

## **Comment: Motorcycle Gangs, Power Hungry Policemen, and the Law Society of Tasmania**

**By Cameron Scott – Barrister, Salamanca Chambers**

In 2018 Tasmania Police released a position paper that argued it should be granted special laws and powers (known as anti-consorting laws), to overcome an alleged problem it asserts exists with the alleged illegal activities conducted by Outlaw Motorcycle Gangs (“OMCG’s”) in Tasmania. This has been met with considerable community resistance. Groups such as the Northwest Community Legal Centre, the God Squad Motorcycle Club, and the Australian Lawyers Alliance (of which I am state secretary) among others, have provided articulated and cogent submissions urging the Government to not grant Tasmania Police these unnecessary powers, powers which have been consistently misused in other jurisdictions. Sadly, the Law Society of Tasmania provided submissions that can only be described as disappointing.

On Friday 18 May 2018 Tasmania Police released the submissions they had received in response to their consorting laws position paper (“the position paper”)<sup>1</sup>. It was apparent that the vast majority of submissions opposed Tasmania Police receiving the powers they are seeking. A range of objections were offered including concerns about the application of the law to persons other than members of OMCG’s, that no evidence was offered to support the assertions in the position paper, that it was improper to ‘tar and feather’ all motorcycle riders as criminals, and that legislators and Tasmania Police ought to return to a model of policing that respects the Rule of Law.

In response to the overwhelmingly negative community response, Tasmania Police convened a press conference. At that press conference, Acting Assistant Commissioner Tony Cerritelli, made a number of statements, of importance are the following quotes:

"We know that people are afraid of outlaw motorcycle gangs — their violence, their drug dealing and their threats — and this is undoubtedly a key reason as to why only a handful of supportive submissions were received."

"Those in the debt of outlaw motorcycle gangs through drug use and those who have experienced first-hand their violence and intimidation would be quite understandably too fearful to make a submission."

It is abundantly clear that these inflammatory, and ignorant comments by Acting Assistant Commissioner Tony Cerritelli are part of a propaganda campaign by Tasmania Police to present a narrative that the criminality of OMCG’s is so pervasive and evil that community members were too frightened to make submissions.

The consorting laws are not the first attempt by Tasmania Police to increase its powers at the expense of the rights of the individual. In 2017, whilst I served on the Criminal Law Committee of the Law Society of Tasmania, Tasmania Police produced a draft amended Road Safety (Alcohol and Drugs) Bill, in which they sought broad powers including that at the time at which a person is requested to undergo a breath test, that they are taken to be *in custody*, this means that they will be under arrest, liable to searches including strip searches, may be detained in a

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<sup>1</sup> See: <http://www.police.tas.gov.au.s3.amazonaws.com/wp-content/uploads/2016/10/Position-Paper-Consorting-and-OMCG-Prohibited-Items-Legislation-20180426.pdf>

police vehicle or cell, or held incommunicado, may be photographed, fingerprinted, or subjected to DNA testing, all while waiting to be subjected to a roadside breath test! That draft Bill increased powers of police to enter land, including forcible entry to land, and reversed a number of evidentiary onuses. None of these laws were necessary, and it was explained to the Criminal Law Committee that the Bill was a “wish list” that Tasmania Police had provided to the Justice Department.

The fact that Tasmania Police are seeking to expand their powers, and in the process to curtail fundamental rights and liberties of the individual is appalling, outrageous, and cannot be tolerated (to any extent) in a liberal democratic society like Tasmania. The willingness of Tasmania Police to mislead the public about the need for the consorting laws, and to cover up the poor reception of these laws by suggesting that certain individuals or members the community live in fear of OMCG’s and consequently could not make a submission (noting that anonymous submissions were permitted) ought to shock any reasonable or right-thinking person.

Worse, in the period since 18 May 2018, Tasmania Police has been quick to allege that various serious crimes including home invasions and cases of evading police have involved “associates” of various OMCG’s. All of this points to a clear propaganda campaign being run by Tasmania Police in order to facilitate its push for new powers.

The history of Western common law rights and individual liberty arguably begin with the creation of Magna Carta in 1215. Readers will be familiar with the following oft quoted passage:

“No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.”

Our system of criminal justice is built on the greatest guarantee of freedom and individual liberty, the presumption of innocence. This means that unless and until the Crown has proven the guilt of an accused person beyond all reasonable doubt, that accused person will not be subject to punishment. Yet what Tasmania Police seeks to do is to remove that presumption and apply a punitive order curtailing the freedom and liberty of the individual.

The position paper seeks to enable police to curtail the ability of persons who hold a conviction for an undefined “serious offence” to associate with persons of their choosing. They need not be suspected of having committed a crime at the time that the notice is issued, and here in lies the problem with these laws, the fact that a person has a criminal conviction should not prevent them from associating with any other person including persons with convictions for serious crime. Once a person has served their sentence, they should be free from further punishment or restrictions on their liberty.

As Australian Lawyers Alliance, Tasmanian Branch President Fabiano Cangelosi argues, if those persons who are issued a non-associate notice, wish to advocate for legislative change or repeal of these laws, how will they be able to assemble for the purposes of organising a political party or pressure group? There can be nothing more repugnant to our democracy than to prevent persons affected by a law from meeting to organise themselves as a political party, political campaign, or political movement that promotes reform or repeal of laws that affect them.

The Law Society of Tasmania is the oldest association of lawyers in the state of Tasmania. The Law Society of Tasmania arguably has considerable clout in the public and political arena. It is for this reason that when the Executive, or agents of the Executive, seek to curtail fundamental rights and liberties that the Law Society should adopt a conservative stance advocating against the excesses of the Executive in favour of individual rights and freedom, unless the Executive can demonstrate a clear or overwhelming case for the curtailment of important rights.

Plainly, Tasmania Police has not demonstrated that there is any clear or overwhelming need that justifies the introduction of these laws in any form or iteration. Therefore, the Law Society of Tasmania should treat this latest attempt by Tasmania Police to increase its powers with a high degree of scepticism and caution. It follows that the appropriate response by the Law Society of Tasmania is to oppose these laws because there was no demonstrable case that justified these laws (in any form), and given the intense anti-OMCG propaganda by Tasmania Police in the period after the release of submissions, the Law Society of Tasmania and its members can be satisfied that these laws are not only unjustified, but are part of a wider programme to curtail individual rights and freedoms, in favour of granting police more power. And this must be resisted, lest we give away our rights and freedom for the false semblance of security.