly pushed government to fix anti-bikie laws

The Andrews government has failed to fix the flawed anti-bikie legislation it introduced shortly after coming to office, despite repeated warnings from Victoria Police.

30 June, 2022

CRAIG DUNLOP

Herald Sun

The shooting of ex-Mongols bikie Sam “The Punisher” Abdurahimlast weekend has prompted renewed calls for a crackdown on Victorian bikies.

The Herald Sun can reveal Victoria Police in 2020 told the authors of a government review the force needed serious defects with anti-association laws introduced in 2016 to be fixed.

The government is yet to introduce a Bill to parliament, and is instead sitting on another report that took two years to produce.

In 2020, police told the authors of a government review — retired judge Margaret White and former NSW public servant Andrew Cappie-Wood — they wanted officers ranked sergeant or above, rather than senior sergeant or above, to have the power to issue criminals with an “unlawful association notice”, which makes it a serious offence to associate with other criminals.

That fix had been included in an Andrew’s government Bill in 2018, but the government let the Bill lapse and has never revisited it.

Victorian police have also never used unlawful association powers, because officers must believe “an offence is likely to be prevented if ... individuals are prevented from associating with each other” before they issue a notice.

The threshold for such a belief is almost impossibly high, and unlike other states, there are no protections to prevent the release of sensitive police intelligence in the event a bikie gang member challenges a notice in the courts.



**One report said Victoria’s anti-bikie laws “do not practically ... prevent and disrupt organised crime”.
Picture: Ian Currie**

Another defect that remains on the books, as previously revealed by the Herald Sun, is that criminals can only be issued with notices if they have been found guilty of an offence at trial, not if they have pleaded guilty.

The report’s authors concluded Victoria’s flawed anti-bikie laws “do not practically ... prevent and disrupt organised crime”.

Victoria Police also told Ms White and Ms Cappie Wood they have spent precious legal resources preparing Supreme Court cases to have bikie gangs made “declared organisations”, but have abandoned the cases before they got to court.

Ms White and Mr Cappie-Wood urged the Andrews government to consider “developing a more operationally practical and effective method of limiting associations between serious criminals and others likely to be involved in organised crime”.

The government this week said it was considering another report on anti-organised crime laws.

A spokeswoman would not say why the government had not amended the state’s anti-association laws in the way Victoria Police have for years suggested.

She said the government was working to “ensure the laws on organised crime in Victoria are as strong as possible”.



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New powers to crack down on organised crime

The NSW Government will take another crucial step towards dismantling organised crime with new powers and tougher penalties targeting money laundering and unexplained wealth.

June 23, 2022

RELEASED BY: THE PREMIER, DEPUTY PREMIER

The reforms represent the State's toughest ever laws targeting organised crime and will see NSW introduce world-leading legislation targeting the use of dedicated encrypted communication devices by criminals to avoid law enforcement.

Premier Dominic Perrottet said the reforms were designed to strike organised crime networks at their financial base, stopping criminals from profiting from their actions and incapacitating them financially.

"Organised crime is all about drug supply and money – and to truly shut it down we need to shut down the flow of dollars that fuels it," Mr Perrottet said.

"These reforms will better arm law enforcement with the powers they need to confiscate unexplained wealth and create new offences and tougher penalties for those seeking to launder money derived from criminal activity.

"Organised crime and the technologies that criminals use to operate are always changing and evolving, and these reforms will put our state in the strongest position to deal with these insidious crimes."

Deputy Premier and Minister for Police Paul Toole said these laws give police tough new powers to infiltrate organised criminal networks which increasingly rely on dedicated encrypted devices to avoid detection by law enforcement.

"We know these devices are being used to plan serious crimes like drugs and

These reforms will better arm law enforcement with the powers they need to confiscate unexplained wealth and create new offences and tougher penalties for those seeking to launder money derived from criminal activity.

firearms smuggling, money laundering and even murder. These reforms will make it an offence to possess these kinds of devices and allow us to better target high-risk individuals from using them to orchestrate crime," Mr Toole said.

"Organised crime in this state is on notice. If you think you can hide the ill-gotten gains of crime, you are wrong. If you think you can avoid detection by using encrypted devices, you are wrong."

The reforms announced today include:

- New powers to confiscate unlawfully acquired assets of major convicted drug traffickers
- Enhanced powers to target and confiscate unexplained wealth from criminal gangs
- Expanded powers to stop and search for unexplained wealth and more effectively investigate organised crime
- New prohibition orders to target high-risk individuals likely to use dedicated encrypted devices to avoid law enforcement

Acting Commissioner David Hudson said the reforms would significantly assist police in the fight against organised crime.

"Organised criminal networks and the technologies they use to coordinate their illegal activities are forever evolving," Acting Commissioner Hudson said.

"These networks go to great lengths to hide from the eyes of law enforcement, but we intend to use every power possible to fully investigate those suspected of serious crimes and put a stop to their activity.

"Today's announcement will significantly increase our ability to target every element of these criminal networks - including the wealth and assets gained from their illegal activities - to keep the broader community safe."

Legislation to underpin the new reforms will be introduced when NSW Parliament returns for the Spring session.



NSW Serious Crime Prevention Orders are Lawful, High Court Rules

November 19, 2019

BY PAUL GREGOIRE AND UGUR NEDIM

On 5 October last year, NSW police commissioner Mick Fuller commenced civil proceedings in the NSW Supreme Court seeking to have serious crime prevention orders (SCPOs) imposed upon alleged Rebel motorcycle gang members Damien Charles Vella, Johnny Lee Vella, and Michael Fetui.

The orders sought to restrain and prohibit the men from various activities for the period of two years. These included associating with any motorcycle gang members, travelling in a vehicle between 9 pm and 6 am – except in an emergency – and possessing more than one mobile phone.

In calling for the SCPOs, the commissioner asserted that all three had

prior serious crime convictions, along with a string of acquittals and withdrawn charges over similar matters. And he claimed the orders would protect the public by preventing their involvement in further such crimes.

Despite the NSW police commissioner relying upon a dearth of particulars in regard to their past criminal activity, or evidence as to why the preventative orders were needed, the three men didn't object to proceedings in the Supreme Court.

Rather, the Vellas and Fetui choose to challenge the validity of the orders in the High Court of Australia, arguing that the SCPO laws are unconstitutional, because they undermine the integrity of the courts.

The SCPO regime

The Baird government passed the Crimes (Serious Crime Prevention Orders) Act (NSW) (SCPO Act) in 2016, amongst widespread furor over the trespass upon individual freedoms the laws make, as well as that these measures subvert basic criminal justice system principles.

In spruiking the laws that are based on similar mechanisms enacted in the UK in 2007, then NSW police minister Troy Grant cited the usual suspects – terrorists and motorcycle gangs – in relation to why they were warranted.

The SCPO Act enables the commissioner, the Director of Public Prosecutions or the NSW Crime Commission to apply to the NSW



Supreme Court or District Court for the imposition of an order, which can last for up to 5 years.

Breaching the conditions of a serious crime prevention order can lead to a maximum penalty of up to 5 years imprisonment and/or a fine of \$165,000.

SCPOs can place wide-ranging restraints upon the subject of the order. These include restrictions around employment, movement, the imposition of a curfew, prohibitions on associating with others or the requirement to check in with police.

The orders can be imposed upon individuals that have been convicted of a serious criminal offence in the past. However, courts have the discretion to apply them to individuals who've been acquitted of such crimes or were initially charged, but had the charges withdrawn or haven't even charged.

Encroaching upon the courts

The three plaintiffs alleged that subsection 5(1) of the SCPO Act is invalid, because it's inconsistent with the third chapter of the Australian Constitution, in that it undermines the

independence and integrity of the courts in requiring them to impose these orders.

Subsection 5(1) sets out that an order can be issued if the subject is 18 years or older, they've been convicted of a crime or involved in such activity but not convicted, and it's satisfied an order would "protect the public by preventing, restricting or disrupting involvement" in further criminal activity.

While subsection 6(1) of the SCPO Act stipulates that an order "may contain such prohibitions, restrictions, requirements and other provisions as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement" in serious crime activity.

The plaintiffs' argument relied on the principle established in the High Court's 1996 case *Kable v the Director of Public Prosecutions*, which provides that the Constitution establishes "an integrated court system, and contemplates the exercise of federal jurisdiction by state Supreme Courts".

So, any state laws that seek to establish power that "substantially impairs the court's institutional integrity" are incompatible with the court's role "as a repository of federal jurisdiction" and therefore, are "constitutionally invalid".

Imposing an order

In its findings, the majority of the High Court set out six steps undertaken in imposing a SCPO.

The first being that the subject is over the age of 18.

The second is the requirement of proof that outlines an individual has been convicted of a serious crime or has had involvement in one.

The third step requires the court to assess whether there is "a real or significant risk" that a person will be involved in serious crime activity in the future.

The fourth requires the court to pass judgement on whether there are reasonable grounds that an order will prevent further crimes.

The fifth step requires High Court justices to decide upon what sort of restrictions the order must make upon a subject's life. And

The final step requires that the court then decides whether the order remains appropriate after it has considered the requirements of the initial steps.

Different systems of law

The plaintiff's argument contained three strands.

The first was that the SCPO regime undermines the NSW criminal justice system, in that, in the case of a prior conviction, it imposes further punishment, or in a case where no conviction against a person is possible, it interferes with their liberty.

The second strand was that the SCPO regime provides that courts issue a "different, and lesser, form of criminal justice". And

The third was that the regime departs from the criminal justice process, in ways that include the admission of hearsay evidence and the imposition of a civil standard of proof.

However, the court reasoned that these arguments don't hold, as while SCPO proceedings involve "a judicial procedure for orders that affect the liberty of the subject", these are civil matters that courts have been exercising since the 14th century, and criminal justice principles don't apply.

The court listed a string of challenges to similar Australian order regimes based on *Kable* that it has dismissed. Although, in 2010's *South Australia versus Totani*, the court did find an order regime invalid, as it left courts no room to assess and then deny an order request once it was sought.

The current challenge to the NSW SCPO regime was found not to be unconstitutional as the laws do not encroach upon the court's authority, as it's left up to the court to consider whether an order should be issued, which is in keeping with properly discharging its duties.

Courts' integrity not infringed upon

On 6 November this year, the majority of the High Court of Australia ruled that subsection 5(1) of the SCPO Act is not invalid because it's inconsistent or prohibited by chapter three of the Australian Constitution.

Their Honours explained that there's nothing within the process of making a SCPO that prevents the NSW Supreme Court or District Court from exercising its "substantial judicial discretion", and in imposing an order, it's in no way simply acting on the command of the executive.

And the High Court ruled that the plaintiffs must pay the costs of the case.



Cross-jurisdictional review of Australian legislation governing Outlaw Motorcycle Gangs

March 5, 2021

LORANA BARTELS^{1,2,3} & MAX HENSHAW¹ & HELEN TAYLOR¹

Abstract

This paper presents a review of the key Australian legislation passed between 2009 and 2019 targeting outlaw motorcycle gangs (OMCGs). It identifies the key similarities and differences across the reforms and provides examples of the legislation being used to disrupt serious and organised crime activity by OMCGs. It also presents some of the barriers to effective enforcement of the legislation. There is limited information about the use and effectiveness of the legislation. The paper considers some of the objections raised in respect of these measures and suggests future directions for responding to OMCG-related crime.

Introduction

Criminal laws in Australia operate on a hybrid federal, state and territory model. Most criminal laws are set by the six states (in descending order of population, these are New South Wales (NSW), Victoria (Vic), Queensland (Qld), South Australia (SA), Western Australia (WA) and Tasmania (Tas) and two territories (the Australian Capital Territory (ACT) and Northern Territory (NT)). There are also Commonwealth (Cth) (or federal) criminal laws, but these are very limited in scope, with federal crimes accounting for only 2% of all offences (see eg Australian Bureau of Statistics 2020; see generally Odgers 2019). As a result, most criminal laws are introduced on a jurisdictional basis, although there have been some attempts at a nationally consistent approach, especially through the work of the Council of Attorneys-General (2020).

As detailed by the Australian Institute of Criminology (AIC) (see Bartels 2009, b; see also Bartels 2010a, c), from 2000 onwards, most Australian states and territories passed a range of legislative measures designed to disrupt the activities of outlaw motorcycle gangs (OMCGs). The principal measures included introducing (and expanding):

- specific offences by criminal organisations (eg *Crimes Legislation Amendment (Gangs) Act 2006* (NSW);
- 'control orders' against specifically 'declared' organisations (see *Serious and Organised Crime (Control) Act 2008* (SA); *Crimes (Criminal Organisations Control) Act 2009* (NSW); *Serious Crime Control Act 2009* (NT); *Criminal Organisation Act 2009* (Qld));
- anti-fortification laws, to enable law enforcement to prevent the installation

of or remove any fortification of OMCG clubhouses (see *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002* (WA); *Statutes Amendment (Anti-Fortification) Act 2003* (SA); *Police Offences Amendment Act 2007* (Tas)); and

- police and intelligence-gathering powers (eg, *Crimes (Assumed Identities) Act 2004* (Vic); *Crimes (Controlled Operations) Act 2004* (Vic); *Major Crimes (Investigative Powers) Act 2004* (Vic); *Surveillance Devices (Amendment) Act 2004* (Vic).

Early 2009 saw several 'bikie gang violence' (ABC News 2009) incidents across Australia. A key event during this period was a "ferocious and vicious" bikie brawl' (AAP 2010; see also ABC News 2009; Bartels 2010b) between members of the Hells Angels and Comancheros at Sydney airport in 2009, resulting in the death of the brother of a Hells Angel member. There has since been a further flurry of amending and new legislation introduced around Australia in response to OMCGs. As a result, this paper updates Bartels' (2009, 2010b) legislative analyses and presents a review of the relevant legislation passed between 2009 and 2019 (the review period). The paper identifies the key similarities and differences across the reforms and examples of the legislation being used to disrupt serious and organised crime activity by OMCGs.

There has also been significant academic commentary on these developments, with the focus often centring on the extent to which the laws impede civil rights and impact on marginalised groups, such as Aboriginal and/or Torres Strait Islander peoples, who

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are over-represented in the Australian criminal justice system, but are not the articulated subjects of the relevant legislation. However, commentators have also observed benefits from some of the reforms. This paper offers an overview of key findings and points of discussion emerging from the literature over the survey period. It also presents some of the barriers to effective enforcement of the legislation, including legal challenges, the complexity and resource implications of the new frameworks and suggestions that there have been limited and inappropriate use of the new powers.

Recent Australian legislation targeting OMCGs

To identify relevant legislation, we undertook a systematic search of legal databases (see Appendix Table 2 for the key legislation passed in the review period, by jurisdiction and year). Research on the impact of this legislation was identified through a comprehensive search of key databases and review of peer-reviewed grey literature and media reports. The search terms included 'OMCG*', 'outlaw motorcycle gang*', 'gang*', 'bikie*', 'consorting', 'Rebel*' and 'Comanchero*'.

While the previous review period surveyed by Bartels (2010b) was undoubtedly active, with the introduction of 19 pieces of legislation aimed at curtailing the activities of OMCGs, the 10-year period from 2009 to 2019 saw a considerable increase in laws both explicitly and implicitly directed towards the regulation of OMCGs, with 79 individual pieces of legislation enacted. With the exception of Western Australia and the Northern Territory, which passed only three and four Acts respectively, all jurisdictions passed significant amounts of legislation during this period. The most legislatively active jurisdictions were NSW (16 Acts) and the Commonwealth (Cth) (11 Acts), while Queensland, South Australia and Victoria each passed 10 Acts.

The rationales for the reforms were varied. For example, the then ACT Attorney-General explained that the *Crimes (Assumed Identities) Act 2009* (ACT) was designed to 'enhance the ability of the police to involve themselves covertly in organised crime, under strict operational control, to gain evidence and intelligence about criminal behaviour' (Corbell 2010: 3422), while the

amendments in the *Crimes (Serious and Organised Crime) Legislation Amendment Act 2016* (ACT) purported to 'give ACT Policing and the justice system enhanced capabilities to prevent and target crime at an individual level, where it has been proven most effective and disruptive to criminal OMCG activity' (Corbell 2016). The intention of the *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth) was 'to lower the threshold of evidence required to show that a person who is a member of a criminal group or organisation, such as a criminal motorcycle gang... does not pass the [migration] character test' (Commonwealth of Australia 2014).

The objectives of the *Crimes (Serious Crime Prevention Orders) Act 2016* (NSW) and *Crimes Legislation Amendment (Organised Crime and Public Safety) Act 2016* (NSW) included restricting the activities of persons or businesses involved in serious crime and allowing senior police to issue temporary public safety orders to prevent people 'attending places or events where they are expected to engage in violence or present a serious threat to public safety or security' (Grant 2016). The reforms which 'modernise[d] the offence of consorting' aimed to

better allow the offence to be applied not only against members of criminal groups, but against those on the periphery of such groups who nevertheless contribute to the group's criminal activity. Criminal groups do not and cannot function in isolation and this offence sends a strong message out to the community (Smith 2012: 47).

The Police Offences Amendment (Prohibited Insignia) Bill 2018 (Tas) was designed to 'stop OMCG members from using their colours to stand over members of the public and create fear in the community' (Ferguson 2018). The *Serious and Organised Crime Amendment Act 2016* (Qld) repealed a range of laws that had been introduced in response to OMCGs, but its scope was not limited to OMCGs, because 'serious criminal activity and organised crime extends far beyond those gangs. A proper response to serious and organised crime must be agile enough to counter the threats to the community posed by all forms of organised crime' (D'Ath 2016: 3400). The new framework was 'built to withstand all stages of the

criminal justice system and, ultimately, is designed to secure actual convictions of serious and organised criminals which will act as a strong deterrent factor against future criminal activity' (D'Ath 2016).

Notwithstanding these formal explanations, throughout the review period, commentators (eg, Goldsworthy and McGillivray 2017) and indeed policy-makers and governments (eg, Hidding 2017), referred to the 'tough on crime' approach taken. This course is not without apparent reason, given that there were a number of high-profile incidents over the review period, including the Sydney airport murder described above, shooting of a 13-year-old girl in NSW, by armed assailants allegedly looking for her brother (see Sydney Morning Herald 2013) and a shooting at a Queensland shopping centre (ABC 2012), and governments are of course responsible for the safety of the community. Yet, some commentators have questioned the practical effectiveness of the ensuing reforms, as well as their underlying intention. On this latter point, Goldsworthy and McGillivray (2017: 111) have posited that 'the introduction of laws targeting OMCGs may [serve] to temporarily quell public concern and satisfy calls for tougher crime control'. Beyond these matters, however, the question of whether these laws have achieved their desired and articulated effect remains contentious.

Key similarities and differences between the legislative approaches

Table 1 summarises the key features of the reforms and identifies 16 primary areas covered by the legislation. Eight out of nine jurisdictions passed legislation to create new offences, not counting new offences in relation to consorting, ie 'the offence of association with criminals' (Loughnan 2019: 8; we note that the term 'anti-association' is often used interchangeably with consorting). Eight jurisdictions also legislated to better facilitate intelligence gathering. Queensland and NSW legislated in respect of the most categories (13 and 11 respectively). By contrast, the NT only legislated in relation to four categories.

Every jurisdiction other than the NT created at least one new offence (not including consorting, discussed further

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below). These new offences related to a range of issues, including:

- 'drive-by shootings' (ACT);
- supporting a criminal organisation (Cth);
- breaching a serious crime prevention order (NSW);
- wearing or carrying a prohibited item in a public place (Qld);
- participating in a criminal group (SA);
- manufacturing, distributing, supplying, selling or possessing body armour (Tas);
- intimidating a witness (Vic); and
- breaching a control order (WA).

The NT was also the only jurisdiction not to pass legislation in respect of intelligence gathering. Some examples include the *National Security Legislation Amendment Act (No 1) 2014* (Cth), which provided criminal and civil immunity to Australian Security Intelligence Organisation officers engaged in 'special intelligence operations' and the *Criminal Investigation (Covert Powers) Act 2012* (WA), which provided for the authorisation, conduct and monitoring of covert law enforcement controlled operations.

It was common (ACT, Cth, NSW, NT, Qld, SA, Vic) to grant additional powers to the police. For example, the *Criminal Legislation Amendment (Consorting and Restricted Premises) Act 2018* (NSW) provided police executing a search warrant with more powers to search a person or compel someone to reveal their name and address and/or move on, while the *Criminal Organisations Control Amendment (Unlawful Associations) Act 2015* (Vic) allows a senior police officer to issue an unlawful association notice.

Most jurisdictions (Cth, NSW, Qld, SA, Tas, Vic and WA) also passed proceeds of crime and/or (more commonly) unexplained wealth legislation during this period. Australia's first unexplained wealth laws were introduced in WA in 2000 (see Bartels 2010c). By 2014, all jurisdictions except the ACT had passed such legislation; the ACT followed suit with the passage of the *Confiscation of Criminal Assets (Unexplained Wealth) Amendment Act 2020* in July 2020.

All states and territories except Tasmania and the ACT also passed criminal organisations control legislation, establishing (or extending) the statutory framework to have an organisation

Table 1 Key features of legislative reforms, 2009–2019

	ACT	Cth	NSW	NT	Qld	SA	Tas	Vic	WA	N=
New (non-consorting) offences	X	X	X		X	X	X	X	X	8
Intelligence gathering	X	X	X		X	X	X	X	X	8
Police powers	X	X	X	X	X	X		X		7
Proceeds of crime/ Unexplained wealth		X	X		X	X	X	X	X	7
Criminal organisations control			X	X	X	X		X	X	6
New consorting offences			X		X	X	X	X		5
Insignia restrictions			X	X	X	X	X			5
Firearms regulation	X		X			X	X	X		5
Industry regulation			X	X	X	X				4
Fortification	X				X		X	X		4
Sentencing	X				X	X				3
Bail	X				X					2
Crime prevention/public safety orders			X		X					2
Extended criminal responsibility	X	X								2
Migration		X								1
Other	X		X		X			X	X	5
N=	9	6	11	4	13	10	7	9	5	74

NB Some reforms were coded as covering more than one issue (eg, the *Fortification Removal Act 2013* (Vic) related to both 'police powers' and 'fortification'). Some jurisdictions also passed multiple Acts on an issue

declared a 'criminal organisation'. Some jurisdictions passed several pieces of legislation, in order to address resulting constitutional issues. Taking WA as an example, section 6 of the *Criminal Organisations Control Act 2012* (WA) provides that the purpose of declaring an organisation as a criminal organisation is to enable control orders to be made to disrupt and restrict the activities of current and former members. A declaration also makes it an offence for anyone to recruit persons to become members of the organisation. Once the Police or Corruption and Crime Commissioner applies for a declaration (s 7), section 13 provides that a judge or retired judge designated under section 26 may make a declaration if satisfied that the respondent is an organisation whose members associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity *and* that the organisation represents a risk to public safety and order in WA. Once declared, members of criminal organisations can be subject to a control order, which restricts their activities, for example, by 'prohibiting them from associating with each other... carrying on certain occupations, possessing firearms and other things, and accessing or using certain forms of technology or communication' (s 33(2)).

Most jurisdictions (NSW, Qld, SA, Tas and Vic) introduced laws to regulate 'consorting', ie 'the offence of association with criminals' (Loughnan 2019: 8), while other jurisdictions already had such laws in place. According to Loughnan,

concern about serious violent offences associated with OMCGs were 'the immediate catalyst for the introduction of these laws' (Loughnan 2019: 16) and, as of 2019, all jurisdictions except the ACT had adopted such offences.

Five jurisdictions (NSW, NT, Qld, SA, Tas) passed legislation seeking to prevent OMCG members from wearing or displaying their insignia. For example, the *Statutes Amendment (Serious and Organised Crime) Act 2015* (SA) created offences in relation to people wearing gang-related materials who enter or remain in licensed premises.

Five jurisdictions (ACT, NSW, SA, Tas, Vic) also passed laws to regulate firearms, including the *Firearms (Miscellaneous Amendments) Act 2015* (Tas), which created a new offence for the possession of stolen firearms, and the *Firearms Amendment (Trafficking and Other Measures) Act 2015* (Vic), which requires gang members to show a firearm was not in their possession, when a weapon is found in their vicinity.

Four jurisdictions (NSW, NT, Qld, SA) increased their regulation of specific industries commonly associated with OMCGs. The most commonly regulated industries were tattoo parlours and liquor licensing (see Lauchs et al. 2015).

There were also four jurisdictions (ACT, Qld, Tas, Vic) that passed anti-fortification legislation, in order to prevent the construction of OMCG headquarters and allow police to demolish existing fortifications, building on the legislation already in place in NSW, South Australia, the NT and WA (see generally



Bartels 2010b; Lauchs et al. 2015). There are now laws in place in all states and territories (see Goldsworthy and Brotto 2019).

Three jurisdictions (ACT, Qld, SA) made reforms to their sentencing legislation. For example, the *Crimes (Serious and Organised Crime) Legislation Amendment Act 2016* (ACT) expanded the categories of offences for which offenders can receive nonassociation orders (a sentencing option that can be imposed for a substantive offence, which may or may not be associated with OMCG activities) and place restriction orders.

Other reforms were less widely implemented, with two jurisdictions (NSW, Qld) establishing a model for crime prevention orders and/or public safety orders (NSW introduced both in 2016), two other jurisdictions (ACT, Cth) extending the scope of criminal responsibility (including the introduction of 'joint' commission and criminal enterprise offences) and two (ACT, Qld) legislating in relation to bail. Five jurisdictions also made other reforms, including in relation to the establishment of the ACT Integrity Commission, criminal procedure and evidence law (NSW), corrections management (Qld) and strengthening the external oversight of Victoria's witness protection system.

The Commonwealth's powers are different in scope and its reforms related principally to the *Migration Act 1958* (Cth), primarily through the passing of *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth). This expanded the powers of the Minister to cancel visas on the basis of criminal suspicion or suspicion of criminal association where no criminal offence has been committed. Specifically, the reforms introduced a mandatory character cancellation power, to be exercised by the Minister, if satisfied it is in the national interest and lowered the threshold required for cancelling a visa on the basis of potential future criminal conduct (from 'significant risk' to 'risk').

How (and how effectively) has the legislation been used to disrupt serious and organised crime activity by OMCGs?

It is possible to assess the effectiveness of legislation in several ways, while noting that there are limitations, based on what information is available. Effectiveness may be assessed by cost

savings to the taxpayer; the incidence of crime generally, bearing in mind that OMCG members comprise a very small proportion of the population overall; by examining the proportion of OMCG members charged or convicted under the various pieces of legislation, compared with non-OMCG members; or by identifying whether OMCG membership has declined (or increased) over time. Drawing on our review of the literature, this section provides some examples of how the legislation has been used to disrupt crime by people associated with OMCGs. Due to the lack of evidence on the use of many of the laws, this section focuses on the types of legislation where we were able to identify evidence of and/or commentary on their use. However, it should be noted that there are significant limitations in the data gathered (by governments and other groups) to assess the impact of the numerous and wideranging pieces of legislation. Although academic commentators commonly call for evidence on the impact of legislation, this is rarely matched by public or political demand. Further, although some legislative provisions require mandatory review processes, these are not universal and do not always result in the ensuing reports being made publicly available. This contributes to the difficulties in clearly distinguishing between symbolic legislation and legislation that makes a practical difference.

The Commonwealth migration laws have been applied to a number of high-profile OMCG members, including the father of well-known Australian Football League player Dustin Martin (Cunningham 2017). In *Graham and Te Puia v Minister for Immigration and Border Protection* [2017] HCA 33, the High Court quashed the Minister's cancellation of the applicants' visas, on the basis that the cancellation and parts of the legislation were invalid. Notwithstanding this decision, the Minister proceeded to cancel Graham's visa a third time (Cunningham 2017). According to Morgan et al. (2018), cancelling and refusing the visas of 184 organised crime offenders (including 139 OMCG members) saved an estimated \$116 million, or over \$630,000 per offender in taxpayer money.

The Queensland legislation introduced in 2013 was subject to considerable media coverage (eg, Robertson 2015)

and academic critique (eg, Cappellano 2014; Goldsworthy and Brotto 2019). It constituted the most expansive range of measures adopted by an Australian jurisdiction over the period, especially the reforms under the *Vicious Lawless Association Disestablishment (VLAD) Act 2013* (Qld). Most of this legislation and the *Criminal Organisation Act 2009* (Qld) were repealed by the *Serious and Organised Crime Amendment Act 2016* (Qld), following recommendations of the Taskforce on Organised Crime Legislation (2016). The Taskforce found, inter alia, that, of 202 people charged under the VLAD Act, only 10% were OMCG members, 7 % were associates of OMCGs, 82% had no known linkage to OMCGs. Furthermore, although 42 people were charged with the anti-association offence under the VLAD Act, none were successfully prosecuted for the offence. There was a similar pattern in relation to the new South Australian offence of knowingly participating in a criminal organisation (introduced by the *Statutes Amendment (Serious and Organised Crime) Act 2012* (SA)). Of the first 84 people charged, only 10 (12%) were OMCG members (Wilson 2015).

Former Supreme Court judge Alan Wilson SC also found that fortification removal orders had not been used widely:

only three attempts have been made to obtain such an order [in Western Australia]. In South Australia, four attempts have been made. Victoria has filed at least two applications in the short time since its legislation came into force in 2013. There is no evidence of fortification removal orders having been sought or made in other Australian jurisdictions, including Queensland (2015: 136).

He considered that 'on balance it makes more sense to deal with fortifications in the course of executing a search warrant' (2015: 222). On the other hand, more recent evidence suggests that visible OMCG clubhouses appear to be generally on the decline. For example, in June 2020, the Queensland Minister for Police and Corrective Services, Mark Ryan (2020) indicated that he had been advised that 'there are currently no active bikie clubhouses known to Queensland Police'. Similarly, it was reported in October 2019 that there was 'not a

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single motorcycle gang left in SA with its own headquarters' (Penberty 2019: 6), while the number of clubhouses in the ACT fell from five in 2015 to one in 2019 (Goldsworthy and Brotto 2019).

At the time of Wilson's review, public safety orders were available in the NT, Queensland and SA (they were subsequently introduced in NSW). Wilson found that only SA made significant use of these orders, with 155 orders issued against individual OMCG members in relation to 12–15 events. Reportedly, in all but one case, this dissuaded people from attending the events, 'thereby potentially avoiding public acts of violence' (2015: 217) and the South Australian Police accordingly considered that the orders 'have been very effective in preventing violent activity at public events' (2015: 151).

Loughnan (2019) has described consorting laws as 'a useful tool in the toolbox of police powers'. A review of the NSW laws by the NSW Ombudsman (2016b) found that there was evidence to support the effective use of the NSW laws to target high-risk OMCGs. The NSW Police Force Gangs Squad, which leads the NSW policing response to serious and organised gang-related crime, particularly in relation to OMCGs, was responsible for half of the consorting warnings issued and 34 of the 46 charges that had been laid by the time of the review. In South Australia, 12 consorting prohibition notices had been issued to members of declared organisations by late 2015. Media reports suggested that 'the new laws have resulted in most declared OMCGs abandoning their clubrooms, with their members now gathering in secret' (Wilson 2015: 158), which may have reduced the OMCGs' ability to recruit new members.

It is somewhat difficult to determine the extent to which the legislative measures are achieving their goals. Firstly, there is a paucity of evidence on the use (and therefore impact) of some of the legislative measures introduced. Secondly, the measures of effectiveness may not be clearly defined. One measure of 'success' is the number of OMCG members. Recent media reports indicate that the number of members in Queensland fell by 18% (from 789 in 2015 to 650 in 2019) over a similar period (Caldwell 2019) and South Australia's

numbers 'plummeted' by 30% in three years (Hunt 2019: np). In the ACT, the membership declined from a peak of about 70 in 2018 to 'in the 30s' in 2020 (Inman 2020: np).

What barriers to the effective enforcement of the legislation have been identified?

Several legislative regimes have been the subject of legal challenges. A High Court challenge to the constitutional validity of the NSW consorting law introduced in 2012 was unsuccessful (*Tajjour, Hawthorne and Forster v NSW* [2014] HCA 35). The challenge to the (subsequently repealed) *Criminal Organisation Act 2009* (Qld) in *Assistant Commissioner Michael James Condon v Pompano Pty Ltd* [2013] HCA 7 was also unsuccessful, but prompted the NSW Government to pass the *Crimes (Criminal Organisations Control) Amendment Act 2013* (NSW) to address vulnerabilities in its regime. The challenge to the *Crimes (Criminal Organisations Control) Act 2009* (NSW), which provided power to seek to declare OMCGs as criminal organisations, was upheld by the High Court in *Wainohu v NSW* (2011) 243 CLR 181. This led governments to pass the *Crimes (Criminal Organisations Control) Act 2012* (NSW) and *Serious Crime Control Amendment Act 2011* (NT). The constitutional challenge to the *Serious and Organised Crime (Control) Act 2008* (SA) in *South Australia v Totani* (2010) 242 CLR 1 was also successful. The South Australian Government rectified this issue by passing the *Serious and Organised Crime (Control) (Miscellaneous) Amendment Act 2012* (SA) (which also addressed some of the issues raised by *Wainohu*). The regular interplay between applicants, governments and the judiciary over the survey period prompted McNamara and Quilter to suggest that the strategic use of the High Court's 'constitutional court role' represents an attempt to 'stop or restrict perceived over-criminalisation' (2018: 1048–1049). The fact that many of these laws have not survived constitutional challenges begs the question: 'who is writing these laws?'. Bartels (2009, 2010b), Loughnan (2019), McNamara and Quilter (2016, 2018), O'Sullivan (2019) and others have catalogued and critiqued the circumstances in which such laws have been passed.

The control legislation, which has been subject to the most legal challenges, has been criticised for

'conflicting with human rights obligations, specifically freedom of association and the reversal of the onus of proof, and as prejudging guilt of members' (Lauchs 2019: 291; see also Lauchs et al., 2015; Monterosso 2018). There have also been practical issues with control orders. For example, a media report indicated that, seven months after the Victorian legislation was introduced, the police had not yet attempted to use it, as it involved 'a complex process with a high burden of proof and takes time' (Lee 2013). Wilson (2015) found that, after seven years of such legislation across six jurisdictions in Australia, only one valid order had been made, in respect of one person and imposing only limited restrictions. The Ombudsman Western Australia (2017: 9) observed that the reasons this type of legislation has not been used include 'resourcing, agility, timeliness and lack of proportionality of resourcing to the level of benefit achieved' and recommended that consideration be given to repealing the *Criminal Organisations Control Act 2012* (WA). On the basis of analysis of the information put forward by the Queensland Police Service in seeking a control order against the Finks OMCG, Lauchs (2019) concluded that 'labelling an OMCG as a criminal organization and restricting the movement of its members is not a good use of resources and an unnecessary foray into controversial areas of human rights'. In its review of the relevant legislation, the NSW Ombudsman (2016a: 32) found that the model 'does not provide police with a viable mechanism to tackle criminal organisations, and is unlikely to ever be able to be used effectively' and suggested that the model (in NSW and other jurisdictions) would not be improved by further legislative amendment. In fact, the NSW Ombudsman asserted that '[c]ontinuing to devote resources to the process of seeking a declaration would not be in the public interest' (2016a: 32). It appears that the Australian experience in this regard echoes the first decade of the *Racketeer Influenced and Corrupt Organizations Act* (commonly referred to as RICO) in the United States, which likewise saw limited use for similar reasons (see eg Blakey and Gettings 1980; Calder 2000).

O'Sullivan's reflection on the Queensland consorting offence introduced in 2016 found that it can apply



to associations with no connection with criminal activity, 'never mind serious or organised crime. By not curtailing the offence to the stated purpose, the law risks disproportionately restricting the right to freedom of association' (2019: 263). The NSW Ombudsman's review of the NSW consorting laws found that the NSW police had used the laws to 'disrupt serious and organised crime and criminal gangs as intended by Parliament (2016b: iii). However, the laws were also used to target minor offending and 'disadvantaged and vulnerable people', including Aboriginal, homeless and young people.¹ This was coupled with 'an exceptionally high police error rate when issuing consorting warnings in relation to children and young people' (2016b: iii). Overall, the Ombudsman found, that the laws were used 'in a manner that, to some extent, illustrated public concerns about its operation' (2016b: iii) and 'may be used lawfully to capture people who are participating in everyday, otherwise innocent, social interactions in public spaces, or who are involved in only minor or nuisance offending' (2016b: 116). Accordingly, the Ombudsman recommended statutory and policy amendments to increase the fairness of the law's operation and to mitigate the unintended impacts of its operation in circumstances where there is no minor crime prevention benefit, as well as a new statutory and policy framework to ensure its use 'is focused on serious crime' (2016b: iii). The Ombudsman suggested that this would be consistent with Parliament's overarching intention of combatting serious and organised crime and criminal groups, and that adopting the recommendations was 'essential to maintain public confidence in the NSW Police Force' (2016b: iii). These findings echo critiques of the application of RICO in the United States, introduced in 1970 in an attempt to curtail Italian-American mafia syndicates' infiltration into legitimate businesses, but which has since been applied to a wide range of contexts which fall outside the definition of organized crime (Lynch 1987; Morselli and Kazemian 2004).²

These observations are salutary in the broader context of legislation

designed to regulate OMCGs and echo some of the concerns with the now repealed Queensland legislation. Excessive legislative reform and use of any ensuing powers will undermine public confidence in the justice system, which may in turn undermine the very goals that governments are trying to promote through their attempts to regulate OMCGs.

The foregoing analysis suggests that some of the measures adopted by governments over the last decade have raised human rights concerns, have not been used widely, have been used inappropriately and/or have constituted an inefficient use of resources (including the costs of legal challenges) in pursuit of their goals. It has also been suggested that laws of this nature may 'drive OMCGs underground', which may in turn 'lead to consolidation and growth of OMCG's along with increased potential for violent turf type conflict' (Monterosso 2018: 694). Furthermore, the Queensland Organised Crime Commission of Inquiry found that the evidence before it indicated that 'the focus upon – and resources solely dedicated to – the threat of outlaw motorcycle gangs by the QPS [Queensland Police Service] has meant that other types of organised crime have not been able to be appropriately investigated' (2015: 26).

Some commentators have suggested that a focus on criminal organisations, rather than on individual liability, presents challenges for legislators. For example, Monterosso observed that:

In targeting structures, activities, objectives and impacts of criminal organisations rather than a traditional criminal justice approach focussed on individual liability, legislators are faced by a number of constraints including development of workable definitions of organisations, membership including whether participant criminality can be attached to the same, suitability of sanction and distribution of legal responsibility between organisation and members. The criminalisation of association also remains problematic as the notion that an actor will commit harmful acts in the future rather than for identified offending is

tenuous as a person may be liable for anti-association offences without committing or intending to commit an offence (2018: 688).

Goldsworthy and Brotto (2019) have also suggested that there is little evidence that anti-association or consorting laws reduce overall offending. Instead, they contended that:

The resources used to police such laws would be better invested in targeting actual criminal activities, rather than in generalised claims of disruption through stopping associations between individuals, in which there is no requirement for a criminal purpose to be attached (2019: 8).

It should also be recognised that all jurisdictions have a broad range of powers available to them to deal with crime generally. As Wilson noted in his review of the (subsequently repealed) *Criminal Organisation Act 2009*, '[w]e already have a comprehensive *Criminal Code*, and ancillary legislation dealing with particular problems like drugs, sufficient to address any criminal act an OMCG member might commit' (2015: 13). It is also indicative that, in what was the 'largest operation on a single bikie gang in Victoria's history', the Victorian police used 'warrants to carry out the searches, rather than making court applications under [the new] anti-fortification laws' (Lee 2013), suggesting that general police powers may be adequate.

Conclusion

In recent years, Australian governments have passed a range of legislative reforms to disrupt and deter crimes committed by OMCG members. The majority of these legislative reforms have been implemented despite legal challenges and a lack of empirical evidence as to their effectiveness. The passage of these reforms is likely due to the real and perceived threat of OMCGs, beginning with an apparent upsurge in 'bikie gang violence' (ABC News 2009) from early 2009, coupled with Australian governments' policies of being 'tough on crime' (Hidding 2017).

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1. Earlier analysis by the NSW Ombudsman (2013) found that Aboriginal people accounted for 38% of all people issued an official warning, even though they only accounted for 2.5% of the population. The rates of Aboriginal people targeted by the consorting laws appears to be increasing. An internal memo circulated to a parliamentary committee investigating the high rates of Aboriginal incarceration in NSW, as part of a recent review by the Law Enforcement and Conduct Commission found that 40% of people subjected to the consorting laws in NSW over an 18-month period to June 2019 were Aboriginal (McGowan 2020).

2. RICO has been used to prosecute not just organized crime enterprises, but corruption in labour unions and other types of organizations.



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This paper has provided an overview of the breadth and depth of legislative activity in the period 2009–2019, highlighting key similarities and differences. The paper then presented examples of this legislation being used to disrupt OMCGs' serious and organised crime activities and barriers to the effective enforcement of the legislative responses. This demonstrated that the examples of effective operation of the legislation are limited and there are a number of practical and human rights barriers to such frameworks.

In some instances, it may be more effective to employ traditional powers and offences. In addition, police could engage OMCG leadership in efforts to identify and strategically remove the criminal elements in their membership (Monterosso 2018). Jahnsen has also highlighted the Scandinavian approach of coupling 'traditional efforts to deter OMCG crimes and the development of more innovative strategies that seek to prevent recruitment to gangs and encourage dissociation and desistance' (2018: 12). Finally, regardless of the approaches adopted, governments should ensure their models are practicable and an effective and efficient use of the limited resources available.

Wilson (2015: 229) observed that 'any legislative attempt to meet the risk posed by organised crime should be evidence-based; it should reflect and respond to the actual nature and extent of that risk, as it is revealed in the available evidence'. As Wilson also noted, however, 'a balanced legislative response to organised crime should be proportional to the risk posed by its various facets — ie, to the level of danger and potential harm presented by different kinds of organised criminal activity' (2015; see also Lauchs et al., 2015).

Goldsworthy and Brotto have suggested that 'bikers are the "poster boys" of organised crime' (2019: 54), but described their involvement as 'insignificant' (2019: 49) and 'overstated' (2019: 55). Specifically, they found that OMCGs accounted for less than 1% of reported crime in the ACT (although the recent alleged murder of a 'bikie boss' should be noted (see eg Bradshaw 2020)). Wilson (2015) found a similar result in Queensland. Lauchs and Staines' (2019) analysis in Queensland

found that OMCG members did participate in serious crime (especially violent crime) at a higher rate than the general public, but this was concentrated in two groups, with few examples of organised crime and 'little to no evidence of OMCGs acting as criminal organisations' (2019: 69). Goldsworthy and Brotto considered it 'tenuous that the breaking up of incidents of association with no obvious criminality or criminal purpose will directly affect the disruption of serious and organised crime. No quantitative evidence has been offered to substantiate such claims' (2019: 67; see also Montessero 2018).

Notwithstanding the apparent small proportion of OMCG-related crime, Morgan et al. (2018) found that the average cost of offending per OMCG member, based on crime and prison costs, is \$1.3 million and that they commit more crimes and more serious crimes than other organised crime offenders. There is also evidence that at least some OMCG members play a significant role in organised crime in Australia, especially in relation to drug and firearms trafficking, tax evasion, money laundering and serious violent crime (Morgan et al., 2020; see also Monterosso 2018). Other Australian Institute of Criminology analysis found that, across Australia, 85% of 5665 OMCG members born in 1984 had been apprehended for at least one offence by the age of 33 (Morgan et al., 2020), compared with 33% of all men born in NSW in 1984 (Weatherburn and Ramsey 2018). Morgan, Dowling and Voce accordingly noted the 'high prevalence of offending among OMCG members, including involvement in violence and intimidation and organised crime offending', although this was 'concentrated among a small proportion of offenders' (2020: 14). However, it should be acknowledged that this was based on charge (rather than conviction) data. Charge data arguably overstates the magnitude of the issue, especially noting Goldsworthy and Brotto's (2019) finding that 27% of charges against OMCG members in the ACT were not proven in court, compared with 4% of all ACT charges.

Another aspect that is yet to be determined in the Australian context is OMCGs' role in their members' criminal activities. This also has implications for how these organisations and their members should be regulated. Von

Lampe and Blokland (2020) have recently posited three scenarios (and suggested that all may occur simultaneously in the one club in relation to different crimes):

- the 'bad apple' scenario, where members individually engage in crime, which club membership may enable and facilitate;
- the 'club within a club' scenario, where members engage in crimes separate from the club, but it appears that the club is taking part, because of the number of members involved, including high-ranking members; and
- the club as a criminal organisation, when the formal organisational chain of command participates in organising crime, lower-level members 'regard senior members' leadership in the crime as legitimate and the crime is generally understood as "club business"' (2020: 1).

Von Lampe and Blokland noted that the latter scenario 'appears to be widely shared among law enforcement officials and journalists. The academic literature is much more cautious' (2020: 40). Future research should therefore consider the applicability of this framework to Australian OMCG clubs and members. It may also help to develop legislative responses that effectively target OMCG crime, without targeting the clubs' non-criminal members and activities or members of the public more generally.

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Appendix

Table 2 Key legislation, 2009–2019

Jdn Legislation	
ACT	<i>Crimes (Assumed Identities) Act 2009</i> <i>Crimes (Serious and Organised Crime) Amendment Act 2010</i> <i>Crimes Legislation Amendment Act 2013 (No 2)</i> <i>Crimes (Fortification Removal) Amendment Act 2018</i> <i>Crimes (Serious and Organised Crime) Legislation Amendment Act 2016</i> <i>Crimes (Police Powers and Firearms Offence) Amendment Act 2017</i> <i>Firearms and Prohibited Weapons Legislation Amendment Act 2018</i> <i>Integrity Commission Act 2018</i> <i>Crimes (Disrupting Criminal Gangs) Legislation Amendment Act 2019</i>
Cth	<i>Crimes Legislation Amendment (Serious and Organised Crime) Act 2010</i> <i>Crimes Legislation Amendment (Serious and Organised Crime) Act (No 2) 2010</i> <i>Crimes Legislation Amendment Act (No 2) 2011</i> <i>Migration Amendment (Character and General Visa Cancellation) Act 2014</i> <i>National Security Legislation Amendment Act (No 1) 2014</i> <i>Crimes Legislation Amendment (Powers and Offences) Act 2012</i> <i>Crimes Legislation Amendment (Unexplained Wealth and Other Measures) Act 2015</i> <i>Law Enforcement Legislation Amendment (State Bodies and Other Measures) Act 2016</i> <i>Migration Amendment (Character Cancellation Consequential Provisions) Act 2017</i> <i>Proceeds of Crime Amendment (Proceeds and Other Matters) Act 2018</i> <i>Unexplained Wealth Legislation Amendment Act 2018</i>
NSW	<i>Crimes (Criminal Organisations Control) Act 2009</i> <i>Crimes (Serious Crime Prevention Orders) Act 2016</i> <i>Criminal Assets Recovery Amendment (Unexplained Wealth) Act 2010</i> <i>Crime Commission Act 2012</i> <i>Crimes (Criminal Organisations Control) Act 2012</i> <i>Crimes Amendment (Consorting and Organised Crime) Act 2012</i> <i>Liquor Amendment (Kings Cross Plan of Management) Act 2012</i> <i>Tattoo Parlours Act 2012</i> <i>Tattoo Parlours Amendment Act 2012</i> <i>Evidence Amendment (Evidence of Silence) Act 2013</i> <i>Firearms and Criminal Groups Legislation Amendment Act 2013</i> <i>Crimes (Criminal Organisations Control) Amendment Act 2013</i> <i>Criminal Procedure Amendment (Mandatory Pre-Trial Defence Disclosure) Act 2013</i> <i>Criminal Legislation Amendment (Organised Crime and Public Safety) Act 2016</i> <i>Tattoo Parlours Amendment Act 2017</i> <i>Criminal Legislation Amendment (Consorting and Restricted Premises) Act 2018</i>
NT	<i>Serious Crime Control Amendment Act 2011</i> <i>Police Administration Amendment Act 2014</i> <i>Liquor Act 2019</i>

Jdn Legislation	
Qld	<i>Criminal Organisation Act 2009</i> <i>Criminal Proceeds Confiscation and Other Acts Amendment Act 2009</i> <i>Criminal Organisation Amendment Act 2011</i> <i>Criminal Law (Criminal Organisation Disruption) and Other Legislation Act 2013</i> <i>Criminal Law (Criminal Organisations Disruption) Amendment Act 2013</i> <i>Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order Scheme) Amendment Act 2013</i> <i>Tattoo Parlours Act 2013</i> <i>Vicious Lawless Association Disestablishment Act 2013 (VLAD Act)</i> <i>Serious and Organised Crime Amendment Act 2016</i> <i>Criminal Law Amendment Act 2017</i>
SA	<i>Criminal Investigation (Covert Operations) Act 2009</i> <i>Serious and Organised Crime (Unexplained Wealth) Act 2009</i> <i>Serious and Organised Crime (Control) (Miscellaneous) Amendment Act 2012</i> <i>Statutes Amendment (Serious and Organised Crime) Act 2012</i> <i>Serious and Organised Crime (Control) (Declared Organisations) Amendment Act 2013</i> <i>Firearms Act 2015</i> <i>Statutes Amendment (Serious and Organised Crime) Act 2015</i> <i>Tattooing Industry Control Act 2015</i> <i>Surveillance Devices Act 2016</i> <i>Criminal Assets Confiscation (Miscellaneous) Amendment Act 2018</i>
Tas	<i>Police Miscellaneous Amendments Act 2009</i> <i>Crime (Confiscation of Profits) Amendment (Unexplained Wealth) Act 2013</i> <i>Firearms (Miscellaneous Amendments) Act 2015</i> <i>Removal of Fortifications Act 2017</i> <i>Police Offences Amendment (Consorting) Act 2018</i> <i>Police Offences Amendment (Prohibited Insignia) Act 2018</i>
Vic	<i>Criminal Organisations Control Act 2012</i> <i>Justice Legislation Amendment (Family Violence and Other Matters) Act 2012</i> <i>Fortification Removal Act 2013</i> <i>Criminal Organisations Control and Other Acts Amendment Act 2014</i> <i>Justice Legislation Amendment (Confiscation and Other Matters) Act 2014</i> <i>Criminal Organisations Control Amendment (Unlawful Associations) Act 2015</i> <i>Firearms Amendment (Trafficking and Other Measures) Act 2015</i> <i>Confiscation and Other Matters Amendment Act 2016</i> <i>Witness Protection Amendment Act 2016</i> <i>Crimes Legislation Amendment (Public Order) Act 2017</i>
WA	<i>Criminal Investigation (Covert Powers) Act 2012</i> <i>Criminal Organisations Control Act 2012</i> <i>Criminal Investigation (Identifying People) Amendment Act 2013</i> <i>Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Act 2018</i>

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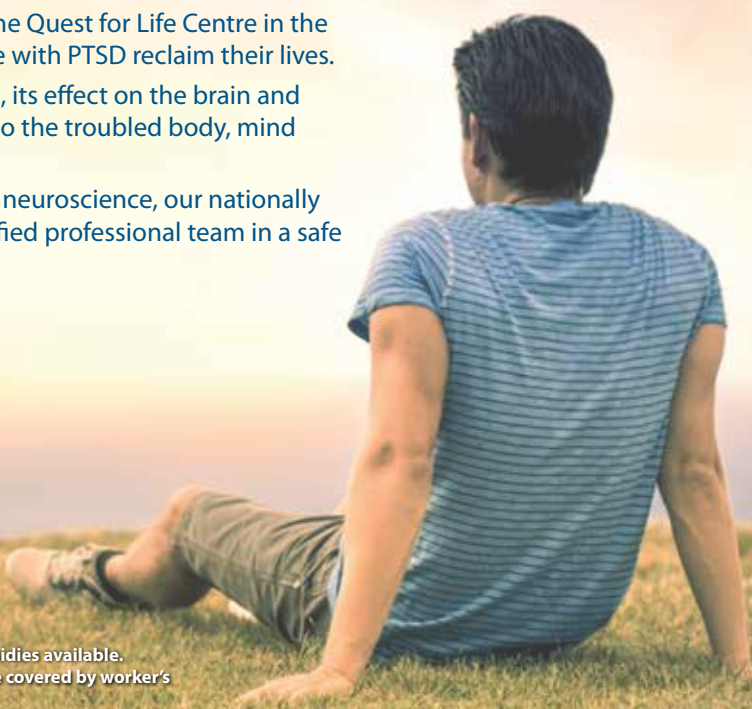
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Regulatory approaches to preventing organised crime among Outlaw Motorcycle Gangs

June 2022

CHRISTOPHER DOWLING AND ANTHONY MORGAN

Abstract

Regulatory approaches to organised crime aim to minimise exploitation of the legitimate economy by offenders. Unlike criminal justice approaches, regulatory approaches prioritise prevention over enforcement.

This study explores the impact of a regulatory approach to organised crime in Queensland which restricted outlaw motorcycle gang (OMCG) members from working in certain industries. We exploit a delay in the implementation of these occupational restrictions after a wider suite of measures commenced, using interrupted time series analysis to analyse changes in organised crime related harm by OMCG members.

Results suggest that the introduction of occupational restrictions was followed by a gradual reduction in organised crime related harm by OMCG members (3% to 4% per month). While the reduction is small, it supports the view that regulatory measures are a promising strategy for reducing organised crime.

Australia's response to organised crime has relied on the criminal justice system, using strong enforcement and legal regimes to dismantle criminal groups, and deter or imprison offenders (Ayling 2017, 2014). Outlaw motorcycle gangs (OMCGs) have been the most visible target of these measures, given their prominence in Australia's organised crime landscape. Many Australian states and territories have adopted suites of laws which criminalise OMCGs and the association of their members. These laws have been introduced alongside dedicated police operations focused on disrupting the operation of OMCGs through high-intensity, low-tolerance enforcement activity.

Regulatory approaches rooted in civil and administrative law, meanwhile, are being increasingly used against organised crime in Europe (for a review, see Spapens, Peters & Van Daele 2015). These approaches focus on reducing opportunities for organised crime by blocking groups and offenders from elements of the legitimate economy that can enable it. This typically includes restrictions on the issuing of licences, permits, contracts, subsidies or grants, and the denial of real estate and other assets. Such measures can be critical to cutting off offenders from the funding streams, physical and technical infrastructure and mechanisms for concealing illicit revenue that facilitate organised crime.

Early examples of these approaches are evident in Italy (Calderoni & Di Stefano 2015; La Spina 2014) and Japan (Reilly 2014), which have long histories of private and public sector infiltration by mafia and yakuza crime organisations, respectively. More recently, the whole-of-government OMCG strategy introduced

in the Netherlands best exemplifies the implementation of a regulatory approach to this offender population (van Ruitenburt 2020). Although it incorporates criminal justice measures as well, this strategy takes a broad view of disruption, with interventions coordinated across government targeting all of the conditions necessary for OMCGs to operate, including employment, finances and location.

There are recent examples of regulatory measures having been introduced in Australia, although they have typically been implemented within a broader criminal justice framework (Ayling 2017). Many Australian states and territories have now established regimes of judicial orders which restrict the activities of individuals with histories of organised crime related offending, including engagement in certain industries and financial activities. Recent changes to the *Transport Security Amendment (Serious Crime) Act 2021* aim to prevent exploitation of the aviation and maritime transport sectors—an enabler of organised crime—by introducing more stringent eligibility criteria for people applying for a card that would allow them to work in Australia's airports and seaports.

Regulatory approaches, used alongside criminal justice approaches, open up a wider variety of angles from which to target organised crime and particularly its enablers. Nevertheless, there is little local or international evidence to support the impact of these measures. Where research has been undertaken, it was often not able to completely disentangle specific regulatory interventions from other

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measures, making it difficult to infer the true source of any change. This is evident in a recent evaluation of the whole-of-government approach to OMCGs in the Netherlands (Klement & Blokland 2021). While results show that the introduction of this approach led to a gradual reduction in the rate of recorded organised crime offending by OMCG members, the wide range of criminal justice and regulatory measures incorporated make it challenging to identify the specific mechanisms at work.

Queensland context

In October 2013 the Queensland Government introduced a suite of measures to deal with OMCGs. Encompassing numerous acts and amendments, and two dedicated police task forces (Maxima and Takeback), these measures constituted a hardened approach to OMCGs, introducing new criminal offences and more severe penalties, increasing police powers and resources, and intensifying investigative and enforcement activity. Policing responses were further enhanced by the relocation of the Commonwealth's National Anti-Gangs Squad to Queensland to work alongside Taskforce Maxima. Implementation of these measures was facilitated by formally declaring 26 OMCGs as criminal organisations under the Criminal Code (Criminal Organisations) Regulation 2013 (Qld). These measures saw substantial increases in the arrest and charging of gang members (Goldsworthy 2015; Queensland Police Service (QPS) 2015, 2014; QPS Strategic Monitoring Team 2014).

This suite of measures included occupational licensing restrictions on members of OMCGs. This effectively prevented them from legally gaining employment in a range of industries, including but not limited to the tattoo, liquor, security, weapons and construction industries, with an aim of protecting these industries from criminal exploitation. Importantly, there is some empirical backing for these measures, despite the lack of research directly evaluating them. While employment can reduce offending among current and former prisoners (Apel & Horney 2017; Ramakers et al. 2017), and can be critical to maintaining desistance

among former gang members (Tonks & Stephenson 2019), evidence also shows that employment comes with a range of illicit opportunities (van der Geest, van Koppen & Kleemans 2020; van Koppen, van der Geest & Kleemans 2020).

Unlike the criminal justice measures introduced in October 2013, which came into immediate effect, occupational restrictions commenced gradually between July 2014 and July 2016. A review of the 2013 laws by Queensland's Taskforce on Organised Crime Legislation (2016), which eventually contributed to their repeal and amendment in December 2016, criticised the inadequate review and appeal rights and the burdensome requirement that all licence applications be referred to the Commissioner of the Queensland Police Service. Nevertheless, this review found that, as of December 2015, around 25 licence applications pertaining to certain industries had been refused due to OMCG affiliations. These refusals have obvious direct implications for applicants but could also have disproportionately affected broader ongoing criminal enterprises. Refusing applications also has the potential to deter OMCG members from working in these industries and to deter employers and recruiters in these industries from employing OMCG members. The latter possibility was borne out in the findings of a recent study by Boland and colleagues (2021) examining former OMCG members in Queensland, a number of whom noted difficulties gaining employment due to their OMCG affiliations.

The legal environment regarding OMCGs in Queensland between October 2013 and December 2016, and particularly the staggered implementation of occupational restrictions nine months after the introduction of intensified criminal justice measures, offers a unique opportunity to empirically analyse a domestic regulatory approach to organised crime.

Aim and methods

This study examines the potential short-term impact of a regulatory approach to preventing organised crime in Australia. It addresses whether the regime of occupational restrictions for OMCG members implemented in Queensland from July 2014 was followed by a reduction in the harm associated with their organised crime activity.

Sample and data

Data on the criminal histories of Australian OMCG members were obtained by linking two Australian Criminal Intelligence Commission databases: the National Gangs List (NGL) and the National Police Reference System. Established in 2014, the NGL is a secure, validated and nationally agreed-upon list of OMCGs and their members in Australia. The National Police Reference System holds national police information on individuals, including their apprehension histories. (See Morgan, Dowling & Voce 2020 for further information on these databases.) The dataset codes offence descriptions using the Australian and New Zealand Standard Offence Classification (ANZSOC) scheme (Australian Bureau of Statistics 2011) and includes information on the month of each offence and the jurisdictions in which offences were committed. Both databases are used for operational and intelligence purposes and are updated regularly. Data from both databases were extracted by researchers in May 2019.

This study examined all organised crime related offending recorded in Queensland between January 2011 and December 2016 (inclusive) by men who were recorded on the NGL as members of an OMCG in Australia as of May 2019. Organised crime related offending consists of ANZSOC offence codes synonymous with an 'ongoing criminal enterprise', as defined by Quinn and Koch (2003) and operationalised by Morgan, Dowling and Voce (2020). Broadly, these offences include serious fraudulent activity, serious regulatory offences and the commercial production and supply of illicit drugs, unregistered firearms or other illicit commodities. The analysis was restricted to men who were added to the NGL in 2014 (its first year of operation) or 2015. It also excluded OMCG members who were born after 1992, leaving only those members who were 18 years or over at the beginning of the study period. Finally, since the dataset did not include those who were members during the study period but left their gangs and were removed from the NGL before data were extracted by researchers (May 2019), these former members were omitted from the study.



Analytic strategy

Measuring organised crime related harm

This study explored changes in the amount of harm related to OMCG members' organised crime activity following the introduction of occupational restrictions. Organised crime related offences, even among OMCGs, are rare occurrences in police administrative datasets, and small changes in the number of offences and offenders can mask significant changes in the extent and impact of organised crime.

The Western Australian Crime Harm Index (WACHI; House & Neyroud 2018) was used to measure organised crime related harm. The WACHI assigns a harm score to offences indicative of the estimated physical, psychological, interpersonal, economic and social damage they cause. In effect, each score represents the median prison sentence (in days) passed down to first-time perpetrators of an offence type in Western Australia between January 2010 and June 2017. There are many recent examples of equivalent harm indices being used to evaluate the impact of interventions to reduce crime harm (eg Bland et al. 2021).

WACHI scores were developed to align with offence codes used in Western Australia, which only partially correspond to ANZSOC offence codes. We addressed this issue by estimating a single harm score for all ANZSOC offence codes that were previously missing them or had more than one assigned. Harm scores were assigned to previously unscored offence codes based on scores assigned to closely related offences. Where more than one harm score was assigned to an ANZSOC offence code, the mean of these harm scores, weighted by the number of cases used to calculate the original harm score, was taken.

Based on this revised WACHI, the most harmful organised crime related offence in the dataset was the commercial supply of illicit drugs (178) and the lowest harm offence was illicit betting and gambling activities (3). Harm scores for all organised crime related offences committed in Queensland by OMCG members were summed for each month, generating a time series dataset for analysis. The highest harm organised crime related offence type originally classified by Morgan, Dowling and Voce

(2020)—importing/exporting illicit drugs (1,309)—was not recorded at any point during the study period. Additionally, none of the new criminal offences created under the suite of legislation that commenced in Queensland in October 2013 were classified as organised crime related offences.

Interrupted time series analysis

This study undertook interrupted time series analysis to examine changes in the harm of OMCG members' organised crime activity following the introduction of occupational restrictions. Because the study period ran from January 2011 to December 2016 (inclusive), the analysis covered 42 months prior to the restrictions (January 2011 to June 2014) and 30 months after the restrictions were introduced (July 2014 to December 2016), or a total of 72 time points.

Interrupted time series analysis is an analytic approach to evaluating an intervention that tracks an outcome variable over multiple points in time before and after the intervention's introduction, accounting for underlying trends that are unrelated to it (Box et al. 2015; Hyndman & Athanasopoulos 2021). It was implemented in this study with auto regressive integrated moving average (ARIMA) modelling, which is well equipped to handle three common issues in time series data that can obscure an intervention's true impact:

- autocorrelation and partial autocorrelation, or the correlation of values in a time series with values at previous times;
- non-stationarity, or variation in the statistical properties of a time series dataset over time, including the means, variances and covariances; and
- seasonality, or the tendency for values in a time series to fluctuate systematically at seasonal intervals—usually every three, six or 12 months.

Interrupted time series ARIMA models incorporate covariates to account for these non-intervention related trends in order to detect changes in an outcome (in this case, organised crime related harm by OMCGs) that coincide with, and can reasonably be linked to, the timing of an intervention (in this case, the introduction of occupational restrictions). Generating an ARIMA model involves assessing whether data

transformation is required to account for non-stationarity, and selecting covariates that best account for patterns of autocorrelation and partial autocorrelation. Where seasonality is detected, additional covariates are included in the model to account for it.

Model selection in this study was facilitated by an automatic search algorithm developed by Hyndman and Khandakar (2008) and implemented in the statistical software program R. This algorithm iteratively compares successive ARIMA models and identifies the best fitting model. Model selection was aided by visual inspection of the time series data and the autocorrelation and partial autocorrelation function plots, along with Augmented Dickey–Fuller and Kwiatkowski–Phillips–Schmidt–Shin testing for non-stationarity. Follow-up Ljung–Box testing was undertaken post-model estimation to ensure that there was no remaining autocorrelation in model residuals. Model fit was assessed through inspection of the corrected Akaike information criterion (AICc).

Limitations

This study relied on recorded apprehension data, which does not include offending that did not come to the attention of police. Additionally, information on time spent in custody, and by extension exposure time, could not be obtained. However, incapacitation was accounted for to some extent through the operationalisation of covariates to capture the impact of criminal justice measures introduced in October 2013 (outlined further in the next section).

The staggered introduction of Queensland's suite of responses to OMCGs in the mid-2010s offers a unique opportunity for evaluation, and the analytic strategy minimises many sources of bias in examining the impact of occupational restrictions. However, there are a lack of suitable control jurisdictions against which to compare Queensland due to the sporadic introduction of a wide variety of OMCG-specific measures across Australia's other states and territories during the study period (Bartels, Henshaw & Taylor 2021). This limits the internal validity of findings and the potential for causal inferences.

While the NGL is a comprehensive and authoritative census of Australian

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OMCG membership used by law enforcement agencies across the country, it does not retain information on former members. Additionally, the dates on which men are added to the NGL do not align with the dates they joined an OMCG, which are rarely known. Because of this, the dataset used in this study approximates OMCG membership during the study period, again limiting the generalisability of findings.

Finally, Queensland's Taskforce on Organised Crime Legislation (2016) concluded that the resources devoted to implementing occupational restrictions were disproportionate to the risks posed by OMCGs. Given the absence of data appropriate for costing, this study was not able to examine the economic viability of Queensland's occupational restrictions, and no conclusions are drawn as to whether the impacts justify the costs. Rather, this study aims to fill a gap in the knowledge base by examining whether there was likely to have been any crime reduction impact in the first place.

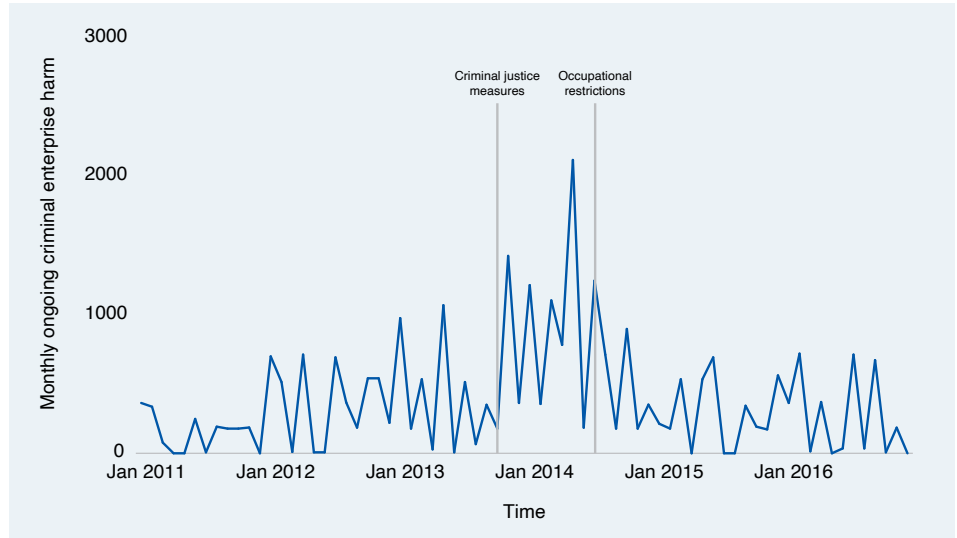
Results

Descriptive analysis and model development

Figure 1 plots the raw monthly organised crime related harm associated with recorded offences by OMCG members in Queensland between January 2011 and December 2016. Given the gradual implementation of Queensland's occupational restrictions, it was expected that any change in organised crime related harm would also occur gradually, appearing graphically as a downward trend as opposed to an immediate drop in the level of harm. These changes are diagrammed for illustrative purposes in Figure 2, with a comparison showing no change. To test for this downward trend change, occupational restrictions were operationalised into an intervention variable, coded as zero up to July 2014 and increased by one for every subsequent month, for inclusion in the ARIMA model.

Importantly, Figure 1 shows a sharp, short-term increase in harm following the introduction of the criminal justice measures in October 2013. This likely reflects a surveillance or detection effect, as police increasingly targeted OMCG members and identified more organised crime activity (Goldsworthy 2015; QPS

Figure 1: Monthly organised crime related harm, as measured by the WACHI, by outlaw motorcycle gang members in Queensland, 2011–2016



Source: OMCG criminal history dataset [2019]

Figure 2: Illustration of post-intervention trend and level reductions in an outcome measure WACHI, by outlaw motorcycle gang members in Queensland, 2011–2016

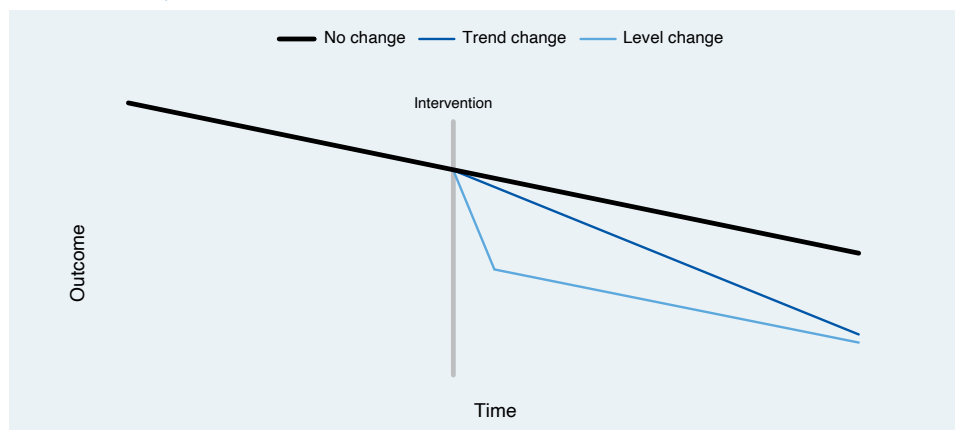
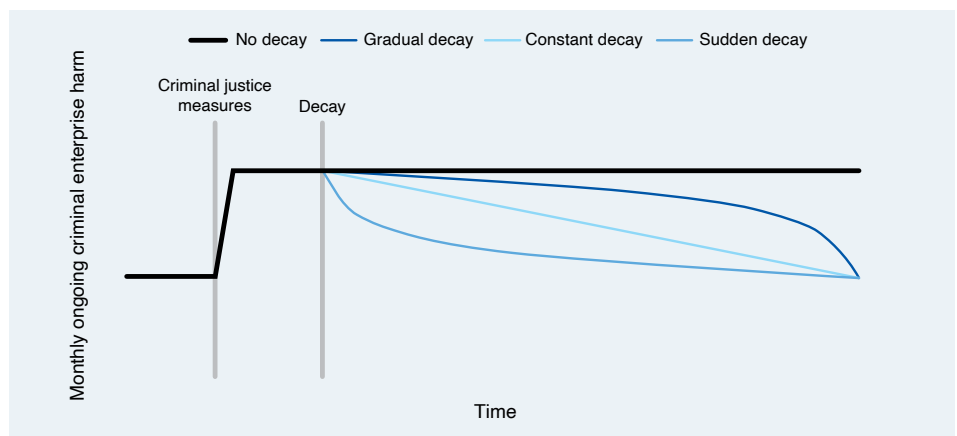


Figure 3: Illustration of different operationalisations of the criminal justice elements of Queensland's 2013 suite of outlaw motorcycle gang measures



Note: Variables operationalising decay in the spike in monthly ongoing criminal enterprise harm between the introduction of criminal justice measures (CJ) and decay onset (D) are coded over time (t) in relation to occupational restrictions (OC) as follows. No decay: 0 if $t < CJ$ and 1 if $t \geq CJ$. Gradual decay: 0 if $t < CJ$, 1 if $t \geq CJ$ and $< OC$, and $1 + \log_{100}((t - 72) / ((OC - 1) - 72))$ if $t \geq D$. Constant decay: 0 if $t < CJ$, 1 if $t \geq CJ$ and $< OC$, and $(72 - t) / (72 - (OC - 1))$ if $t \geq D$. Sudden decay: 0 if $t < CJ$, 1 if $t \geq CJ$ and $< OC$, and $1 \times \log_{100}((72 - (t - (OC - 1))) / (72 - OC))$ if $t \geq D$



2015, 2014; QPS Strategic Monitoring Team 2014). There is an equally notable decay in this short-term spike around the time occupational restrictions were introduced. Much of this decay could reflect the incapacitation of OMCG members—through imprisonment, remand, community sentences or bail conditions—for offences detected in the months after October 2013, the delayed deterrent effect of criminal justice measures, a tapering off in the intensity of these measures, or some combination. Failing to account for this spike in harm, and its subsequent decay, risks greatly overestimating the impact of occupational restrictions. The challenge was to identify any reduction in harm within this broader decay that could reasonably be linked to occupational restrictions.

This required the inclusion of an additional covariate in the ARIMA model that captured both the immediate increase in harm following the introduction of the criminal justice measures and its decay. The immediate increase was operationalised as a level change, coded as zero before October 2013 and one from October 2013 up to the point of decay. Because it was unclear when this spike started to decay, a data-driven approach was used to determine its point of onset. This was achieved with changepoint analysis, which is a family of methods for inductively identifying points in a time series dataset at which there are meaningful changes in one or more of its statistical properties (Aue & Horváth 2013). A level change in monthly harm after the introduction of criminal justice measures was identified with a segment neighbourhood approach (Auger & Lawrence 1989). This approach was implemented in the statistical software program R using the 'changepoint' package (Killick & Eckley 2014). The search was constrained to one changepoint, with an Akaike information criterion penalty applied to prevent overfitting.

Changepoint analysis indicated a level drop in monthly harm at May 2014. This was taken as the onset point for decay in all criminal justice covariates. Since the rate of decay was also unknown, we decided to examine Queensland's occupational restrictions with multiple ARIMA models, each incorporating a different criminal justice covariate, operationalising decay as

sudden (exponential), constant (linear), gradual (reverse exponential) or non-existent. These are diagrammed for illustrative purposes in Figure 3.

Prior to the main analyses, each model was run as an ordinary least squares regression and the resulting collinearity diagnostics were used to determine whether the criminal justice and occupational restriction covariates were too highly correlated. Tolerance values less than 0.1 were taken as indicative of collinearity. Based on this threshold, there was no evidence of collinearity across any of the models.

Importantly, while ARIMA models included covariates for the criminal justice measures introduced in Queensland in late 2013, it must be emphasised that the aim of this study was not to evaluate these measures, and conclusions about their effectiveness cannot be drawn from the results. These measures encompassed multiple enforcement, investigative, intelligence and legal responses, all implemented at around the same time to achieve various outcomes.

Results of Augmented Dickey–Fuller and Kwiatkowski–Phillips–Schmidt–Shin testing indicated significant non-stationarity in the variance of the data. Monthly harm totals were logarithmically transformed to induce stationarity before further analysis. For each ARIMA model, the automatic search algorithm was programmed to search across seasonal and non-seasonal models. However, seasonal differencing was not induced with the specification of a differencing term, as autocorrelation function and partial autocorrelation function plots of the transformed data showed no statistically significant autocorrelations at lags suggestive of seasonality (ie lags of 3, 6 or 12 months).

Was the introduction of occupational restrictions followed by a reduction in harm?

Table 1 summarises the results of the final ARIMA models examining changes in the organised crime related harm caused by OMCG members following the introduction of Queensland's occupational restrictions, controlling for different operationalisations of its criminal justice measures. There was no evidence of autocorrelation in the residuals of any models up to 24 lags, as indicated by non-significant Ljung–Box tests.

There was a four- to seven-fold increase in the level of organised crime related harm with the introduction of the criminal justice measures. Statistically significant trend reductions in organised crime related harm were found after the introduction of occupational restrictions in all but the ARIMA model assuming sudden decay (model 4). Under the unlikely scenario of no decay (model 1) results suggest that organised crime related harm decreased by nine percent per month after the introduction of occupational restrictions. Where gradual decay was assumed (model 2), results suggest a six percent monthly reduction, and where constant decay was assumed (model 3), results suggest a reduction of less than four percent monthly.

While the actual rate of decay cannot be confirmed, a constant rate of decay is, in the authors' view, the most plausible. Model 3, which examines occupational restrictions under the scenario of constant decay, was (along with model 2—gradual decay) the best-fitting model (ie an AICc closest to zero). For sudden decay to be plausible, it would need to be explained by an intervention such as the arrest or incapacitation of a large number of OMCG members, or a sudden cessation of policing activity, and the interruption would have to be similar in magnitude to the suite of OMCG measures introduced in October 2013. There is no evidence for either scenario in the material documenting police activity against OMCGs in Queensland during the study period (Goldsworthy 2015; QPS 2015, 2014; QPS Strategic Monitoring Team 2014; Taskforce on Organised Crime Legislation 2016). Meanwhile, assuming anything less than constant decay results in a questionably large effect size for an intervention that targeted only a small subset of organised crime methodologies and that could only be expected to have a small impact on organised crime activity among OMCGs.

Further sensitivity analyses were undertaken using the model 3 scenario of constant decay. Models were run incorporating artificial occupational restriction covariates which operationalised their commencement three months (April 2014), two months (May 2014) and one month (June 2014) prior to their actual commencement. The fit of these models, as measured by the

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**Table 1: ARIMA models examining changes in the organised crime related harm of OMCG members following the introduction of Queensland's occupational restrictions**

	Model 1: No decay	Model 2: Gradual decay	Model 3: Constant decay	Model 4: Sudden decay
Covariate coefficients (95% confidence interval)^a and effect size measures				
Occupational restrictions	-0.091 (-0.150, -0.033)*	-0.062 (-0.110, -0.014)*	-0.038 (-0.074, -0.003)*	-0.028 (-0.064, 0.008)
Estimated monthly post-intervention change attributable to occupational restrictions ^b	↓8.7%	↓6.0%	↓3.7%	↓2.8%
Criminal justice measures	1.522 (0.411, 2.632)***	1.455 (0.414, 2.495)***	1.585 (0.437, 2.732)***	1.962 (0.536, 3.387)***
Model statistics				
AICc 302.7	302.4	302.4	302.6	
Log likelihood	-147.0	-146.9	-146.9	-147.0
Ljung-Box χ^2	11.2	11.7	11.1	10.5

***statistically significant at $p < 0.001$, *statistically significant at $p < 0.05$

a: Coefficients and 95% confidence intervals reflect log-transformed data

b: The estimated monthly change post-intervention reflects the trend change in monthly harm totals between July 2014 (the month in which occupational restrictions were introduced) and December 2016 (the end of the study period), and was calculated as follows: $(1 - \exp_{\beta_1}) \times 100$, where β_1 = occupational restrictions coefficient

Note: AICc=Akaike information criterion (corrected)

Source: OMCG criminal history dataset [2019]

Table 2: Sensitivity analyses with ARIMA models examining artificial occupational restriction covariates at different points of onset prior to actual implementation in July 2014

	April 2014, constant decay	May 2014, constant decay	June 2014, sudden decay
Coefficients (95% confidence interval)^a and effect size measures			
Occupational restrictions	-0.035 (-0.072, -0.002)*	-0.036 (-0.072, -0.003)*	-0.037 (-0.073, -0.003)*
Criminal justice measures	1.645 (0.498, 2.792)***	1.624 (0.477, 2.770)***	1.604 (0.457, 2.750)***
Model statistics			
AICc	302.6	302.5	302.5
Log likelihood	-147.0	-146.9	-147.0
Ljung-Box χ^2	11.0	11.0	11.0

***statistically significant at $p < 0.001$, *statistically significant at $p < 0.05$

a: Coefficients and 95% confidence intervals reflect log-transformed data

Note: AICc=Akaike information criterion (corrected)

Source: OMCG criminal history dataset [2019]

continued from page 43

AICc, was compared with that of model 3 in the main analysis to determine whether the trend reduction detected in the main analysis predated the introduction of occupational restrictions in July 2014. Across all three models, the AICc was slightly higher than that of model 3 in the main analysis (302.4), indicating poorer model fit (Table 2). This further supports the notion that a small and gradual trend reduction in the organised crime related harm caused by OMCG members in Queensland coincided with the introduction of occupational restrictions.

Discussion

Findings from this study suggest that the introduction of occupational restrictions on OMCG members in Queensland from July 2014—part of a suite of measures implemented by the Queensland Government to combat OMCGs—was followed by a small and gradual reduction in their organised crime related harm. Estimates vary according to the assumptions used in the modelling, with results ranging from no significant reduction to a reduction of almost nine percent per month in organised crime related harm. The most plausible outcome is that these restrictions were

followed by a three to four percent monthly reduction in organised crime related harm. This study offers the first Australian evidence for the potential impact of occupational restrictions on organised crime and, more broadly, for the potential effectiveness of regulatory approaches to organised crime.

Occupational restrictions, like most regulatory measures, are a form of opportunity reduction in that they prevent would-be offenders from exploiting elements of the legitimate economy to engage in organised crime. However, it is difficult to discern from these results whether this is likely to



have been achieved through the actual refusal of jobs to OMCG members or through wider deterrence. While the final report of Queensland's Taskforce on Organised Crime Legislation (2016) notes only a small number of licence refusals under this regime, research has hinted at the widespread difficulties many men with OMCG affiliations in Queensland experienced gaining employment during this period (Boland et al. 2021), suggesting at least some deterrent effect. Nevertheless, the principal mechanism by which occupational restrictions are likely to have reduced organised crime is unknown.

Critically, it should be remembered that occupational restrictions were applied solely on the basis of an individual being affiliated with an OMCG, whether or not they had an accompanying police record of serious or organised crime. This highly controversial approach has since given way, in Queensland and elsewhere, to individually targeted judicial orders that set a stricter threshold for applying restrictions and that can only be issued by courts post-conviction. Queensland's Taskforce on Organised Crime Legislation (2016) also proposed a number of other mechanisms by which restrictions could be applied, including a 'blue card' system similar to that regulating occupations that involve working with children in Queensland, which also relies on prior convictions.

The decision to examine the occupational restrictions implemented in Queensland between 2014 and 2016 was made purely to take advantage of a unique opportunity for evaluation. Considered from an empirical perspective, the individual targeting

of regulatory measures based on higher legal thresholds might reduce their effectiveness by limiting the pool of individuals to whom they apply. Conversely, regulatory measures might increase in efficacy if they extend beyond the formal membership of 'declared' organisations, taking account of the fluid structures of many organised crime groups and networks, in which people constantly move into and out of them (Bouchard & Morselli 2014; Morselli 2009).

It is also worth noting that these results have emerged alongside those highlighting the important role employment can play in disengagement from criminal lifestyles (Apel & Horney 2017; Ramakers et al. 2017; Tonks & Stephenson 2019). The former OMCG members interviewed in Boland and colleagues' (2021) research highlighted employment as a critical source of material and social support, and important to helping them stay disengaged from their gangs. Occupational restrictions, and regulatory approaches more broadly, must balance a concern for preventing exploitation of the legitimate economy with the need to provide access to this economy in support of offender desistance (Douglas & Smith 2018).

Although promising, and with significant implications for policy, these findings highlight the pressing need for further research to build the evidence base on whether and how regulatory approaches can reduce organised crime. It is also important to read these findings against the limitations discussed. Most notably, the ability to make definitive causal claims about the impact of occupational restrictions is somewhat

limited by the complicated legislative and policing environment in which they were introduced, and uncertainty regarding the true impact of other measures introduced to combat OMCGs. While a number of methods were used to disentangle occupational restrictions from other measures introduced at around the same time, it is not possible to infer a causal impact with complete confidence. More than many other interventions, the evidence base for regulatory approaches would benefit from further research that evaluates them across multiple locations and contexts.

This study attempted to measure the possible short-term impact of a regulatory approach to organised crime by OMCG members in Australia. Findings highlight the potential utility of measures outside the criminal justice system in preventing this form of crime. Measures like these should be subjected to more rigorous studies, including prospective studies, to build an evidence base of alternative strategies to reduce the significant burden of organised crime to the Australian community.

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Alleged WA Comanchero OMCG member charged with drug, money laundering and armed robbery offences

An alleged Comanchero Outlaw Motorcycle Gang member has been charged with money laundering, armed robbery and drug supply offences after investigations by the Western Australia National Anti-Gangs Squad and the WA Police Gang Crime Squad.

March 10, 2022

www.afp.gov.au

The 32-year-old man is expected to face Perth Magistrate's Court today (10 March 2022), following his arrest yesterday as a result of an operation targeting criminal activities involving the Comanchero OMCG.

Police arrested the 32-year-old man at a Forrestfield property, where they allegedly caught him in the backyard throwing approximately 60g of methamphetamine over the fence.

Police seized another 100g of methamphetamine during a search of the home.

The Swan View man was charged with two drug supply offences, as well as a charge of property laundering over the seizure of more than \$224,000 in cash from his girlfriend's home in January (2022). Police will allege the money is the proceeds of drug trafficking.

Officers allegedly found \$196,050 hidden in an esky in a laundry cupboard and another \$26,205 in a bedroom when they executed a search warrant at the home in Perth's south-eastern suburbs.

The alleged OMCG member has also been charged with aggravated armed robbery over allegations he robbed and assaulted another man in Perth earlier this year.

Australian Federal Police Sergeant Joel Van Den Brun said outlaw

motorcycle gangs were heavily involved in drug trafficking across Australia, and they had a callous disregard for the harm they caused.

"The AFP is working tirelessly with WA Police and other partners to try to make West Australia as hostile an environment as possible for outlaw motorcycle gangs and protect the community," he said.

"Seizing illicit cash, as well as drugs, is a key strategy to ensure OMCGs have difficulty paying debts and cannot fund future criminal ventures."

Western Australia Police Force, Serious Organised Crime Division, Detective Superintendent John Hutchison states: "WA Police Force continues to work with our partner agencies to develop investigative methodologies and disrupt outlaw motorcycle gang members to minimise the harm they cause to the community of Western Australia".

"This is an example of our willingness to share resources and capability to achieve our goal of making WA an unattractive environment for serious organised crime groups to operate," he said.

The 32-year-old man was refused police bail to appear at Perth Magistrates Court today (10 March 2022) charged with:

- Possess a trafficable quantity of a prohibited drug with intent to sell/ supply, contrary to section 6(1)(a) of the *Misuse of Drugs Act 1981* (WA). The maximum penalty for this offence is life imprisonment;
- Offer to supply a prohibited drug, contrary to section 6(1)(c) of the *Misuse of Drugs Act 1981* (WA); The maximum penalty for this offence is life imprisonment;
- Property laundering, contrary to section 563A(1) of the *Criminal Code Compilation Act 1913* (WA); The maximum penalty for this offence is 20 years' imprisonment;
- Aggravated armed robbery, contrary to section 392 of the *Criminal Code Compilation Act 1913* (WA); The maximum penalty for this offence is 20 years' imprisonment.

WA NAGS comprises members from the Australian Federal Police, Western Australia Police Force and Australian Taxation Office.

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Alleged WA Comanchero OMCG charged with drug supply offence

An alleged Comanchero Outlaw Motorcycle Gang member is due to face Perth Magistrates Court today (25 February 2022) after being charged by the Western Australia National Anti-Gangs Squad for alleged drug supply.

February 25, 2022

www.afp.gov.au



Photos: AFP

WA NAGS investigators arrested the 37-year-old man in Midland at a search warrant yesterday, where they seized 600g of methamphetamine and an unregistered firearm.

The arrest is part of a larger operation targeting the criminal activities of the Comanchero OMCG and their associates in WA.

Australian Federal Police Acting Inspector Chris Colley said outlaw motorcycle groups remained an ongoing threat here and across Australia.

"OMCGs are organised criminal syndicates that have no qualms trafficking illicit drugs and firearms, or committing acts of extreme violence to maintain their way of life," Acting Inspector Colley said.

"The AFP and its partners in the National Anti-Gangs Squad teams around the country are committed to putting a stop to their illegal activities and keeping the community safe."

WA Police Force's Serious and Organised Crime Division Detective Superintendent John Hutchison said targeting outlaw motorcycle gangs, and their members and associates, remains a key priority of WA Police.

"Our community is no stranger to the harm created by illicit drugs, in particular methamphetamine, and we will do everything in our power to continue to disrupt and dismantle the organised crime networks that profit from the distribution of those drugs," he said.

"Outlaw motorcycle gangs rely on criminal activities to fund their operations and they have no regard for the damage their drug dealing activities cause to our community, including some of our most vulnerable citizens.

"Our state and Commonwealth partnerships, such as the National Anti-

Gangs Squad, continue to deliver arrest outcomes that contribute to our goal of keeping our community safe from the criminal activity of those criminal networks."

The 37-year-old Swan View man was charged with possessing a trafficable quantity of a prohibited drug, contrary to section 6(1) of the *Misuse of Drugs Act 1981* (WA).

Enquiries into the ownership of the unregistered firearm are ongoing and investigators have not ruled out further charges.

WA NAGS comprises members from the Australian Federal Police, Western Australia Police Force and Australian Taxation Office.



National Anti-Gangs Squad seizes more firearms, cash and drugs from OMCGs

The Australian Federal Police-led National Anti-Gangs Squad (NAGS) seized more illicit drugs, more cash and almost twice as many firearms from outlaw motorcycle gangs in 2020-2021 than in the previous financial year.

December 4, 2021

www.afp.gov.au

More than \$3.6 million of suspected proceeds of crime was seized, up from \$1.56 million in 2019-2020, while the number of charges laid against alleged gang members and associates jumped by 35 per cent to 231 charges.

Ninety-nine firearms were taken out of the hands of alleged gang members and associates by NAGS investigators – almost double the 51 weapons seized in 2019-2020.

The deadly haul included easily concealable loaded handguns and military-grade automatic firearms capable of firing several rounds a second. Many of the weapons were found loaded and easily accessible to offenders, increasing the dangers to police and the public.

Sixteen firearms – including a fully automatic Chinese-copy of an AK-47 rifle and a SPAS 12 Gauge shotgun – as well as power gel explosives were found at one Perth property during Operation Ironside.

WA NAGS, with the assistance of an AFP bomb appraisal officer and AFP firearms and explosives detection dog, found the weapons buried in a storage container. Police suspect they were stockpiled for the Comanchero OMCG.

An investigation in New South Wales into the manufacture and supply of prohibited firearms resulted in officers seizing two 3D-printed submachine guns and three other firearms.

A further 34 firearms and parts have been seized during NAGS-led investigations between July and October (2021).

Firearms seizures last month (November 2021) included loaded guns found with illicit drugs and cash in properties or cars linked to several different OMCGs.

In Queensland, three men with links to the Hells Angels OMCG were charged after police seized seven firearms – including handguns and assault rifles.

In Victoria last month (November), NAGS investigators and other AFP specialists worked with Victoria Police to search the rural home of a Mongols OMCG member. A loaded 0.45 Sig Sauer handgun, a homemade handgun and a silencer were among the weapons seized.

AFP NAGS Detective Superintendent Jason McArthur said about 90 per cent of the threats to life identified during Operation Ironside were directly related to outlaw motorcycle gangs – as offenders and in some circumstances, victims of rival gangs and even their own.

“The AFP and our state and territory police partners, intercepted and disrupted plots to shoot, bash or kidnap both rivals and innocent people,” he said.

“The number of firearms seized by NAGS officers around the country last financial year and so far this year – almost two a week on average – highlights the access outlaw motorcycle gangs have to weapons that are used to follow through with their violent plans.

“Even when criminals are trying to target each other, they put innocent bystanders at risk and National Anti-Gangs Squad teams are pleased to take these firearms away from violent

offenders. We will do whatever we can to protect Australians.”

Detective Superintendent McArthur said the portrayal of outlaw motorcycle gangs as just groups of guys who like riding motorcycles was false.

“Intercepted communications from the ANOM encrypted communication platform has provided further evidence that OMCGs are organised crime networks that exist to make money - generally through drug activities, and sometimes through intimidation and acts of violence.

“Of the 311 people arrested by the AFP and its state and territory partners during Operation Ironside, more than 100 are members or known associates of OMCGs.”

Detective Superintendent McArthur said Operation Ironside had provided great insight into the international reach of Australian-based gangs and their collaboration with known offenders residing offshore.

“The international collaboration between these transnational criminal syndicates causes a domino effect of damage to Australian communities.”

A recent study by the Australian Institute of Criminology shows OMCGs are increasingly recruiting violent, criminally-inclined men to their ranks.

“The study, which involved the Queensland Police Service interviewing former gang members, also highlighted that while members were once loyal to a club for life, it was becoming more common for them to switch clubs to pursue their self-interests or a profit,” Detective Superintendent McArthur said.



“The men involved in these gangs are not loyal to each other, they will hurt each other or rip each other off to make money and they certainly give no thought to the innocent people they put at risk through their violent crimes.

“Anyone who becomes involved with an OMCG puts not only themselves, but the lives of their families at risk.”

Queensland Police figures show more than one-third of OMCG members in Queensland have been issued with domestic violence orders. QPS statistics also reveal that women in relationships with OMCG members are six times more likely to become a victim of domestic and family violence.

Police predict OMCGs will try to take advantage of easing COVID border restrictions to ramp up illicit imports.

“We want to put them on notice that we are ready and we are coming for them,” Detective Superintendent McArthur said.

The National Anti-Gangs Squad (NAGS) was established in 2014 as a multi-agency law enforcement taskforce targeting organised criminal syndicates, including those involving members of outlaw motorcycle gangs (OMCG). NAGS comprises of members from the AFP and State Police forces, as well as members from the Australian Taxation Office.

2021 Case Studies

Western Australia:

The 16 weapons were found in June 2021 buried at a property in Perth's southern suburbs. Forensic testing has not yet returned any results. NAGS are awaiting the results from ballistics testing to see if the weapons have been used in any shootings.



Firearms seized from WA property.



3D printed submachine gun seized during firearms distribution investigation.

New South Wales:

February 2021: A Rebels OMCG associate, now aged 63, was charged after police seized a rifle, handgun, 10 replica pistols and an M4 replica rifle from a Coffs Harbour property. He has since been convicted of 13 offences relating to possession of unauthorised firearms and weapons. AFP Detective Superintendent Jason McArthur said anyone who had one of these replica weapons pointed at them would not think it was a fake.

June 2021: NSW NAGS seized five firearms, including a semi-automatic assault rifle and two 3D-printed submachine guns, during an investigation into the illegal manufacture and supply of firearms. Police will allege a 38-year-old man was distributing and selling firearms to criminals, including people linked to the Comanchero OMCG. The 3D printed weapons were branded ‘FGC’ – F* Gun Control.

Victoria:

Victoria NAGS works closely with the Victoria Police Echo Taskforce, providing investigative, intelligence and specialist capability support for the mutual fight against OMCG-linked organised crime.

April 2021: A loaded sawn-off pump action shotgun, a loaded revolver, a loaded semi-automatic pistol and ammunition were allegedly found in a car owned by a Comanchero OMCG associate. AFP NAGS and Echo Taskforce investigators searched the man's home and car as a result of intelligence from Operation Ironside. The man, then aged 20, was charged with several offences including trafficking



Firearm allegedly found in car in Victoria.

firearms, possessing two unregistered handguns and possessing an unregistered long-arm.

November 2021: Two loaded guns were found in a purpose-built hidden compartment in a Toyota Corolla by NAGS investigators, AFP Geomatics specialists and Echo Taskforce officers during investigations that were initiated as a result of Ironside intelligence. Police seized the car for a detailed search after finding a 1kg block of cocaine and \$62,000 cash hidden under the seats. The elaborate compartment was hidden behind the car's air conditioning control unit. Inside the compartment police found a loaded 0.32 Smith and Wesson revolver, a loaded 9mm Colt semi-auto pistol, another \$170,000 cash and about 80g of cocaine. AFP Forensic Firearms Intelligence and Victoria Police specialists will test the seized firearms. A further \$373,800 cash was found in an apartment where the Corolla was parked. A 38-year-old man has been charged over the weapons, drugs and cash haul.

November 2021: NAGS investigators and other AFP specialists worked with Victoria Police to search the property of a Mongols OMCG member. A loaded 0.45 Sig Sauer handgun, a homemade handgun and a silencer were among the weapons seized.

November 2021: A NAGS investigator found a loaded homemade sub-machine gun hidden underneath an oven at a Clarinda home. The property was one of several searched as part of a long-running investigation by the AFP and Victoria Police into an organised crime syndicate.



SPECIAL OPERATION IRONSIDE

Operation Ironside Phase 2 to land second blow to organised crime

Australian Federal Police, Australian Criminal Intelligence Commission,
NSW Police Force, Queensland Police Service, Victoria Police

December 9, 2021

www.acic.gov.au

The second phase of the Australian Federal Police-led Operation Ironside will be launched today under a nationally-coordinated strike against organised crime.

The AFP and state law enforcement agencies will begin the protracted offensive, which is likely to run for months, and will focus on arrests plus the disruption of criminals' business operations.

Up to 160 targets around Australia have been identified under Operation Ironside Phase 2.

Those targets include outlaw motorcycle gangs, Italian organised crime, illicit drug distributors and trusted insiders – those who use their knowledge or connections at a workplace to facilitate crime.

Operation Ironside was a three-year, covert, AFP-led investigation into significant organised crime syndicates that were using dedicated encrypted communications device, named ANOM, to traffic illicit drugs and weapons

to Australia, as well as order local executions.

The global sting was enabled by the AFP and FBI. The FBI secretly controlled ANOM, which was distributed and used only by transnational serious organised crime, or those facilitating crime for them. AFP technical expertise allowed law enforcement to obtain and read the encrypted messages in real time.

On June 8, 2021, Operation Ironside, launched hundreds of search warrants across Australia.

To date, more than 700 warrants were executed and 311 offenders were charged with 820 offences. More than 6.3 tonnes of illicit drugs and 139 weapons have been seized. About \$52 million in suspected proceeds of crime has been seized.

Globally, 993 suspects were arrested after 1042 search warrants were executed.

More than 42 tonnes of illicit drugs were seized, along with 220 firearms. More than \$US58 million in cash and cryptocurrency has also been seized by global law enforcement agencies.

When the ANOM platform was shut down in June 2021, about 19 million messages captured from the platform related to Australia.

The ANOM platform has provided voluminous, invaluable intelligence and insight that has never been obtained before by Australian law enforcement.

These key insights are helping the AFP to determine who and what it will target next, including companies and professionals who are unknowingly or deliberately facilitating transnational serious organised crime.

Some of this intelligence includes:

- A number of criminal groups used dive teams to assist in attaching and/or retrieving illicit drugs imported via cargo ships. The drugs would be attached to, or secreted within, the hulls of ships or thrown overboard before the ship docked at port. Criminals planning to dive themselves bought expensive equipment, such as sea bobs – small underwater scooters – to help them descend and ascend



quickly. Some planned to paint these underwater scooters to be less visible. Intermediaries likely operated between dive crews and criminal syndicates;

- Criminal syndicates used waste management services to pick up drugs hidden in bins at ports;
- Criminals shared legal advice over ANOM about which lawyers they were using and what legal advice they were provided in the event they were charged for drug trafficking;
- Australian high-profile syndicates are moving offshore, creating an ex-pat community of criminals;
- Specialist illicit drug cooks are providing their unique services in multiple countries, including Australia, to help extract concealed drugs.

Using this intelligence, the AFP and our partners have built intelligence packages against alleged offenders. This is continuing and is it likely arrests under Operation Ironside will continue for years.

Today, the AFP will also reveal more details about ANOM.

Criminals distributed ANOM under a four-tier system.

- Wholesalers were mid-to-high-level criminals, some with exclusive distribution rights in certain countries and regions;
- Agents had distribution rights for particular territories. They employed staff to recruit more clients and deal with “customer” issues;
- Representatives were resellers who sold devices to associates and collected fees for subscriptions; and
- Drivers were employed to deliver the ANOM handsets.
- Criminals have moved to other encrypted devices. It is likely some large syndicates will develop their own dedicated encrypted communication devices and private networks within the next three years.

The messages decrypted on ANOM revealed multiple users around the world planned, discussed or carried out cocaine imports to Australia from various countries.

Several users planned multi-tonne ventures, including one group which planned to import 3 tonnes of cocaine, half of Australia's annual consumption.

AFP Assistant Commissioner Crime Command Nigel Ryan said Operation Ironside was continuing to reveal serious syndicates, plus those on the periphery who provided significant assistance to

criminal gangs but believed they were unknown to law enforcement.

“You will see AFP or our state law enforcement partners executing search warrants across Australia in the coming months,” Assistant Commissioner Ryan said.

“It is just a matter of time before we scoop up those who believed they had gotten away with their crimes – like the alleged criminals who smashed or burned their ANOM devices.

“The AFP will never give up in the fight against organised crime. We do this to keep Australians safe – that is our number one job.”

AFP Assistant Commissioner Ryan said illicit drug use was deeply concerning for the AFP.

“Transnational serious organised criminals, including outlaw motorcycle gangs, triads, cartels and Italian organised criminals, are trafficking drugs into Australia at an industrial scale because of the significant profits being made,” he said.

“The AFP is deeply concerned about how Australia's illicit drug use impacts on national security, money laundering and the economy. We also hold grave fears about how illicit drug use is making our vulnerable communities, our suburbs and our roads less safe.

“We are seeing drug wars played out in suburbs, as well as the indiscriminate tragedies illicit drug use can be linked to, such as road trauma.”

NSW State Crime Commander, Assistant Commissioner Stuart Smith, said law enforcement agencies Australia-wide continue to maintain and strengthen their partnerships to combat serious organised crime.

“The ongoing targeting of criminal groups identified through this operation has only been made possible by taking a collaborative, multi-agency approach,” Assistant Commissioner Smith said.

“We know that improved intelligence and information sharing among law enforcement partners has drastically enhanced our responses to organised crime, which we saw during Operation Ironside I.

“Since that time, police have been working hard to analyse and explore all those additional leads, specifically targeting trusted insiders and those who present the most significant threat to our communities,” Assistant Commissioner Smith said.

Victoria Police Assistant Commissioner Crime Command Bob Hill said, “The information obtained during the course of Operation Ironside has allowed police to continue to actively target a number of serious and organised crime groups based within Victoria.”

“While we have already had a number of significant results including the arrest of over 50 people in Victoria, we recognised that the ongoing analysis of the intelligence would provide us with a unique opportunity to keep holding these criminals to account.

“Victoria Police, along with our law enforcement partners, will continue to collaboratively do everything we can to dismantle these networks and ensure we prevent further harm to the Victorian community as a result of their actions.”

Queensland Police Service Acting Assistant Commissioner Roger Lowe said, “Operation Ironside has had a significant impact on dismantling the organised crime syndicates profiting from harm caused to our communities.

“The arrests and seizures have laid bare the role of Outlaw Motorcycle Gangs in international crime impacting Queensland.

“The outcomes of the operation are unprecedented and the Queensland Police will continue our strong approach, working closely with law enforcement partners”, Acting Assistant Commissioner Roger Lowe said.

ACIC Executive Director Intelligence Operations Rob Jackson said that strong collaboration and working relationships across Australian law enforcement is central to maximising the impact to disrupt the upper tiers of organised crime here in Australia and their associates offshore.

“We are committed to ongoing development of new and enhanced capabilities that complement law enforcement investigations and intelligence activities targeting criminal enterprises and those that enable illicit activity like money laundering, drug importations and other serious criminal offending.

“Developing collaborative strategies that leverage the breadth of law enforcement capability, tactics and legislation is key to disrupting and dismantling transnational serious and organised crime groups and Outlaw Motorcycle Gangs that adversely impact the Australian community and families,” Mr Jackson said.



Joint investigation targets Hells Angels in South-East Queensland

The Australian Criminal Intelligence Commission, the Australian Federal Police and the Queensland Police Service

November 9, 2021

www.acic.gov.au

A joint investigation by the Australian Federal Police-led Queensland National Anti-Gangs Squad, Queensland Police Service (QPS) Organised Crime Gangs Group and Australian Criminal Intelligence Commission (ACIC) has resulted in the arrest of three men with links to the Hells Angels Outlaw Motorcycle Gang and the seizure of firearms and illicit drugs worth over \$3 million.

Officers, acting on information gained from National Anti-Gangs Squad and intelligence developed by the ACIC, conducted a search warrant at a building in East Brisbane on 4 November 2021 as part of an investigation into the production and trafficking of methamphetamine.

During a search of the building, officers allegedly located a commercial-size clandestine laboratory for the production of methamphetamine, seven firearms (including handguns and assault rifles), \$153,000 in cash, over six and a half kilograms of heroin and two kilograms of methamphetamine.

The total value of the drugs located at the scene is estimated to be over \$3 million.

A 45-year-old Gold Coast man and a 30-year-old East Toowoomba man were arrested close to the address and have both been charged with one count each of production of a dangerous drug, unlawful possession of a weapon, possession of property suspected of being the proceeds of crime, possession of relevant things and two counts of possession of a dangerous drug.



They were remanded in custody and are due to appear in Brisbane Magistrates Court. The Toowoomba man is due to appear on November 16 and the Gold Coast man on December 6.

If found guilty these offences carry a maximum penalty of 25 years imprisonment.

A 31-year-old Rockhampton man was also intercepted by police at Miriam Vale on 4 November 2021.

A search of his vehicle allegedly located \$151,000 in cash.

He has been charged with possession of tainted property and is expected to

appear in Gladstone Magistrates Court on 22 November 2021.

National Anti-Gangs Squad Commander Andrew Donoghoe said the AFP, with state and Commonwealth law enforcement partners has remained one step ahead of outlaw motorcycle gangs, making arrests from the top to the bottom of the packs.

"Meth and heroin cause horrendous damage to the community through addiction and family violence, all in the name of greed for organised crime," he said.



"There's nowhere to hide for groups who seek to produce or peddle drugs like meth, the full force of the Australian Federal Police and our partners is coming for you."

Queensland Police Service Detective Acting Superintendent Craig McGrath of the Organised Crime Gangs Group said the investigation highlights the value of QPS working collaboratively with partner agencies to disrupt and prosecute criminal groups who continue to prey on our community.

"The seizure of the firearms, also greatly reduces the risk of harm to the

community, by removing them from the hands of gang members, who continue to threaten and use violence as part of their illegal operations," Detective Acting Superintendent McGrath said.

ACIC State Director Queensland Boyd Doherty said this result is another example of the importance of the joint agency approach against organised crime.

"Through and working in conjunction with law enforcement partners, the ACIC can extend its reach to target criminal networks,

"By working together, we are seeing significant results in preventing illicit drugs from reaching the community and we will continue to target the serious and organised crime groups who profit from the manufacture and trafficking of these drugs and firearms, with no regard for the harm they cause," Mr Doherty said.

The National Anti-Gangs Squad (NAGS) was established in 2014 as a multi-agency law enforcement taskforce targeting organised criminal syndicates, including those involving members of outlaw motorcycle gangs (OMCG).



Mongols OMCG targeted as part of National Day of Action

Police have arrested 18 people and seized almost 30 firearms, drugs and cash as part of a national joint operation to target and disrupt criminal activities linked to the Mongols Outlaw Motorcycle Gang (OMCG).

December 4, 2020

www.afp.gov.au

A series of coordinated warrants and other operational activities were undertaken yesterday, Thursday 3 December, by police and other government agencies and partners from across Australia. Law enforcement agencies involved included Victoria Police, Australian Federal Police, Australian Border Force, Western Australia Police, Northern Territory Police, Queensland Police Service, South Australia Police and New South Wales Police Force.

18 people were arrested, including Mongols office bearers, members and associates, and charged with a range of offences.

A number of items were also seized including firearms, drugs, cash following the execution of almost 20 search warrants nationally.

In addition to the arrests and seizures made yesterday, valuable intelligence was gained which will be shared with all law enforcement agencies through the Australian Criminal and Intelligence Commission's Australian Gangs Intelligence Coordination Centre.

Victoria Police Acting Assistant Commissioner Mick Frewen, speaking on behalf of National Task Force Morpheus, said it was imperative that law enforcement agencies across Australia continue to work together to target OMCGs, including the Mongols.

"This is a group we know have traditionally been involved in violent crimes such as shootings, assaults, arson, drug trafficking, extortion and intimidation," Acting Assistant Commissioner Frewen said.

"These activities bring immense harm to communities across Australia and often

significantly impact innocent people who have no links to the OMCG.

"Organised criminal groups such as the Mongols aren't a state-based problem, they remain a significant issue for law enforcement right across Australia and days of action such as this one provides the ideal opportunity for us to work together to target their offending and also gather intelligence.

"This benefits us by not only immediately removing offenders and their weapons or drugs from the community, but also builds our knowledge to support future investigations. "It's important that criminal organisations such as the Mongols are held accountable for their criminal actions and this week shows that police will actively work to disrupt their activities."

"The members of National Task Force Morpheus are committed to disrupting and dismantling the criminal networks linked to outlaw motorcycle gangs and will do everything within their powers to protect the community from the dangers outlaw motorcycle gangs pose."

AFP Acting Commander Sascha Rayner said today's activity shows that police continue to target OMCGs using both traditional and non-traditional law enforcement methods, including executing search warrants on clubhouses, investigating tax and welfare payments and monitoring travel movements and business activities.

"The community need to be aware that OMCGs are not harmless motorcycle clubs—they are well-organised criminal gangs causing harm and disruption across our country," A/Cmdr Rayner said.

"The AFP continues to work closely with our domestic and international counterparts to detect, deter and disrupt all types of criminal activities undertaken by OMCGs both within Australia and overseas. State and international borders are no impediment to the joined-up efforts to combat these criminal groups and protect the Australian community."

Queensland Police Crime and Intelligence Command A/Assistant Commissioner Katherine Innes said co-ordinated activities were an important part of disrupting OMCG criminal activity.

"These ongoing activities are based on real time intelligence, and in response to anti-social and violent behaviour by gang members, which impacts the safety of the community.

"We will continue to work collaboratively with our state, territory and Commonwealth partners to take action at every opportunity to dismantle and disrupt the illegal, anti-social and violent behaviours associated with OMCGs," A/Assistant Commissioner Innes said.

National Task Force Morpheus is a joint initiative of Australia and New Zealand law enforcement and Australian Commonwealth agencies targeting the crime associated with Outlaw Motorcycle Gangs (OMCG).

The National Taskforce has been working cooperatively to prevent OMCG from establishing in our communities to reduce harm and ensure community safety and wellbeing in public spaces. Anyone with information about OMCG activity is urged to contact Crime Stoppers on 1800 333 000.



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REMEMBRANCE DAY

29 SEPTEMBER

HONOURING OUR FALLEN POLICE MEMBERS

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TASMANIAN CHINESE BUDDHIST ACADEMY OF AUSTRALIA



Along with many community leaders and members, Master Zhi-Ji and a delegation from the Buddhist Academy attended the National Reconciliation Week - Hobart Breakfast.

This year's theme is "Be Brave. Make Change." According to Reconciliation Australia, the week is "a time for all Australians to learn about our shared histories, cultures, and achievements, and to explore how each of us can contribute to achieving reconciliation in Australia."

The Academy acknowledges and pays respect to Traditional Custodians and Elders of this nation, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

