



WESTERN AUSTRALIA POLICE FORCE

Report by way of Justification of the Provisions of
Part 3 of the Criminal Law (Unlawful Consorting
and Prohibited Insignia) Bill 2021.

Final version

Date: 15-Oct-21

Introduction

Under Part 3 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021, there are two key measures which have been proposed. First, a prohibition on the display of insignia of identified organisations in a public place. Second, a prohibition on consorting contrary to a dispersal notice by members of an identified organisation.

A provision which imposes a prohibition on the display of insignia of identified organisations, or a prohibition on consorting contrary to a dispersal notice, may be held invalid if it impermissibly burdens the implied freedom of communication on governmental and political matters, contrary to the Commonwealth Constitution.

Parliament does not generally need to provide evidence to justify the legislation it enacts. However, in *Unions NSW and ors v State of New South Wales* [2019] HCA 1 the High Court noted that this position is different in respect of laws which burden the implied freedom. Because laws which burden the implied freedom of political communication must be justified, there must be evidence of constitutional facts which justify such laws (at [45]).

A law imposing the prohibitions in Part 3 will be justified if it is reasonably appropriate and adapted to advance a legitimate purpose. To be reasonably appropriate and adapted, the law must have a rational connection to the purpose of the law; there must be no other equally effective means available to achieve the purpose which imposes a lesser burden on the implied freedom; and the importance served by the purpose must be balanced against the law's burden on the implied freedom.

Outlaw Motorcycle Gangs

The Australian Institute of Criminology published a paper in March 2021 which provided a comprehensive literature review of the organisational structure, social networks and criminal activities of Outlaw Motorcycle Gangs (**OMCGs**) (Bright & Deegan 2021).

OMCGs encompass characteristics that facilitate violent crime, including their size, paramilitary hierarchical structures, criminally inclined membership, reputations for violence and hostility to outsiders. In Western Australia (**WA**), OMCG members have been increasingly implicated in a variety of high-level criminal enterprises including drug and weapons trafficking and distribution, extortion, fraud and money laundering.

OMCG Conflict and Risk to Community

OMCGs are recognised as having high levels of involvement in methylamphetamine production and distribution, illicit firearms trafficking, tax evasion and money laundering, as well as serious violent crime (Australian Criminal Intelligence Commission 2017, 2015). To support and facilitate this offending, OMCGs are highly territorial and utilise intimidation and violence to exert power and control over criminal syndicates.

Violent conflict between OMCGs is common and often takes place in public, exposing members of the community to extreme risk. Most notably in 1984 an incident now known as the “Milperra Massacre” resulted in the death of seven people and a further 28 wounded when a gunfight erupted between members of the Comanchero OMCG and Bandidos OMCG in regional New South Wales.

Since 1984 there have been multiple OMCG murders, shootings, fire-bombings and violent assaults that have occurred in public places throughout Australia. This includes the recent

Western Australian incident where Rebels OMCG President, Nickolas Martin, was fatally shot from long range while attending an event at the Kwinana Motorplex in 2020.

Prior to his death, in November 2020, the Rebels OMCG President was assaulted by a senior patched member of Hells Angels OMCG at an alfresco dining venue in Scarborough, WA. During the assault, the victim was headbutted to the face and punched 42 times to the head and face. Approximately 12 patrons were forced to move out of the vicinity of the fight as the pair knocked over chairs and tables. The Hells Angels member was charged with Fighting in Public Causing Fear and plead guilty.

Martin's death is not the only OMCG-affiliated murder in WA. In 2016 during an altercation between Coffin Cheaters OMCG (including members of City Crew Affiliate Gang) and Rebels OMCG, firearms were drawn and several shots exchanged. This resulted in multiple injuries, including three people being shot and a fatal gunshot wound to the chest of a City Crew member. A member of the Rebels OMCG was charged with one count of murder and two counts of attempted murder. No convictions were recorded as the charges were later discontinued, which is not uncommon with assaults involving OMCG members.

OMCG Violence and Criminal Behaviour in Western Australia

The following table outlines recent significant criminal events involving OMCGs in Western Australia. Some of these incidents are currently before the courts or subject to active investigation (as at August 2021) and the alleged OMCG involvement is based on WA Police intelligence holdings.

Date	Incident
26 August 2021	Grievous Bodily Harm Violent assault allegedly committed by a member of the Mongols OMCG in the carpark of a Geraldton licensed premises. Victim was allegedly stabbed seven times in the arms and torso whilst trying to defend himself.
23 June 2021	Robbery / Shooting Incident Violent home invasion allegedly committed by four offenders linked to the Comanchero OMCG. Also alleged that victim seriously assaulted and a shot fired inside the premises.
22 June 2021	Armed Robbery / Arson Tattooist and customer at Ellenbrook Tattoo business allegedly robbed at gunpoint. Business and offenders allegedly linked to the Rebels OMCG.
17 June 2021	Arson Highway 61 OMCG clubhouse in Wellard allegedly destroyed by a deliberately lit fire.
17 June 2021	Kidnapping / Serious Assault Rebels OMCG members and associates allegedly abducted a female over a perceived debt. Also alleged that victim seriously assaulted, including having her hair cut off.
06 June 2021	Serious Assault and Fighting in Public Members of the Mongols OMCG allegedly involved in serious assault and brawl at a service station in Newman.
18 May 2021	Serious Assault Former Rebels OMCG member allegedly seriously assaulted in a common area at Casuarina Prison by an associate of the Rebels OMCG.
13 May 2021	Aggravated Burglary / Threats / Extortion

Date	Incident
	Several members of the Rebels OMCG allegedly forced entry to a house and threatened the occupants over a perceived debt and demanded money in return.
6 May 2021	Aggravated Burglary / Serious Assault / Threats to Kill 1 x Lone Wolf Member and 1 x associate allegedly forced entry to a house and assaulted the occupants.
29 April 2021	Shooting Incident Two members of the Comanchero OMCG allegedly fired several shots into a house in Bennett Springs.
11 March 2021	Shooting Incident Several members of the Rock Machine OMCG allegedly fired shots into the premises of a Mongols OMCG member in Port Kennedy.
2 March 2021	Shooting Incident Offenders allegedly fired multiple shots into the garage and vehicle of a Hells Angels OMCG member narrowly missing his girlfriend and her child.
12 December 2020	Murder Rebels OMCG President fatally shot at the Kwinana Motorplex during a motorsport event attended by members of the public. The bullet exited the victim's body, struck another male person and caused a ricochet that injured a child.
5 November 2020	Cash Seizure 2 x Trucks stopped 1 x truck stopped in Coolgardie, locating \$13.2 million in cash allegedly concealed in compartments in trailer being driven by one member of the Lone Wolf OMCG. 1 x truck stopped in Meckering, locating \$2.94 million in cash concealed in compartments in trailer being driven by one member of Lone Wolf OMCG
24 November 2020	Fighting in Public Rebels OMCG President allegedly attacked and assaulted by a Hells Angels OMCG member while attending a café in Scarborough.
11 September 2020	Deprivation of Liberty / Threats to Kill Mongols OMCG member allegedly lured his ex-partner to a service station in Bertram where he allegedly assaulted her, and held a gun to her before firing the weapon in her direction. Inquiries over matter led police to execute a search warrant in Shoalwater, locating 4 x rifles, 1 x shotgun, 2 x silencer. Mongols member charged
26 August 2020	Serious Assault and Robbery A member of Gypsy Joker OMCG assaulted an adult male with learning difficulties for wearing a "Sons of Anarchy" jacket. The offender punched and kicked the victim before stealing his jacket, stating "I earned my patch, you didn't"
27 July 2020	Arson Offenders allegedly set fire to a house and vehicle in Brigadoon linked to the Mongols OMCG.
25 June 2020	Firearms Incident Former Queensland Bandido OMCG member and Western Australia Rebels OMCG associate arrested after a city-wide search after allegedly making threats online to Police Officers

Date	Incident
	while in possession of a sawn-off shotgun. Firearm recovered and found to be real.
21 June 2020	Serious Assault Lone Wolf OMCG nominee (former patched Coffin Cheater member) allegedly attacked and struck with an axe in front of members of the public at the Fraser Suites, Perth.
08 June 2020	Attempted Murder Comanchero OMCG member allegedly shot his partner in the back four times before shooting himself in the head.

OMCG Prosecutions and Imprisonment in Western Australia

WA Police currently records 431 verified OMCG members, however due to recent membership movements within gangs, this number is not truly indicative of current gang membership in WA. When the emerging gangs such as the Mongrel Mob and Black Power are included in the numbers, it is likely that gang membership in WA exceeds 700.

During the 2020/2021 financial year, the WA Police Gang Crime Squad charged 355 persons with a total of 1,045 offences. Of the persons charged, 132 were verified OMCG members and 161 were identified as close associates of OMCGs. Since December 2020 to August 2021 Gang Crime Squad has executed 286 Search Warrants and charged 271 persons for 798 offences. As a result of this work, 92 firearms have been seized from OMCG members and associates.

In addition to prosecutions, the Gang Crime Squad seized \$15.4 million dollars in cash, 28 kilograms of methylamphetamine, five kilograms of cocaine and three kilograms of MDMA as part of ongoing operations relating to OMCG members. This included the seizure of \$13.2 million which, to date, is the largest single cash seizure by an Australian law enforcement agency.

A significant number of the 431 verified OMCG members in WA are incarcerated as either sentenced prisoners or currently held on remand. As this number varies on a daily basis, the following snapshot represents the details of verified OMCG members incarcerated on 21 June, 2021.

OMCG	Status	Offence(s)/Alleged offence(s)
Coffin Cheaters	Remand	Robbery
Comanchero	Sentenced	Kidnapping / Drugs
Comanchero	Sentenced	Drugs
Comanchero	Sentenced	Robbery
Comanchero	Sentenced	Drugs / Firearms
Comanchero	Sentenced	Assault / Firearms
Comanchero	Sentenced	Assault / Firearms
Comanchero	Sentenced	Traffic offences.
Comanchero	Sentenced	Steal Motor Vehicle
Comanchero	Remand	Drugs
Comanchero	Remand	Drugs
Comanchero	Remand	Drugs
Comanchero	Remand	Burglary / Assault
Comanchero	Remand	With intent to harm.
Hells Angels	Remand	Drugs
Lone Wolf	Sentenced	Drugs / Firearms
Lone Wolf	Sentenced	Drugs
Lone Wolf	Remand	Drugs

OMCG	Status	Offence(s)/Alleged offence(s)
Lone Wolf	Remand	Money laundering
Mongols	Sentenced	Drugs
Mongols	Sentenced	Drugs
Mongols	Sentenced	Assault
Mongols	Sentenced	Drugs
Mongols	Sentenced	Drugs / Firearms / Assault
Mongols	Sentenced	Assault / Burglary / Robbery
Mongols	Sentenced	Burglary
Mongols	Sentenced	Arson / Assault
Mongols	Sentenced	Robbery / Burglary
Mongols	Remand	Kidnapping / Assault
Mongols	Remand	Drugs / Sexual Assault
Mongols	Remand	Drugs
Mongols	Remand	Assault / Sexual Assault
Nomads	Sentenced	Robbery
Nomads	Sentenced	Drugs / Firearms
Nomads	Sentenced	PWISS (cannabis).
Nomads	Sentenced	Firearms
Nomads	Remand	Assault / Threats
Nomads	Remand	Drugs
Nomads	Remand	Sexual Assault / Firearms
Nomads	Remand	Robbery / Firearms / Assault
Nomads	Remand	Sexual Assault / Strangulation
Rebels	Sentenced	Threats / Drugs
Rebels	Sentenced	Drugs
Rebels	Sentenced	Drugs
Rebels	Sentenced	Robbery / Assault
Rebels	Sentenced	Kidnapping
Rebels	Sentenced	Drugs
Rebels	Sentenced	Assault / Firearms/ Burglary
Rebels	Sentenced	Kidnapping
Rebels	Sentenced	Assault
Rebels	Sentenced	Reckless Driving (pursuit)
Rebels	Sentenced	Murder
Rebels	Sentenced	Assault / Burglary
Rebels	Remand	Threats / Firearms
Rebels	Remand	Burglary / Extortion
Rebels	Remand	Drugs / Firearms
Rock Machine	Sentenced	Assault
Rock Machine	Remand	Drugs / Firearms
Rock Machine	Remand	Assault
Rock Machine	Remand	Firearms
Rock Machine	Remand	Criminal damage
Rock Machine	Remand	Assault / Burglary / Drugs
Rock Machine	Remand	Firearms / Criminal Damage
Rock Machine	Remand	Firearms / Criminal Damage
Rock Machine	Remand	Criminal Damage
Rock Machine	Remand	Robbery / Threats / Burglary
Rock Machine	Remand	Drugs

As demonstrated in the above table, 67 of the 431 verified OMCG members were incarcerated as at 21 June 2021 (36 sentenced, 31 remand). This represents 16% of the total verified

OMCG members. There is also a large number of former OMCG members in prison who have ceased to be members only as a result of their long-term imprisonment.

Identified Organisations

The 46 *Identified Organisations* proposed for inclusion in the Bill fall into four categories:

- OMCGs recognised as having a presence within Western Australia
- OMCGs recognised as having a presence within Australia
- OMCG Affiliate Gangs (also known as ‘feeder clubs’)
- Street Gangs

OMCG in WA and Australia

WA Police Force has proposed that each of the 38 OMCGs listed by the Australian Criminal Intelligence Commission (**ACIC**) OMCG Identification Chart (ACIC 2020) be listed as identified organisations. Each OMCG listed on the Chart has gone through an assessment process to be deemed an OMCG, which is defined as being a motorcycle club whose members use the club, its reputation or its membership for criminal activity.

For a gang to be recognised as an OMCG, each gang is assessed and approved by the National Taskforce Morpheus (Morpheus). Morpheus is a joint initiative of all Australian law enforcement agencies and Commonwealth partners targeting the highest risk outlaw motorcycle gang risks to Australia. This includes all Australian state and territory police, the Australian Federal Police National Anti-Gangs Squad and New Zealand Police. Morpheus was established to support an enhanced national response to the threat posed by OMCGs and to take multiagency action with a focus on cross-border serious criminal activity.

Members of Morpheus can request to have a particular gang considered for inclusion as an OMCG by the taskforce. The gang is then assessed by Morpheus against several indicators, including club identity and ideology and involvement in planning or facilitating criminal activity. If a gang is deemed to meet the indicators, it is added to the Outlaw Motorcycle Gang Identification Chart of OMCGs operating in Australia. The most recent assessment of Outlaw Motorcycle Gangs identified 38 OMCGs operating in Australia, of which 17 currently have members or a presence in WA (ACIC 2020).

Each of the 38 OMCGs has been proposed as an identified organisation. OMCGs in Australia are volatile and dynamic in nature and gangs often move, take over, open or close chapters without warning. OMCGs are also known to travel nationally on “runs” as a display of strength. It is therefore considered appropriate to include all of the Australian OMCGs within the WA legislation to ensure that these gangs can be appropriately managed should they choose to establish a presence in, or travel to, WA

Affiliate Gangs

Six Affiliate Gangs in Western Australia have been proposed as identified organisations. An affiliate gang (also known as a ‘feeder club’ in some instances) is a unique gang with its own hierarchy and insignia which is aligned to and affiliated with a specific OMCG. Affiliate Gangs function as a recruitment source for the OMCGs to grow their membership, and support their activities.

WA Police Force has identified Affiliate Gangs based on contemporary holdings from police systems. Each Affiliate Gang proposed as an identified organisation has been identified as having an established link with an OMCG and a presence in WA and has been assessed in regards to criminality of individual members; organisational criminality; use of insignia; and affiliation with OMCGs.

Street Gangs

Two Street Gangs have been proposed as identified organisations. Street gangs are similar to OMCGs however they may not have a clearly defined link to motorcycle ownership and may not be bound by the same strict hierarchical structure as OMCGs (such as a President, Sergeant-at-Arms, Treasurer etc). Similar to OMCGs, Street gangs wear insignia and use their club, its reputation or membership for criminal activity.

WA Police Force has identified Street Gangs based on contemporary holdings from police systems and ACIC reports. Each Street Gang proposed as an identified organisation has been assessed in regards to criminality of individual members; organisational criminality; use of insignia; and affiliation with OMCGs; and has been identified as using their club, its reputation or membership for criminal activity.

It should be noted that to date, membership to Affiliate and Street Gangs has not been verified to the same extent as OMCGs. However, based on current holdings, there are approximately 300 members across the eight Affiliate/Street gangs being proposed as identified organisations. This brings the total membership of proposed identified organisations in WA to approximately 730. This number would be significantly higher if unverified members were included.

List of Identified Organisations

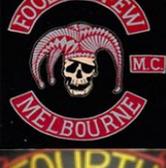
The following table sets out the organisations listed as identified organisations in the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021, the type of organisation and the reason for their inclusion.

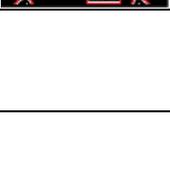
Each of the 46 identified organisations has their own insignia. This can be represented by 'colours' where patches representing the gang's emblem and the member's activities/associations are sewn onto specific clothing items, commonly leather or denim vests. Insignia can also be displayed as 'soft colours' where logos or representative wording is printed on clothing such as t-shirts and jumpers. An example of each gang's insignia is included in the table.

Table 1: List of Identified Organisations

Outlaw Motorcycle Gang (OMCG) – WA				
Identified Organisation	Insignia	Description/Type	Reason for inclusion	
1	Comanchero		OMCG	ACIC OMCG Identification Chart
2	Hells Angels		OMCG	ACIC OMCG Identification Chart
3	Bandidos		OMCG	ACIC OMCG Identification Chart

4	Mongols		OMCG	ACIC OMCG Identification Chart
5	Rebels		OMCG	ACIC OMCG Identification Chart
6	Finks		OMCG	ACIC OMCG Identification Chart
7	Lone Wolf		OMCG	ACIC OMCG Identification Chart
8	Outlaws		OMCG	ACIC OMCG Identification Chart
9	Nomads		OMCG	ACIC OMCG Identification Chart
10	Gypsy Joker		OMCG	ACIC OMCG Identification Chart
11	Gods Garbage		OMCG	ACIC OMCG Identification Chart
12	Club Deroes		OMCG	ACIC OMCG Identification Chart
13	Coffin Cheaters		OMCG	ACIC OMCG Identification Chart

14	Diablos		OMCG	ACIC OMCG Identification Chart
15	Highway 61		OMCG	ACIC OMCG Identification Chart
16	Rock Machine		OMCG	ACIC OMCG Identification Chart
17	Satudarah		OMCG	ACIC OMCG Identification Chart
Outlaw Motorcycle Gang (OMCG) – Australia				
18	Black Uhlans		OMCG	ACIC OMCG Identification Chart
19	Bros		OMCG	ACIC OMCG Identification Chart
20	Descendants		OMCG	ACIC OMCG Identification Chart
21	Devil's Henchmen		OMCG	ACIC OMCG Identification Chart
22	Foolish Few		OMCG	ACIC OMCG Identification Chart
23	Fourth Reich		OMCG	ACIC OMCG Identification Chart

24	Gladiators		OMCG	ACIC OMCG Identification Chart
25	Highwaymen		OMCG	ACIC OMCG Identification Chart
26	Huns		OMCG	ACIC OMCG Identification Chart
27	Immortals		OMCG	ACIC OMCG Identification Chart
28	Iron Horsemen		OMCG	ACIC OMCG Identification Chart
29	Life and Death		OMCG	ACIC OMCG Identification Chart
30	Mobshitters		OMCG	ACIC OMCG Identification Chart
31	Odin's Warriors		OMCG	ACIC OMCG Identification Chart
32	Outcasts		OMCG	ACIC OMCG Identification Chart
33	Phoenix		OMCG	ACIC OMCG Identification Chart
34	Red Devils		OMCG	ACIC OMCG Identification Chart

35	Renegades		OMCG	ACIC OMCG Identification Chart
36	Satan's Riders		OMCG	ACIC OMCG Identification Chart
37	Vigilantes		OMCG	ACIC OMCG Identification Chart
38	Vikings		OMCG	ACIC OMCG Identification Chart
Affiliate Gangs				
39	77 Crew		OMCG Affiliate Gang	WA Police Force holdings
40	7/10 Crew		OMCG Affiliate Gang	WA Police Force holdings
41	Raiders		OMCG Affiliate Gang	WA Police Force holdings
42	Connected Crew		OMCG Affiliate Gang	WA Police Force holdings
43	City Crew		OMCG Affiliate Gang	WA Police Force holdings
44	Southern Independence		Other (Associate gang)	WA Police Force holdings
Street Gangs				

45	Black Power		Street Gang	WA Police Force holdings
46	Mongrel Mob		Street Gang	WA Police Force holdings

Insignia of Identified Organisations

The prohibition on the display of insignia of an identified organisation in a public place

Clause 25 of the Bill provides that a person commits an offence if the person displays insignia of an identified organisation in a public place. The prohibition does not apply to a person who has not reached 18 years of age. The maximum penalty for the offence is imprisonment for 12 months and fine of \$12,000 (in the case of an individual) and a fine of \$60,000 in the case of a body corporate. The following are insignia of an identified organisation: includes the name of the organisation, the logo or patch of the organisation, and another image, symbol, abbreviation, acronym or other form of writing or mark that indicates membership or, of an association with, the organisation. The following are taken to be insignia of every identified organisation: the symbol "1%" or the symbol "1%er".

Insignia utilised by identified organisations, like the gang names themselves, is often intended to be intimidatory and depicts skulls, weapons and satanic/demonic imagery. This, coupled with antisocial behaviour, promotes an atmosphere of intimidation and fear of violence.

The display of insignia of an identified organisation by a person is designed to immediately associate that person with an identified organisation or denote that person as a member.

The public notoriety of identified organisations means that members of the public who see the display of insignia of an identified organisation feel intimidated, threatened or fearful. The intimidation, threat or fear increases in proportion to the number of members gathered together displaying such insignia.

OMCGs, Affiliate Gangs and Street Gangs each have their own brand (insignia) which is often depicted as the official gang logo or emblem. This forms part of each gang's 'colours' which comprise of the logo/emblem as well as the leather or denim jacket on which they are attached and a series of badges/patches. The 'colours' of an OMCG member serve as a notice to the world that the wearer is a member of an outlaw gang and are generally worn during OMCG events.

OMCG 'colours' usually contain a number of badges displaying the gang's insignia and other OMCG specific terms or references. These identifying marks are either specific to one particular gang or common throughout motorcycle gang culture. Particular patches and badges can reveal significant information about the wearer, including:

- the wearer's length of time with the gang;
- significant events in gang history;
- deeds the wearer has completed for the club;
- acts of violence the wearer has performed;
- indicating if the wearer deals in or has contacts for illicit drugs; and
- characteristics of their personality.

These badges are generally located on the front of the vest.

The display of insignia of an identified organisation by members of identified organisations also serves to intimidate other identified organisations.

A prohibition on the display of such insignia will mean that members of the public can go about their lawful business in public places without experiencing such intimidation, threat or fear.

Gang rivalry

There is often rivalry, animosity and open warfare between members of different identified organisations. Violence between gangs is common and it is not unusual for members to wear their colours whilst participating in rivalry violence, using weapons such as firearms, steel bars and knives.

On 3 October 2010 members from the Finks OMCG and the Coffin Cheaters OMCG attended a street drag event at the Motorplex complex, Anketell Road, Kwinana Beach. The Coffin Cheaters were located near the 'Snap on' sponsors tent within the complex. At some stage, the two groups have come together where the Coffin Cheaters outnumbering the Finks have engaged in an altercation using steel bars, knives and a hand gun. During the altercation, a member of the Coffin Cheaters OMCG approached a member of the Finks OMCG with a pistol with a silencer, and shot the Finks OMCG member in the knee. The offender is believed to have dismantled the pistol and silencer and secreted it under the seat of his motorcycle. Other offenders used steel bars and knives to inflict multiple injuries on the victims. Throughout the ordeal, Coffin Cheater members were wearing their colours, whilst participating in the violence and committing the offences.

In a recent example (July 2021) a male victim was assaulted, receiving stab wounds to his arm and a jaw injury sustained from a knuckle duster-type weapon. Reporting on the incident indicates that at least five members of the Bandidos OMCG were assaulting a similar number of Lone Wolf OMCG members over a debt.

The display of insignia of an identified organisation by a member or members of one identified organisation can provoke or incite a breach of the peace or an act of violence by a member or members of another identified organisation.

Impact on the public

Innocent members of the public can be inadvertently caught in the crossfire and their health or safety may be put at risk. For example, on 12 December 2020 a shooting occurred at Perth Motorplex, Kwinana Beach, involving two victims.

Former Rebels Outlaw Motorcycle Gang State President Nickolas Martin was fatally wounded. The projectile that killed Martin, passed through him and grazed a young boy causing minor injuries before lodging in the arm of an unverified Bandidos Outlaw Motorcycle Gang member causing non-life-threatening wounds.

The display of insignia of an identified organisation by a person who is not a member of an identified organisation or otherwise entitled to display such insignia can also provoke violence. For example, on 26 August 2020, a member of the public was working on a vehicle at the front of his premises in Armadale. The victim was wearing a vest depicting the American fictional OMCG "Sons of Anarchy". At this time, a Gypsy Joker OMCG member, drove past and took offence to the vest being worn by the victim. The OMCG member stopped his car on the side of the road, confronted the victim and assaulted him several times by punching him to the face whilst removing the vest. During the incident, the offender stated "I've earned my vest, you haven't" prior to departing the scene with the victim's vest. A member of the Gypsy Joker OMCG was convicted of this offence and received 18 months imprisonment.

Purpose of the prohibitions

A prohibition on the display of insignia of an identified organisation will lessen the likelihood of such breaches of the peace or acts of violence since, in most cases, absent the display of such insignia, a member or members of one identified organisation would not be able to identify a member or members of another identified organisation. More generally, the prohibition on the display or insignia of an identified organisation makes a member of an identified organisation less able to be identified to other persons who may wish to cause them harm.

The display of insignia of identified organisations is a powerful advertisement for identified organisations. A person may wish to become a member of an identified organisation because they see the impact the display of insignia by members of identified organisations has on other members of the public. A prohibition on the display of such insignia will deprive identified organisations of one means of recruiting members and reduce the intimidating impact on the community. Members who are no longer able to display insignia of an identified organisation may leave the identified organisation because the identified organisation is no longer attractive to them. In either case, the outcome is a reduction in membership of the organisation.

It is important to note that the prohibition on the display of insignia of identified organisations is not a blanket prohibition. The defences in the *Criminal Code* are not excluded. There are also other defences contained in clause 26 of the Bill. For example, it is a defence to a charge of an offence under clause 25 to prove that the display was for a genuine artistic, educational or law enforcement purpose, or for the purpose of performing legal practitioner's functions or receiving legal advice, and in the circumstances, reasonable for that purpose. Further, it is a defence to a charge under clause 25 to prove that the accused did not know that the accused was displaying insignia of an identified organisation. It is also a defence to prove that the display of the insignia was authorised by another written law and was being displayed for the purpose of that authorising law.

Unlawful Consorting

The prohibition on consorting contrary to a dispersal notice

Under clause 36 of the Bill, a police officer may issue a dispersal notice in respect of a person (a restricted person) if three criteria are met. First, the person must have reached 18 years of age. Second, the police officer must reasonably suspect that the person is a member of an identified organisation and that the person has consorted, or is consorting, in a public place with another person who has reached 18 years or age and is a member of an identified organisation. Third, a dispersal notice has not already been issued in respect of the person for the suspected consorting.

It is not mandatory for a police officer to issue a dispersal notice upon satisfaction of the criteria in clause 36 and the police officer has a discretion as to whether or not such a notice is issued.

The dispersal notice is not of indefinite duration and, pursuant to clause 39 of the Bill, takes effect when served on the restricted person and remains in effect for a period of 7 days unless the notice is sooner revoked under clause 41(4).

A person commits an offence contrary to clause 42(1) of the Bill if they are served with a dispersal notice and, during the period that the notice is in effect, consorts with a named person in a public place. The maximum penalty for the offence is imprisonment for 12 months and a fine of \$12,000.

'Runs'

'Runs' are gatherings organised and participated in, by OMCGs. These events involve travelling via motorcycle convoy from one location to another with the purpose of advertising the gang's profile and strength which can be used as a recruitment tool. During a run, members wear their 'colours' (insignia) and require a significant amount of police resources to ensure public safety.

National Runs are annual compulsory events. Only participants classified by the club as members, probationary members and prospective or nominees can attend. Some OMCGs will change the date of their run each year dependant on the requirements of senior members and availability of locations.

These events occur over several days and are planned months in advance by the OMCG. Recent National Runs in WA include

- Rebels OMCG National Run, September 2013
- Hells Angels OMCG National Run, 8-12 February 2019
- Mongols OMCG National Run, 1-9 March 2021

OMCG members attend from all over Australia and as a result, numbers for these events can be high, with up to 350-400 OMCG members in attendance.

In addition to National Runs, many OMCGs also hold State Runs in which all chapters of an OMCG within the State are involved and it is compulsory for members to participate.

OMCGs in WA also regularly engage in 'club runs' which are a show of force to indicate strength. Club runs normally occur over a day with an evening party/event but can go over several days on occasion.

Runs in WA are heavily policed by WA Police Force. If not policed, OMCG members cause disturbances including committing various traffic and criminal offences. For example, in March 2019, Coffin Cheaters OMCG held a State run where members congregated at the Newdegate Hotel. No police were present due to no prior knowledge of the OMCG run. Numerous Coffin Cheaters members were present and during the evening several incidents occurred including entering the 'staff only' office area to remove the CCTV control box, assaulting a member of the public, damage to windows and glass wear and general disturbances.

The public notoriety of identified organisations means that members of the public who see members of an identified organisation consorting in a public place feel intimidated, threatened or fearful. The intimidation, threat or fear increases in proportion to the number of members gathered together

Intimidation by groups of gang members

OMCGs use their notoriety to intimidate members of the public. Media reports on the violence of OMCG members likely increases public awareness and fear surrounding OMCG members.

Scarborough, WA, is a particularly evident example where local residents and businesses have been exposed to the violence and intimidation of OMCG members.

Throughout 2020, Hells Angels OMCG began to regularly gather in Scarborough and attend licensed venues alongside members of the public. Hells Angels members became involved in a number of incidents involving threats of violence or intimidation and appeared to be taking a dominant position in the Scarborough area. In September 2020, approximately 12 Hells Angels members were inside a licenced venue when they were approached by uniformed officers from WA Police Force and spoken to regarding a breach of Section 115 of the *Liquor Control Act 1988* as they were wearing colours and insignia of the Hells Angels OMCG. The group were abusive towards police and were immediately ejected. Outside the premises they continued to abuse and threaten officers, in front of members of the public. Further police resources were required before the group could be dispersed.

Hells Angels members have a history for being aggressive, belligerent, and difficult to police, with WA members wearing patches and tattoos bearing the number 673, denoting a specific dislike for the Gang Crime Squad of the WA Police Force. Each number represents a letter of the alphabet, i.e. 6th letter is **F**, 7th letter is **G** and 3rd letter is **C**. FGC is commonly known as the acronym for Fuck Gang Crime.

Purpose of the prohibitions

The issue of a dispersal notice to a member of an identified organisation to prohibit that member from consorting with another member of an identified organisation will mean that members of the public can go about their lawful business in public places without experiencing intimidation, threat or fear.

Members of identified organisations have been known to commit criminal offences with other members, as shown. This has been outlined by several examples in this report.

The issue of dispersal notices to members of identified organisations will reduce the number of offences committed by members of identified organisations in concert since the members cannot get together to commit such offences.

As outlined, there is often rivalry, animosity and open warfare between members of different identified organisations. Members of identified organisations who consort with each other in public places may provoke or incite a breach of the peace or an act of violence by members of another identified organisation. This violence has occurred in a range of public places including residential streets, dining venues, petrol stations, parks and the casino. For example, in September 2018 members of the Rebels OMCG and the Comanchero OMCG participated in a violent feud on a grassed area within the Crown Casino Perth complex. The violence was filmed by a member of the Rebels and involved assaults on several members of the Comanchero, including stomping on their heads.

Innocent members of the public can be inadvertently caught in the crossfire and their health or safety may be put at risk, as occurred with the Perth Motorplex shooting where a child was injured as a result of the shooting of a Rebels OMCG member.

The issue of dispersal notices to members of identified organisations will lessen the likelihood of such breaches of the peace or acts of violence since the members cannot get together in public to plan or engage in such behaviour.

A person may have joined, or wish to join, an identified organisation because they want to be part of a brotherhood. The issue of dispersal notices to members of identified organisations to prevent them from consorting with other members undermines the basis for joining an identified organisation. A person may decide not to join an identified organisation if they are aware that they could be the subject of a dispersal notice. A member of an identified organisation may leave the identified organisation because the identified organisation is no longer attractive to them if they cannot consort with other members. In either case, the outcome is a reduction in membership of the organisation.

It is also important to note that the prohibition on consorting contrary to a prohibition notice is not a blanket prohibition. The defences in the *Criminal Code* are not excluded. Further, there are a number of defences to a charge of consorting contrary to a dispersal notice contained in clause 43 of the Bill. For example, it is a defence to prove that the consorting occurred between persons who are family members and the consorting was reasonable in the circumstances. Further, it is a defence to prove that the consorting occurred in the course of receiving a health service or social welfare service and the consorting was necessary in the circumstances.

References

Australian Criminal Intelligence Commission (ACIC) 2020. Outlaw Motorcycle Gang Identification Chart, September 2020 <https://www.acic.gov.au/about/priority-crime-themes/gangs>

Australian Criminal Intelligence Commission (ACIC) 2017. Organised crime in Australia 2017. Canberra: ACIC. <https://acic.govcms.gov.au/publications/intelligence-products/organised-crime-australia>

Australian Criminal Intelligence Commission (ACIC) 2015. Organised crime in Australia 2015. Canberra: ACIC

Barker T 2014. Outlaw motorcycle gangs as organized crime groups. New York: Springer

Bright D & Deegan S 2021. The organisational structure, social networks and criminal activities of outlaw motorcycle gangs: Literature review. *Trends & issues in crime and criminal justice no. 621*. Canberra: Australian Institute of Criminology.

Haut F 1999. Organized crime on two wheels: Motorcycle gangs. *International Criminal Police Review* 28: 474–475

Lauchs M, Bain A & Bell P 2015. Outlaw motorcycle gangs: A theoretical perspective. London: Palgrave

Scaramella G, Brenzinger M & Miller P 1997. Outlaw motorcycle gangs: Tattoo-laden misfits or sophisticated criminals? *Crime and Justice International* 13(9): 10–13