

Declared criminal: An examination of the South Australian ‘bikie gang’ moral panic

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Abstract

Numerous claims such that Outlaw Motorcycle Clubs (OMCs) were ‘the biggest threat to society’ after terrorism, that they ‘ran’ organised prostitution, drug racketeering, and organised crime, that they controlled ‘75 per cent of Australia's methamphetamine trade’, and that they were expanding into people smuggling and sex slavery, heralded the introduction of the ‘the toughest legislation anywhere in the world’. The severe legislative response to these groups is evidence that they are perceived as a significant problem, however a paucity of publicly available data to support many of the claims led various researchers to label the phenomenon a moral panic, and others to refute it. Thus, this dissertation examines the fitness of the concept of ‘moral panic’ to the problem of OMCs. The term moral panic suggests some kind of hysteria or at least overreaction to a social condition that is perceived as posing a threat to the moral order. Driven by claimsmakers and moral entrepreneurs, and given impetus by the media, moral panics use problems as symbols that play on people’s fears to drive changes to policy or law. In exploring the extensive literature on moral panic, it was found that discussions are often limited by the traditional model’s concepts of monolithic hierarchical power, absolute truths, deliberate political lies, and binary oppositions. However, postmodern theories of power and truth instead conceptualise the episodic panics which target deviants as the result of a plurality of value interests. The research involves interviews with several members of the OMC subculture, a discourse analysis of news media, and numerous government documents obtained through the *Freedom of Information Act* 1991 (SA) to review the publicly available information on the subject against the claimsmaking regarding the threat of OMCs. The research makes an original contribution to moral panic literature (particularly on disproportionality) and to the understanding of the institutional context of the South Australian OMC problem.

Declaration of originality

I certify that this work does not incorporate without acknowledgement any material previously submitted for a degree or diploma in any university, and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

Rhys Wain

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Introduction

Since Hunter S. Thompson's *Hell's Angels* was first published in 1967 the public have seemingly been fascinated by Outlaw Motorcycle Clubs, and for several decades investigations into their nature and activities went little deeper. OMC members do not typically share the same normative values and beliefs with the rest of society and instead subscribe to a very different code of behaviour (van den Eynde & Veno, 2007, p. 96). Their displays of unconventional, antisocial, and often violent behaviour have led law enforcement to consider them as a criminal problem since at least the mid-1960s, although the perceived nature of that problem has changed in more recent years. It is striking that after so many years only a small amount of authoritative data regarding their criminality is publicly available, and because of this some of the earlier out of date material which was based on very weak evidence still seems influential in the way the subculture is more widely perceived.

Separating the myths stemming from or perpetuated by these earlier sources and fact often proves challenging. Further, many of the popular culture investigations have tended to be rather superficial in their analysis of specific events, clubs or individuals, and have often made very broad, generalised statements over-simplifying more complex issues. Foreign literature can also be a source of misunderstanding as books typically focus on extreme circumstances and they are frequently written in a relaxed journalistic style. Numerous authors have discussed OMCs in terms of unitary values and their efforts have promoted a common understanding of the subculture. However, misunderstandings and generalisations are common and often go unchallenged because the closed nature of the subculture means that there are few opportunities for comprehensive analysis, and any conclusions can only be based on the particular resources available to the analyst.

Until very recently official statistics had been scarce and even now only limited data from

particular jurisdictions is available. This dearth of authoritative data has placed the handful of more objective academic research studies at a premium. Arthur Veno (2009) and Daniel Wolf (1991b) have done two of the most thorough academic investigations of OMC culture and lifestyle in Australia and the United States, and Jarrod Gilbert (2013) has similarly investigated the culture and lifestyle as part of his broader study of gangs in New Zealand. Thomas Barker (2015, 2018), and James Quinn (2001; 2003) provide analysis of OMC criminality in the United States, and Mark Lauchs, Andy Bain, Peter Bell (Lauchs, 2019; Lauchs et al., 2015; Lauchs & Staines, 2019) and Terry Goldsworthy (2013, 2014a, 2014b, 2015, 2016) have provided very useful analysis of the situation in Queensland. The Queensland (Department of Justice and Attorney-General, 2016b) and ACT (Goldsworthy & Brotto, 2019) Governments' reports on their specific legislation are also informative, as are recent studies carried out by researchers at the Australian Institute of Criminology with privileged access to federal crime data (Dowling et al., 2021; Hughes et al., 2020; A. Morgan et al., 2020; I. Voce et al., 2021). However, the nature of the subculture and governments' responses to it are still contentious. Veno and van den Eynde (Veno & van den Eynde, 2007, 2008) argued that the South Australian 'anti-bikie' laws were the result of a moral panic, but Vakalis (2013) later concluded that the phenomenon did not meet Cohen's (2002) basic criteria. Barker's (2015) analysis of international OMC related crime led him to conclude that many of the more extreme clubs such as those proscribed under the South Australian legislation are criminal organisations as did Morgan et al.'s (2020) examination of Australian Criminal Intelligence Commission data, however Goldsworthy's (2015; Goldsworthy & Brotto, 2019) and Lauchs' (2019; Lauchs & Staines, 2019) analyses of clubs in Queensland and the ACT largely contradicted these assessments. Thus, questions remain over the exact nature of today's OMC subculture and the activities of its members in a local context, and more empirical research is warranted considering the severity of the government's response

to the threat they are perceived as posing.

The exceptional legislation Australian governments are continuing to pass as part of their 'war on bikies' is evidence that these clubs are still perceived as a significant threat to society, so it is fair to say that OMCs have only just begun to receive the amount of academic attention their social significance justifies. While the various studies mentioned provide an excellent starting point, given the lack of local data, various journalistic and scientific sources from further afield also need to be examined. Data and analysis from the United States, Canada and Europe is extremely useful regarding certain aspects of the subculture, although these sources must be examined critically as it is questionable whether cross cultural applications are necessarily constructive or if they are more culturally specific. Given that the transnational OMC phenomenon has been led by American based clubs, the examination of foreign material should prove no more challenging than the use of narrative accounts. Combining the material from other jurisdictions helps to build a strong foundation, but there is still a substantial knowledge gap regarding the specific situation in South Australia.

While the crime and violence often associated with the OMC subculture is completely unacceptable, and the South Australian legislative approach of increasing police powers might help incarcerate its members, it does so without proper judicial scrutiny and without addressing the underlying issues. Dispensing with the need to establish criminality, the South Australian laws proscribe a list of clubs as criminal organisations and allows for both their members and anyone who associates with them to be sanctioned, essentially placing them in a 'reduced rights zone' (Janus, 2006, pp. 5-6). The laws extend the principles which were established in response to terrorism into criminal law, and override basic common law principles, presumptions and protections in a way that is susceptible to abuse. Although often

referred to as ‘anti-bikie’ laws, the legislation is not actually limited to OMCs in any way and any clearly delineated club or organisation could be added to the government’s list in the future. Yet despite the breadth of current laws, the need for a name and distinct structure also makes them incapable of addressing the majority of criminal organisations. The potential long-term consequences of laws that disregard traditional legal principles and infringe upon civil liberties in order to combat the publicly unknown number and severity of crimes that members of OMCs commit, underlines the urgent need for further research.

When the first version/s of the current ‘anti-bikie’ laws were introduced many commentators predicted that they would achieve little and come at a huge cost in terms of civil liberties, however there is little information on how the laws have been used or their effectiveness (Ananian-Welsh & Williams, 2014; Ayling, 2011b; Cash, 2012; A. Lynch, 2009; Nicola McGarrity, 2012; Nixon, 2008; Schloenhardt, 2008a; Veno & van den Eynde, 2008). The lack of concrete data means that we cannot objectively determine the size of the problem, and equally that politicians cannot justify their legislative solution, which raises questions over their proportionality. Taking into consideration that other policing methods and increased or more targeted police resources have been used to effectively combat organised crime in the past, this study will further query whether these laws are a necessary and reasonable response to the threat posed by OMCs. The moral panic concept will be used as a way of interpreting the way in which claims and rhetoric have replaced evidence, but its use is not intended to minimise or negate the dangers OMCs pose to the community. While one of the key tenets of moral panic theory is to establish whether the measures are disproportionate to the threat, given the dearth of data this is extremely challenging and will be approached by examining the discourse for signs of inflation in the claims used to justify the laws. This research suggests that although OMCs should be taken seriously as a criminal problem, considering

the levels of inflation found (presented in chapters one and four), politicians have seized upon their readily identifiable image as a ‘folk devil’ to push forward an intrusive criminalisation agenda, and in doing so have established a foundation for various aspects of the laws to expand into unrelated areas. By providing information and analysis to bolster the existing literature and offering insight into the way lawmakers have conceptualised and responded to uncertainty, it is hoped that this research will provide a useful reference to assist in the formulation of evidence-based serious and organised crime legislation in the future.

Aims and methods

Members often join OMCs because they share interests such as riding, drinking, and partying. However, once they have joined, membership typically instils an organisational identity which affects their individual personalities, reflecting that of the group. A tribal mentality manifests through the cohesion and solidarity of brotherhood, wearing of colours, allegiance to Harley-Davidson, territoriality, and displays of extreme machismo. This ‘hypermasculinity’ tends to play a significant part in many of the crimes the subculture’s members are convicted of. From a sociological standpoint there are two distinct forms of violence, expressive and instrumental. While OMC members are involved in both kinds, expressive violence stems from aggression and a desire to cause harm, whereas instrumental violence is more rational and driven by a desire for material gain or elevated status. Violence is also a central feature of news reporting and because of their overt displays of violence the mass media often pay them significantly more attention than they otherwise would. The discourse analysis in chapter four suggests that there is a significant amount of inflation between the number of crimes OMC members commit and the number times they are discussed in news reports in relation to that type of crime. As OMCs thrive on the notoriety from their violent behaviour both the media and their members can be seen as inclined to

amplify any claims of violence. The combined amplification thereby creates a situation where the public perceive OMC members to be responsible for significantly more crime than they actually are. This further complicates any attempts at moral panic analysis as a group who intentionally and actively marginalises itself from society cannot necessarily be examined in the same straightforward manner as other groups who reject such marginalisation.

Veno (and others (Shand, 2013; Shepherd, 2013; Veno & Gannon, 2009; Veno & van den Eynde, 2007, 2008)) argued that the Rann Government's introduction of the *Serious and Organised Crime (Control) Act 2008* was the result of a moral panic, however Lauchs et al. (2015, pp. 99-101) suggested that while Australian legislative responses to OMCs are hard to justify, it could not be proved whether the responses constituted a moral panic, and Vakalis (2013) argued that while OMC members were constructed as folk devils, the South Australian laws were not the result of a moral panic. Thus, established as a point of contention, this research chose to re-examine the issue considering both new evidence and a broader conceptual base.

Moral panics typically reinforce stereotypes and exacerbate perceived differences between already marginalised groups and the rest of society, which leads to the creation of new laws that target them, and often allows governments to both increase social control in ways that would not otherwise be possible and reinforce their own authority. Thus, it is important to examine phenomena and determine whether they meet moral panic criteria so that, if so, steps can be taken to address various issues such as equality, re-examine the continued need for and any negative effects of resulting laws, and prevent the legislative measures from 'creeping' into other areas. It is also important to identify moral panics from an academic standpoint, and how they fit within existing framework, as it invites new perspectives and

reaffirms the relevance of the concept in the social sciences and criminology. In Cohen's (2002) analysis of the mass media's role in the construction of a moral panic he identified several key features: Exaggeration, distortion, misreporting, misleading headlines, multiple reporting of the same incident, and demonology. Goode and Ben-Yehuda (2009, pp. 37-43) further list five elements that constitute a moral panic: public concern, hostility (toward the group in question), consensus, disproportionality, and volatility. Thus, beginning these key features and elements, this thesis set out to answer whether the South Australian 'anti-bikie' laws are the result of a moral panic, examine their impact, and suggest what the logical next step would be as a result of these findings.

When studying social issues, and particularly when attempting to uncover and interpret subjugated knowledges through qualitative research, it is extremely difficult for the researcher to remain neutral and prevent any personal or political sympathies from colouring their analysis (Becker, 1967, p. 239). In studies of deviance there is a hierarchy of credibility, with the dominant view of reality being that of the accepted moral authority (which in this case is generally politicians and the mainstream media) and the marginal view that of the alleged transgressors (members of OMCs). In immersing themselves in an issue sociologists and criminologists are likely to form an opinion of it, and as many of these issues are deeply political, they thus find themselves in broad terms being on one side or the other. If they question the prevailing view, as they often do, they essentially question the established order (Becker, 1967, pp. 240-245). Bias in fields such as deviance is therefore largely inevitable, regardless of the specific methodological or theoretical approach, so making an explicit commitment to a value position while ensuring research meets the accepted scientific standards is the most straightforward way to guarantee that sympathies do not invalidate conclusions (Becker, 1967, p. 246).

After reviewing a wide range of sources on the subject of OMCs and the ‘anti-bikie’ laws, and interviewing several of the subculture’s members, this study found that while some of the liberal defence of OMCs and condemnation of both the ‘anti-bikie’ laws and the police response to it were perhaps somewhat blinkered or uncritical (for instance, arguing that former South Australian Premier ‘Mike Rann hates bikies’ (Veno & Gannon, 2009, p. 217) or accepting one-sided accounts of events (Veno & Gannon, 2009, pp. 217-241; Veno & van den Eynde, 2008)), their perspectives and criticism of the declaration and control order scheme were not necessarily far from those developed by the researcher. Although the situation has changed since the first iteration of specific ‘anti-bikie’ laws, this research suggests much of the original argument and many of those researchers’ conclusions are still valid. Given that most sociologists tend to be politically liberal (Becker, 1967, p. 244), including those criminologists who developed moral panic theory (Hayward & Matthews, 2013; Rock, 2015), and the role Foucault’s theories of power and knowledge have played in critical thought, this may not be surprising, however it must also therefore be acknowledged that this study is steeped in critical theory. In critiquing objective reality, morality, and truth, the merits in forming one’s own opinion and contesting beliefs freely must be recognised. Thus, one of the goals of such a critique can be seen as opening or continuing a dialogue about social change, and more specifically the continued necessity of certain pieces of legislation which mark a significant shift the balance between liberty and security.

Data sources

The moral panic analysis is based on data developed from: (1) a comprehensive search of 23 years of local newspaper articles and an analysis of what they reveal about the public’s perception of the problem; (2) the examination of numerous South Australian Cabinet notes

and other documents obtained through the (*Freedom of Information Act, 1991*); (3) the analysis of all the various pieces of South Australian ‘anti-bikie’ legislation and associated Hansard, several submissions to and hearings of associated Parliamentary Committees, and numerous official government documents and reports; (4) a series of four face-to-face interviews with local members of predominantly 1% OMCs; (5) the examination of a wide range of academic literature from books, journal articles, dissertations, conference papers, internet publications, and personal blogs, covering topics such as legal analysis, criminological theory, historical responses to organised crime, and writing on OMCs and gangs; (6) the critical examination of popular culture depictions of the OMC and its members.

Discourse Analysis

Moral panics are constructed through discourse and can be understood as discursive events, therefore the principal way of deconstructing a moral panic is through discourse analysis (Cricher, 2009). Discourse analysis allows researchers to examine the structures and strategies that underpin the discussion within social, political and cultural contexts, and to understand how it more broadly relates to the policies, systems, and processes of government (van Dijk, 1995, p. 10). It can further reveal the nature of the discursive intervention, i.e., the claims and claimsmakers that deliberately change the discourse, and might require researchers to measure the quantity of news stories that focus on various crimes. The analysis of the 4,235 articles that mentioned ‘bikie’, ‘bikies’ or ‘outlaw motorcycle’ in ‘The Advertiser’ and ‘Sunday Mail’ between 1/1/1998 and 31/12/2020 is presented in chapter four.

Government documents and Hansard

This thesis has drawn upon 11 Australian Crime Commission documents and reports

(Australian Crime Commission, 2003, 2007, 2011a, 2011b, 2013a, 2013b, 2013c, 2015a, 2015b, n.d.-a, n.d.-b), 6 Australian Criminal Intelligence Commission reports (Australian Criminal Intelligence Commission, 2017, 2018, 2019a, 2019b, 2020, 2021), the SA Attorney-General's 2009 'Application for the declaration regarding the Finks M. C.' (Atkinson, 2009b), 37 submissions or statements of evidence given to parliamentary committees and taskforces from various different stakeholders (Attorney-General's portfolio agencies, 2015; Bar Association of Queensland, 2015a, 2015b; Berry & Stewart, 2011; Broadhurst & J, 2009; Crime and Misconduct Commission (Queensland), 2008; Goldsworthy, 2015; Government of South Australia, 2008a, 2008b; Inquiry into Serious and Organised Crime, 2015; *Inquiry into Serious and Organised Crime: Clarification of SAPOL's evidence*, 2015; *Inquiry into Serious and Organised Crime: SAPOL's evidence*, 2015; Kimber, 2015; Law Society of South Australia, 2011; Law Society of South Australia & South Australian Bar Association, 2011; Moss, 2015; Nixon, 2008; NSW Bar Association, 2016; *Reference: Australian Crime Commission annual report 2007-08*, 2009; *Reference: Future impact of serious and organised crime on Australian society*, 2007; *Reference: Legislative arrangements to outlaw serious and organised crime groups*, 2008; Rudd, 2020; Rule Of Law Institute Of Australia, 2015; Saul, 2008; South Australia Police, 2007; Stevens, 2021; Turnbull, 2021; Veno, 2008b; Veno & van den Eynde, 2008), the 2015 report of the Queensland Organised Crime Commission of Inquiry (Byrne, 2015), the 2015 Queensland Review of the Criminal Organisation Act 2009 (A. Wilson, 2015) the 2006 report of the Security Legislation Review Committee (Security Legislation Review Committee, 2006), the 2009 Commonwealth Attorney General's Department Organised Crime Strategic Framework overview (Commonwealth Attorney General's Department, 2009), The NSW Director of Public Prosecutions documents relating to their 'anti-bikie' laws (Cowdery, 2009), the 2018 Department of Home Affairs' National Strategy to Fight Transnational, Serious and

Organised Crime (Department of Home Affairs, 2018), the 2016 Queensland Taskforce on Organised Crime Legislation's report (Department of Justice and Attorney-General, 2016b), the 2019 review of the effectiveness of ACT Policing powers (Goldsworthy & Brotto, 2019), The SA Government's 2007 Strategic Plan (Government of South Australia, 2007), the 2016 NSW Ombudsman's review of the Crimes (Criminal Organisations Control) Act 2012 (McDonald & Gayler, 2016 and 3 other reviews of powers and acts (New South Wales Ombudsman, 2013, 2015a, 2015b), the 2002 Resolutions of the Australasian Police Ministers' Council's Special Meeting on Firearms (Ministerial Council on the Administration of Justice, 2002), the 3 South Australian reviews of the execution of the powers under the SOCCA (Moss, 2009, 2010, 2011), the 2010 NT 2013 Review of the Summary Offences Act 1923 report (Department of the Attorney-General and Justice (NT), 2013), the 2017 WA Ombudsman's report on the Criminal Organisations Control Act 2012 (Ombudsman Western Australia, 2017), the 2007 report on the Inquiry into the future impact of serious and organised crime on Australian society , the 2009 report on the Inquiry into the legislative arrangements to outlaw serious and organised crime groups (Parliamentary Joint Committee on the Australian Crime Commission, 2009), the 2007 Inquiry into the manufacture, importation and use of amphetamines and other synthetic drugs (AOSD) in Australia (Parliamentary Joint Committee on the Australian Crime Commission, 2009), the 2007 Inquiry into the future impact of serious and organised crime on Australian society (Parliamentary Joint Committee on the Australian Crime Commission, 2007a), the Queensland Crime Commission's 1999 Bulletin on Organised Crime in Queensland (Queensland Crime Commission, 1999), the Queensland Crime Commission's 1999 Strategic Assessment of Organised Crime (Queensland Crime Commission & Queensland Police Service, 1999), the 2015 Annual SAPOL Report (South Australia Police, 2015), the 2020 Victorian review of the Criminal Organisations Control Act 2012 (Victoria State Government

Department of Justice and Community Safety, 2020), and 33 records of Hansard. These documents and Hansard are discussed primarily in chapters three and four.

The researcher was able to obtain through the (*Freedom of Information Act 1991 (SA)*) the South Australian Cabinet notes and other documents in relation to; the 2007 Inquiry into the future impact of serious and organised crime on Australian society (Holloway, 2007a), the 2007 Parliamentary Joint Committee on the Australian Crime Commission Inquiry into the Australian Crime Amendment Bill (Atkinson, 2008a), the 2007 Legislative Reform on 'Outlaw' Motorcycle Gangs (Holloway, 2007b, 2007c), the 2008 Inquiry into the Legislative Arrangements to Outlaw Serious and Organised Crime Groups, the 2008 Serious and Organised Crime (Control) Regulations (Atkinson, 2008b, 2008c), and the 2009 Appointment of a Judicial Office to Conduct a Review of the Powers Exercised under the SOCCA (Atkinson, 2009a). However, while the documents obtained through FOI applications did provide certain insights into Rann Government's decision-making process during its introduction of the South Australian 'anti-bikie' laws and SAPOL's perspective of the OMC problem, they were of limited usefulness. Several documents the researcher applied for were not released because they contained SAPOL operational details, some sections of the documents that were obtained were removed or redacted for various reasons such as legal professional privilege or because they disclosed personal affairs, and all of the documents were more than ten years old.

Interviews

While all the related government data that could be obtained is examined in this study, a sole reliance on that limited data could bias findings as it reflects where the attention of those agencies responsible for compiling it had been focussed, and not necessarily the actual levels

of crime. Thus, complementing that data, further data was collected through face-to-face interviews in an effort to give voice to the perspectives and experiences of those people most affected. To further address the issue of exaggeration and inflation in claims about the criminal nature of OMCs today and the extent of their members' involvement in crime, the interviews provided an opportunity for members to relay their views of the more recent evolution of their subculture and the impact they perceive the 'anti-bikie' laws and associated control measures to have had on their way of life. While creating an opportunity to study the subculture, the 'anti-bikie' laws also complicated the sourcing of participants by heightening levels of paranoia amongst members, reducing their visibility, preventing them from meeting in public, and dismantling clubhouses. It is also important to note that anyone who formally identifies themselves as a member of an OMC could find that it has real-world legal consequences in any future prosecutions, especially under the laws in question (C. B. Hopper & Moore, 1990, p. 367; Posnansky, 1988, p. 48; Veno, 2010, p. 15; Wolf, 1991b, pp. 3-29). Initially the researcher canvased magazines, motorcycle shops, motorcycle related events, social motorcycle club gatherings, tattoo parlours, and interest groups, but the effort was largely unsuccessful. The only available option for identifying potential participants was through the network (or snowball) sampling method which subsequently imposed certain limits on the research and accordingly on the findings (Hobbs & Antonopoulos, 2014, pp. 109-110). Subjects for this study were solicited through personal contacts, and those contacts then provided further referrals, so it is necessary to acknowledge that a complete spectrum of OMC members involved in the subculture and affected by these laws may not be represented in the study (Zhang & Chin, 2004, p. ii). During the course of the study a few long-term members expressed misgivings about any kind of formal involvement, as they felt that they had been 'burned' by previous research. This data is presented in chapter six.

Thesis structure

Chapter one explores who and what an ‘outlaw’ is, the subculture’s reciprocal relationship with popular culture, the rise of the Australian ‘bikie’, and the evolution of South Australian OMCs. As an identifiable ‘folk devil’ is a fundamental element of a moral panic, this chapter discusses how as the ‘folk devil’ in numerous episodes of panic, the OMC has continually evolved through a process of deviance amplification and secondary deviance. OMCs have been highly visible on Australian roads since the late 1960’s and a number of prejudices have accumulated over the years resulting in the way they are now more widely perceived. What began as an effort to police the criminal activities of OMC members has since become a whole of government effort to eradicate clubs, and the central premise of the ‘anti-bikie’ laws is that OMCs are violent criminal organisations that monopolise the methamphetamine market and cannot be dealt with by traditional means. Thus, this chapter examines what is known about the scale of the problem and explores the academic literature covering the relationship between the club structure and any organised crime type activities of its members. While the limited data does not provide significant detail regarding the situation in South Australia, it does give a reference point for comparison with some of the claims made about the subculture in the mainstream media. Although this study cannot objectively determine the extent of OMC members’ involvement in organised crime, nor the percentage of the methamphetamine supply they are responsible for, it can determine that the claims made to justify the laws are inflated. The public’s perception of Australian OMCs has also been shaped by a number of high-profile and extremely violent incidents, so the chapter then looks at the meaning of violence within the subculture. The chapter finishes with a discussion about whether it is more accurate to describe the groups within the subculture clubs or gangs.

Chapter two discusses moral panic as both a concept and a model. It explains in more detail that the term implies that a social condition which is perceived as posing a significant threat to moral order has generated hysteria or serious concern. Inspired by claimsmakers and moral entrepreneurs, and driven by the mass media, moral panics use social issues as symbols that prey on society's fears to bring about policy or legislative change (Drislane & Parkinson, 2002). Politicians have often emphasised particular threats in order to rally voters behind their strong crime control policies, and a tough on crime stance is often politically successful because crime is concerning to the community and as such receives considerable media attention (Furedi, 2005; Veno & van den Eynde, 2007, pp. 490-491). Once a feedback loop is established, the perceived threat of the 'folk devil' becomes amplified (Veno & van den Eynde, 2008, p. 3), and when the imagery used in mass media reporting taps into and mobilises society's deep seeded fears and anxieties, a moral panic can develop (S. Hall et al., 1987, p. 165). The chapter examines the key elements and issues identified by prominent moral panic scholars such as Cohen (2002) and Goode and Ben-Yehuda (2009), and further discuss the connected issues of labelling, deviance, criminalisation, crime reporting, quantification, and narrative. It goes on to explore the 'anti-bikie' laws as an example of the paradigm shift that has transformed the way legislators conceptualise nature of control in recent decades. Governments seem to regard the unknowable nature of the future as a problem, and in a society governed by risk and risk management, their solution has often been preemptive action. The original moral panic model was based on concepts of top-down power, universal truths, and deliberate lies. However, Foucault's writing on power and discourse provides another way of conceptualising these issues (Hier, 2002b, p. 52). Foucault suggests that instead of being exercised by individuals or groups, power is spread throughout society and is constantly state of flux. A discussion of subjugated knowledge highlights the

utility of qualitative research, and this chapter finally outlines some of the problems uncovered in relation to this study's use of in-field research.

Chapter three examines drug abuse and what is known about the methamphetamine problem in Australia, and the OMC subculture's links to it. Continuing from chapter one, the chapter explores various data sources such as Australian Crime Commission (ACC) / Australian Criminal Intelligence Commission (ACIC) reports and Parliamentary Inquiry reports to reaffirm that while we do not know the extent of OMC members' involvement in organised crime, nor the percentage of methamphetamine supply they are responsible for, we do know that they do not control or monopolise the market and that the vast majority of serious offences have been committed by a relatively small number of club members. The available information and statistics emphasise how the Australian approach to legislating organised crime through specific 'anti-bikie' laws seems to be, based on its stated aims, largely the result of misattributing the activities of individual members to that of the group, and aligns with way moral panic theory suggests a 'folk devil' is constructed and responded to. The chapter then looks at the ways different Australian jurisdictions have approached their 'anti-bikie' laws, highlighting their similarities and weaknesses. This leads to a discussion about symbolic laws, criminalisation, and the history various Australian states and territories have of borrowing innovative new legislation from each other, regardless of its effectiveness. In the case of laws that appear to be inspired by a moral panic this kind of cross-jurisdictional borrowing is particularly concerning as politics appears to have been prioritised over need and effectiveness which has allowed for the normalisation of what had previously been considered extraordinary measures which have the potential to be needlessly oppressive and cause injustice.

Chapter four narrates the introduction and evolution of the South Australian ‘anti-bikie’ laws and deconstructs events through an analysis of discourse in the mainstream media. Picking up where chapter one left off in explaining how OMCs came to be identified as a problem and how the media subsequently reported that problem, this chapter begins by examining the emergence of the *Serious and Organised Crime Control Act 2007* (SA) and compares the way events unfolded to the way Cohen (2002), Hall et al. (1987), and others explained the moral panic cycle. Numerous claims regarding the size and severity of the problem were made, extreme laws were passed to ‘solve’ the problem, and the legislation was subsequently defeated in the High Court. However, several governments in other states had either copied or been inspired by South Australia’s laws, as discussed in chapter three, and when the South Austrian Government then copied their laws, it would seem the moral panic essentially came full circle through this process of cross-jurisdictional borrowing. The traditional moral panic model stresses a short-term timeframe, and after nearly two decades this episode seems to have had much greater longevity than panics have typically had. As a way of measuring public concern, the discourse analysis shows how the OMC problem is more widely perceived, and how concerns have changed over time. While it does reveal that there is a significant level of inflation in reports of OMC related crime and that overreporting likely distorted the public’s perception of OMC related crime, a broader study would be required to determine how this level of inflation might differ from the reporting on other subjects. The analysis also shows that despite numerous claims about OMCs’ involvement in organised crime and illegal drugs, the public perceive violence and shootings to be a more serious problem. The discourse analysis further links then Premier Rann’s ‘war on bikies’ rhetoric to that of the ‘war on terror’ and notes the presence of Cohen’s (2002) five elements of the mass media’s role in the construction of a moral panic.

Chapter five discusses how the scale or potential threat of crime issues can be a secondary consideration to the various interests of the institutional actors involved, such as the mass media, politicians, police. Stemming from the narrative and discourse analysis in the previous chapter, this chapter explores the how the mass media create the news, how they choose stories, and how they produce them. It then discusses the primary interests of the institutional actors, how the mainstream media are driven by increasing consumers and advertising investment, politicians by votes, power, and maintaining order, and the police by both maintaining order and increasing their resources to do that. Thus, as the mass media has the power to influence its consumers, it is in the best interests of politicians and the police to engage with them in a way that ensures they are able to achieve their goals. A feedback loop thereby exists between the mass media, politicians, police, and public opinion, and when making policy decisions, as the two primary sources driving the mass media's presentation of crime and criminals, public relations interests are sometimes prioritised over other considerations, such as efficacy. In some cases, this can lead to purely symbolic legislation that fails to address the underlying issues (as discussed in chapter two). While the goals of the mass media, politicians, and police all vary and may conflict at times, even within each institution, they all also unite in favour of maintaining order and, in the case of this research, they appear to be largely in favour of the 'anti-bikie' laws.

Stemming from chapter two's discussion of power and subjugated knowledge, in an effort to give voice to those most affected by the 'anti-bikie' laws and further address the issue of inflation in claims regarding the criminal nature of South Australian OMCs, chapter six explains the results of the infield research component of this study. The chapter hears from members of local Adelaide based clubs and chapters about their own experiences of the more recent evolution of the subculture and their perception of the impact of the 'anti-bikie' laws

and associated control measures on their way of life. While the interviews were regrettably limited in scope, in conjunction with the various other sources available the chapter investigates: why the clubs exist and who their members are, the concept of 'brotherhood', their rules and behaviour, club 'colours', their structure and hierarchy, club sizes and the age of their members, how members are employed, and their involvement in crime. It then discusses long-term changes in the subculture, the emergence of 'Nike bikies', and the nature of clubs' extended networks and support clubs. The interviewees stressed that the subculture has retained a largely traditional outlook, and although it subculture will continue to change and evolve in unpredictable ways, they claim that it does not currently resemble what claimsmakers have declared it to be.

Chapter seven starts by examining the meaning and importance of evidence-based policy and discusses some of the issues associated with anti-association laws and the Australian Constitution. It then looks at civil liberties and rights in order to address some of the key concerns that previous chapters have highlighted, such as the importance of preserving the balance between liberty and authority, and how in order to counter the constant expansion of government powers, guarantees that human rights and civil liberties will be observed become more necessary. The chapter finally revisits moral panic theory to see how the research fits within the traditional moral panic framework. Based on Foucault's understanding of power it can be observed that the goals of the various actors in their conflicts over knowledge and truth and how the role of governmental and disciplinary power in defining the other also defines the norm. This leads us to the conclusion that while Cohen's original moral panic model is extremely useful as a starting point, the concept has expanded such that it is no longer sufficient in isolation to determine if a phenomenon meets the moral panic criteria. This perhaps helps to explain the differing conclusions on whether the situation in South

Australia meets the criteria of a moral panic. A number of key academics have advanced the concept, and it is thanks to their continued efforts that this study has been able re-examine the South Australian ‘anti-bikie’ laws and conclude that it is likely a moral panic over ‘bikies’ has led to the creation of largely symbolic preemptive ‘anti-bikie’ laws and that the contentious declaration and control order scheme ultimately does little more than act as a moral boundary.

Discussion

Numerous claims such that OMCs were ‘the biggest threat to society’ after terrorism (Barrett, 2004), that they controlled ‘75 per cent of Australia's methamphetamine trade’ (Robinson, 2007), and that they were expanding into people smuggling and sex slavery (unattributed, 2005), heralded the introduction of the ‘the toughest legislation anywhere in the world’ (Former Premier Mike Rann in *Parliamentary Debates*, 2007, pp. 1707-1708). The extraordinary new laws which had the potential to radically change the balance between security and liberty were justified by claims of extraordinary threat, however the limited publicly available data did not seem to support this. Reviews in Queensland (Department of Justice and Attorney-General, 2016b), NSW (NSW Ombudsman, 2015), and Victoria (Victoria State Government Department of Justice and Community Safety, 2020) have all subsequently suggested that their similar ‘anti-bikie’ laws should be repealed, and as a result of the Queensland review their laws were repealed and the *Human Rights Act 2019* (QLD) was ultimately enacted. A review in the ACT further concluded similar laws were not needed (Goldsworthy & Brotto, 2019). Thus, this thesis sets out to answer whether the South Australian ‘anti-bikie’ laws are the result of a moral panic, examine what their impact has been, and suggest what the logical next step would be as a result of these findings.

Chapter One: The OMC, crime, and violence

This chapter explores who and what an ‘outlaw’ is, the subculture’s reciprocal relationship with popular culture, the rise of the Australian ‘bikie’, and the evolution of South Australian OMCs. It looks at the of the evolution of the subculture, what is known about its members’ involvement in crime and to what if any extent the criminal organisation label can be justified. The chapter then examines the role of violence within the subculture, and if that violence justifies the use of the term gang. An identifiable ‘folk devil’ is a fundamental element of any moral panic (as will be discussed further in chapter two), and this chapter examines what it is about the OMC subculture that has led to it being identified as a ‘folk devil’ in numerous episodes of moral panic. OMCs have been apparent in Australia since the 1960’s and the way they are more widely perceived today is largely the result of the way various prejudices have combined over the years. Examining the history of the subculture is important to this study because it establishes that OMCs have attracted waves of media interest throughout their existence (and thereby that of law enforcement agencies and law makers) and are thus an important entity for the media. The subculture is hypermasculine and extremely violent, but its portrayal is often plagued by generalisations and one of the biggest misconceptions stems from its perceived homogeneity. While it has evolved significantly since its inception, to mainstream society the biggest change has undoubtedly come from its members involvement in the illegal drug trade. OMCs are not responsible for the normalisation of drug culture or the increase in size of the black market (which is essentially supply and demand (Reuter, 2010, p. 33)), however many members have been willing to exploit the money-making opportunities it has generated. What began as a police effort to control OMC members’ criminal activities several decades ago through the establishment of a specialised ‘bikie squad’, has now become a whole of government effort to eradicate them.

The OMC

They are known as ‘outlaws’ in the United States and ‘bikies’ in Australia, but these terms are used simply as a way of differentiating these groups from the larger more general category of motorcycle riders often referred to as bikers. From the outset it should be noted that most of the terms used to describe the subculture are problematic because they lack concise definitions. To whom exactly the term ‘bikie’ refers is somewhat ambiguous, and ‘outlaw’ is only slightly more concrete. Just as any club exists to provide infrastructure and services in support of a core purpose or activity, motorcycle clubs ostensibly exist to provide camaraderie based around the shared love of motorcycling, however those known as Outlaw Motorcycle Clubs have evolved into something different and more specific. Law enforcement use the term Outlaw Motorcycle Gang (or Outlaw Motorcycle Criminal Gang (OMCG)) but their use of the terms outlaw and gang have different meanings in the literature than they do in a legal sense, and accurately describe only limited aspects of the groups. For the purposes of this research, it is important to note that the term ‘outlaw’ is not used to imply any kind of law breaking. In the context of the ‘anti-bikie’ laws the separation becomes a little clearer as the laws are not aimed at motorcyclists more generally or members of social motorcycle clubs,¹ they are focussed specifically on the members of OMCs known as ‘1%ers’.² The term ‘1%’ is more definite, although not without its pitfalls, and this will be discussed more thoroughly later in the chapter. The insider/outsider separation can clearly be seen in the terminology used to describe these entities with the insider term club and outsider term gang. The terms are interchangeable, and although gang is more appropriate in some instances it is also inappropriate in others (the subjective nature of the term ‘gang’ is discussed further at the

¹ Although casual Motor Cycle Clubs, relaxed Social or Riding Clubs, and specific Military or Christian Motorcycle Clubs, all come under the ‘outlaw’ label at times (United Social Clubs Queensland, pp. 3-8).

² However, there are several caveats to this, such as that a number of people have been caught up in the laws under the larger umbrella of being ‘associates’, the police have also focussed on a number of OMCs which are not ‘1%’ clubs, and it is not always possible to determine a person’s membership status.

end of the chapter), so this study uses the term club as a more broad and neutral term as those who participate in the subculture do.

There are large number of different OMCs in Australia, some clubs are very small and operate only in certain limited geographic areas, and others are much larger operating nationally or internationally (Australian Crime Commission, 2013c; A. Morgan et al., 2020). OMCs have existed for generations, and in certain places at certain times, their members have committed serious crimes, both in number and severity, against people, property, and public order (e.g. Lauchs, 2019). It has also been proven that members of many clubs have at different times been involved in a variety of serious and organised types of crime (e.g. Lauchs & Staines, 2019). However, given the mass media's interest and the added emphasis police as news sources place on an individual's association to an OMC (as discussed in chapter five), the subculture's long-term involvement in crime has led to an inflated perception of criminality within the community (Austin et al., 2010, p. 946). Law makers now seem to have an immediate knee jerk reaction to any serious OMC related crime, which is likely the result of many of them knowing little about the subculture and not having had any kind of personal interaction with its members.³ The unusual behaviour, violence, and code of silence that surrounds these organisations has allowed a lot of hearsay and speculation to create a myth surrounding what these groups are about and who their members are. The word 'myth' is used throughout this thesis, and it is important to note that it does not mean something entirely false, but rather something which functions to give narrative order to seemingly separate issues and events in a coherent story, in way that is both real and imaginary (Feinstein et al., 1988, p. 27). Exploring the myth that surrounds these groups is important in the discussion of a moral panic, because the actions and reactions of the mass

³ There are notable exceptions to this such as former Federal Opposition Leader Brendan Nelson (Hirst, 2009).

media, politicians, and police to the perceived level of threat they pose has allowed the creation of exceptional legislation which alters the fundamental balance between liberty and security.

Who and what is an ‘outlaw’?

Historically the term 'outlaw' was used to denote someone who had been declared separate from society and outside the sphere of legal protection (or stripped of their civil rights), which was one of the most severe punishments. It was ostensibly a pre-Magna Carta phenomenon that nullified the legal principles of habeas corpus (protection from unlawful and indefinite imprisonment) and due process (that legal rights, rules and traditions are observed in a fair and just manner), or put simply meant that any such person could be persecuted or killed with impunity (Drewery, 2003, p. 25; The National Archives (UK), n.d.). This phenomenon whereby societies often designate particular groups outside the rule of law (the idea that all people are subject to the same laws regardless of their status) will be explored further in subsequent chapters and in discussions of the ‘alien’ or ‘other’, particularly in relation to terrorism and the consequent development of counter-terrorist policies in the twenty-first century. Today the ‘outlaw’/‘other’ can be conceptualised as a person whose existence is perceived as being a threat to society, and who has thus been determined as no longer entitled to the same rights and protections as everyone else (Finnane, 2009, p. 443). Stemming from the ‘Declaration of the Rights of Man and of the Citizen’ and the United Nations ‘Universal Declaration of Human Rights’ (of which Australia is a signatory and played a key role in drafting (Australian Human Rights Commission, n.d.)), the nation-state theoretically provides unalienable human rights. However, laws such as the *SOCCA* reveal that Australian legislators will only recognise those ‘sacred’ rights when it is politically convenient for them to do so. While broad assertions risk oversimplifying the way

in which the state hierarchically organises people, the ideological split between the ‘outlaw’ or ‘other’ and citizen further highlights a fundamental crisis in the principles of liberal democracy and the modern nation-state (Agamben, 2000, p. 20).

The term ‘outlaw motorcycle club’ originated in 1908 as simple way of differentiating clubs that were not associated with the Federation of American Motorcyclists, and the ‘outlaw’ label had nothing to do with criminality (Dulaney, 2006, p. 3; Veno & Gannon, 2009, p. 23). The Federation (which later became the American Motorcycle Association) was based around racing, and its charters set the standards needed to legitimise and standardise race meetings (Dulaney, 2006, p. 51; Wolf, 1991b, pp. 4-5). ‘Outlaw clubs’ were effectively those that refused to be voluntarily regulated and chose to continue self-regulating. Although these kinds of clubs already existed, they flourished after the Second World War as veterans came together, drinking, going away for long weekend rides and throwing parties. After a few years a distinct lifestyle emerged, separate from the more mainstream commuter and racing motorcycle cultures (I. Harris, 1985, p. 15). In hindsight ‘outlaw’ was a poor choice of words, as it has proven to be a powerful and easily romanticised term that has subsequently served to both idealise and demonise the clubs throughout the years (Davis, 2015, p. 28; Dulaney, 2006, pp. 60-61 & 162). Today the term is a self-adopted honorific used by motorcyclists who view themselves as separate from mainstream society, and most seem to take pleasure in exploiting the term’s colloquial meaning, which confuses the uninformed. While the term ‘outlaw motorcycle club’ still has its original meaning and represents the majority of motorcycle clubs worldwide, it has also become synonymous and is used interchangeably with the terms ‘outlaw motorcycle gang’, ‘outlaw motorcycle criminal gang’, ‘one-percent club’ and ‘1%ers’, although the later groups are a distinct subset (Dulaney, 2006, pp. 60-61 & 162).

'Outlaw' clubs attracted very little attention from the media or law enforcement until an article was published in Life Magazine in 1947 about an AMA sanctioned 'Gypsy Tour' in the small Californian town of Hollister (Veno & Winterhalder, 2009, p. 31). While the sort of behaviour commonly associated with these clubs; drinking, partying, fighting and recklessly riding their motorcycles, undoubtedly made for a wild weekend, it would have likely been forgotten if a posed photograph had not spawned a number of heavily sensationalised news stories in the weeks that followed. Nearly three weeks after the event the photo was given a whole page in 'Life' and was accompanied by a story in which the few hundred drunken motorcyclists had been exaggerated as 4,000 OMC members (Osgerby, 2005, pp. 29-30; Reynolds, 2000, pp. 54-55). Both the New York Times and the Los Angeles Times then picked up the story and the incident became a major news headline. That one photo, and the stories that stemmed from it which overused terms like 'terrorism' and 'pandemonium' changed the image of motorcycling and essentially started the myth of the OMC (Reynolds, 2000, pp. 54-55; Veno & Winterhalder, 2009, p. 32; Yates, 1999, p. 12). Similar reports of what came to be known as the 'Riverside riot' in 1948 caused that county's undersheriff to write an open letter condemning the media's 'gross exaggeration and sensationalism' which he said 'was neither honest nor factual' (Riverside County Undersherriff, Roger Abbot as cited in Hayes & Quattlebaum, 2009, pp. 43-45). This kind of panic is a re-occurring theme in the OMC narrative and forms the foundation of this thesis. Cohen (2002, pp. 23-25) described similar events in his examination of the Mods and Rockers phenomenon in 1964, where a few hundred adolescents broke some windows and destroyed a beach hut with a total value in today's market of less than a thousand Australian dollars, triggering an overreaction by police and a huge number of sensationalised news reports. Although moral panics will be discussed in much more detail in the following chapter, they essentially occur when the fear

or reaction to a 'folk devil' is disproportionate to the actual danger (Goode & Ben-Yehuda, 2009, p. 2).

The president of the AMA is attributed with saying that 'only 1 per cent of motorcyclists in the US were involved in the lawlessness identified in the town of Hollister, California, and other such criminal riots' (Lauchs et al., 2015, p. 22). While the AMA has no record of the statement ever being made and there is some contention over the origins of the '1%' tag, in trying to distance themselves and the majority of law-abiding motorcyclists from the events, the term 'outlaw' was emphasised and it subsequently became synonymous with the developing subculture (Drewery, 2003, p. 27; Dulaney, 2006, p. 53; McBee, 2015, p. 23; Reynolds, 2000, p. 118; Veno & Winterhalder, 2009, p. 33). However, a wide variety of motorcycle clubs came under the 'outlaw' label, so the '1%' moniker emerged as a way separating some of the more extreme clubs (United Motorcycle Clubs Queensland, pp. 1-2). While some bikers simply laughed at society's perception, others made every effort to live up to it seeing themselves as separate from mainstream society and behaving accordingly (Brash & Weldon, 1984, p. 9; Johnson, 2011, p. 147). Amused by and taking great pleasure in their outsider status, '1%' became the symbol that some members of the subculture banded behind and it added further impetus to an ongoing process of marginalisation on the fringe of mainstream society (K. Harris, 2012, p. 2). The more hardcore clubs embraced their new label and eventually wore it as a patch on their 'cuts'⁴ proudly showing that they were not among the 99% of law-abiding riders (Dobyns, 2009, p. 21; Lauchs et al., 2015, p. 22). Labelling and deviance amplification theory form part of the basis of moral panic analysis, and in simple terms Matza (2017, p. 157) explained 'To be cast a thief, a prostitute, or more

⁴ 'Cuts' are also known as 'colours' and the term stems from the denim jackets that bikers used cut the sleeves off of in order to make the vests they had the patches showing their club affiliation sewed on to.

generally, a deviant, is to further compound and hasten the process of becoming that very thing.’ Although these concepts will be further explored in the next chapter, we can see that during this period these groups put themselves in a vulnerable position (Barker, 2014, p. 6; 2015, p. 19; I. Harris, 1985, p. 15). The image of the OMC member is synonymous with that of the ‘1%er’ today, but the original ‘outlaws’ were philosophically, culturally and socially incomparable (Nichols, 2010, p. 83). These events took place before many of the now infamous ‘1%’ clubs were formed, so although apocryphal at the time, through a process of deviance amplification and secondary deviance they became somewhat prophetic (Veno & Veno, 1992, p. 63; Vieth, 2005, p. 105).

The reciprocal relationship with popular culture

The sensationalised new stories which depicted the events in Hollister inspired a short story which then became a movie in 1953. 'The Wild One' went on to become a cult success and created a whole genre of B-grade biker movies and books that together firmly established the deviant biker image and helped to export the outlaw subculture around the globe (Barger et al., 2002, p. 220; Barker, 2015, p. 17 & 24; Haslett, 2007, p. 21). Marlon Brando's main character Johnny and the Black Rebels Motorcycle Club were what Hollywood producers imagined outlaw motorcycle gangs should look like, and the image they created became the archetype for motorcyclists throughout the 1950s and 60s (I. Harris, 1986, p. 33; Osgerby, 2005, pp. 34-35). The image reached a wide audience and was readily adopted by rebellious youth, as impressionable young men across the Western world began emulating the dress, attitude and behaviours shown in the movie (Barger et al., 2002, p. 220; I. Harris, 1985, p. 16; Nichols, 2017, p. 16; Wolf, 1991b, p. 7). Although a myriad of clubs appeared and what were initially fictitious codes essentially become real in a self-fulfilling prophecy, these clubs could not be considered OMCs as they lacked many of the subculture's defining features such

as its structure and rules (Veno & Gannon, 2009, p. 25). In many cases those elements would later come from sources such as Hunter S. Thompson's (1967) book 'Hell's Angels: A Strange and Terrible Saga', which was also enormously influential on the development and spread of the subculture.

Despite the broad appeal of Brando's image, it was Lee Marvin as the dishevelled, drunk, and full of swagger antagonist, Chino, that more accurately represented how OMC members looked at the time, and who ultimately had the biggest impact on the direction of the subculture (Barger et al., 2001, p. 26; I. Harris, 1986, p. 33 & 55; Osgerby, 2005, pp. 34-35). Essentially formed four years after the release of *The Wild One* in 1957 (although the name had been in use since 1948 (Barger et al., 2001, p. 30)), many authors have singled out the 'Hells Angels' as the original or prototypical '1%' OMC. Founding members Sonny Barger and Frank Sadilek, then presidents of the Oakland and San Francisco charters, idolised Marvin's character (Barger et al., 2001, p. 26; Osgerby, 2005, p. 33). So, it is perhaps interesting that Marvin allegedly based his performance on a prominent member of the Boozefighters MC whom he had met while preparing for the role, because although they were one of the main clubs involved in the Hollister incident, what the movie failed to reflect about the club's nature was that family, job, and brotherhood were its core values, and that two of its members, including one of its first presidents, were also serving police officers (Hayes & Quattlebaum, 2009, p. 26 & 192; Osgerby, 2005, p. 33; Reynolds, 2000, pp. 72-73). Cavanagh (2007, p. 10) highlights that there is typically a 'kernel of truth' at the heart of a moral panic, and in the case of both real and perceived OMC crime and violence, there is an ongoing pattern of sensationalised media headlines, bombastic political rhetoric, and knee-jerk legislative response (Barker, 2018, p. 6).

The nature of how fictive icons are copied ties in with a discussion of how representations of reality presented in the mainstream media and discourse and reality itself are dialectically entwined (as will be further explored in relation to the media and propaganda in chapter five). Such representations do not reflect reality, as a representation by its very nature is chosen, structured, shaped, and presented based on numerous criteria. Essentially, what something means cannot simply be transmitted from the source to the recipient, and it is the processes involved in producing and communicating a message that gives it meaning (S. Hall, 1973, p. 2; 1982, p. 64). Two related phenomenon that can further help explain the power and significance of the mass media's representation on our understanding of reality are the illusory truth and copycat effects. The phenomenon known as the illusory truth effect dictates that if a statement is repeated often people are more likely to believe it unless they know it to be false. Although misleading or false claims are commonly found in advertisements, political propaganda, and rumour, the gravity of the problem was highlighted by the prevalence of disinformation on social media during the 2016 US Presidential Election which became known as 'fake news' (Fazio et al., 2015, p. 993; Pennycook et al., 2018, pp. 1865-1866). The copycat or contagion effect refers to the phenomenon that when events are depicted in various ways that attract significant attention, similar events are likely to follow in a somewhat predictive cycle (Coleman, 2004, p. 5 & 255; Nacos, 2009, p. 5; Weimann & Winn, 1994, p. 230 & 277). Research into the effects of the mass media's depiction of certain statistically rare crimes and acts of terrorism in news reports and entertainment programs has shown that they can be a catalyst for particularly susceptible individuals to emulate those observed behaviours (Surette, 2002, p. 48). Although the media does not cause anyone to commit crimes, it can provide a model or act as a guide for those individuals predisposed to it (Surette, 2013, pp. 406-407).

Since the initial news reports of the events in Hollister the media has delivered a relatively consistent image of OMCs and their members (Fuglsang, 1997, p. 196). These events may seem somewhat inconsequential today but they both inspired the subculture's members and started a process of association in the public consciousness that OMCs readily engage in criminal behaviour. The mass media has further inflated the problem over the years through episodic overreporting and by continually using sensationalist language, and the violence and crime that was once merely associated with OMCs has for many people today become their defining characteristic (McBee, 2015, pp. 58-59; Veno & Veno, 1992, p. 63). Numerous movies, documentaries, magazines and books have been created since then, and OMCs and their members have typically been depicted as a combination of deviant, rebellious, violent, and criminal. Nearly all of the popular culture representations have involved some variation on the social menace theme, and the template has only had to be changed slightly to incorporate organised crime more recently (Fuglsang, 1997, p. 6; I. Harris, 1985, p. 125; Wolf, 1991b, p. 7). While the subculture has changed beyond all recognition since the 1940s, until quite recently their image and the narrative surrounding it had not (Osgerby, 2005, p. 136). The following chapters will examine the contemporary forces shaping their image and the narrative that has been constructed around them, with a particular focus on the South Australian context since the early 2000s and the factors that contributed to a legislative response, and whether in essence fears over the threat OMC's pose have become a self-fulfilling prophecy in what some authors have suggested amounts to a feedback loop driven by the actions of club members, sensationalised news reports, claimsmaking, and the legislative responses of numerous state actors (G. Morgan et al., 2010, p. 592).

The Australian ‘bikie’

The term ‘biker’ was used initially in the late 1800s to describe to someone who rode a bicycle, and in the early 1900s also began to include those who rode motorcycles (Merriam-Webster, n.d.-a). After the Second World War the term ‘bike’ became synonymous with motorbike and ‘bikie’ joined biker, cyclist and motorcyclist in the common lexicon, although it would appear that the term ‘bikie’ tended to be used more when violent and boisterous behaviour was involved (McBee, 2015, p. 53). The American ‘outlaw’ terminology was not relevant in the Australian context, but the media sought a way of clearly differentiating members of the growing subculture from regular motorcyclists. As such members of OMCs became referred to as ‘bikies’ in Australia, while in the rest of the world they remained simply bikers (Veno & Gannon, 2009, p. 34). Australian OMC members typically find the use of the term ‘bikie’ repugnant and would prefer to be known as bikers or ‘motorcycle enthusiasts’, but the ‘1%er’ is a distinct subset and in no way comparable with a typical mainstream motorcycle enthusiast (Nichols, 2010; Errol Gildea, Hells Angels Charter President as quoted in *Reference: Legislative arrangements to outlaw serious and organised crime groups*, 2008). There is no strict definition of what a ‘bikie’ or an OMC is or is not, and in Australia it would seem that if a club identifies itself as an OMC, wears an OMC style back-patch, is tough enough to defend itself from other OMCs and is thus considered by those clubs to be an OMC, then it is (Drewery, 2003, p. 25). Any efforts to refine the definition are complicated by the fact that some outlaw style clubs are inherently law abiding, such as Christian or Police clubs,⁵ so it becomes important in the context of crime and criminal law to further separate OMCs from ‘1%’ clubs.

⁵ For example, although their outward similarities may exceed their differences, members of Law Enforcement Motorcycle Clubs have sworn an oath to uphold the law (Silverii, 2014, p. 112).

The generic international 'outlaw' image emanated from the United States, but the subculture developed independently in most Western countries. While the big American clubs established themselves in Australia early on, the Australian subculture evolved with numerous different influences. Until the mid-1950s Australian motorcycle clubs were typically conventional social clubs based around riding motorcycles (Veno, 2008b, p. 13). However, by the end of the 1950s cars were becoming much cheaper and more accessible, and the popularity of motorcycles was in decline. Motorcycles did not appeal to young baby-boomers in the same way they had to the previous generation, and both the number of clubs and their membership was falling rapidly (Cunneen et al., 1989, pp. 63-64; I. Harris, 1985, pp. 110-111). The local motorcycle club scene, from which 'outlaw' clubs later developed in the mid to late 1960s, was initially more heavily influenced by the British 'rocker' subculture than the American 'outlaw' (Osgerby, 2005, p. 124; Veno & Gannon, 2009, p. 25). Although quite distinct, the 'rocker' subculture shared many similarities with the 'outlaw' and 'greaser' subcultures, and both the rockers and outlaws drew heavily from the image of the motorcycle club established by 'The Wild One' (Vieth, 2005, p. 105). A number of youth riots occurred during Easter weekend in 1964, the most notable of which was the first clash between the mods and rockers in England. The events were covered extensively in the Australian media, and newspaper reports made direct comparisons between the events and those depicted in 'The Wild One' (Cunneen et al., 1989, p. 73). As alluded to earlier, the massive over-reaction to what was a relatively small series of minor skirmishes was documented by Stanley Cohen in his seminal 1972 study 'Folk Devils and Moral Panics' (which also provides the conceptual basis of this research as discussed further in chapter two). The motorcycle was a central element in the unpredictable, violent, and mobile youth narrative provided by the news media, and the sensationalised reports paradoxically served to attract a whole new generation to it. One of the effects of the moral panic was that it essentially made the

motorcycle 'cool' again and helped to rejuvenate the lifestyle based around them (I. Harris, 1985, pp. 111-113).

Influences on the Australian motorcycle club scene began to change toward the end of the 1960s as the notoriety of the American OMCs grew and many young conscripted Australian men fought alongside their American allies in the Vietnam War (Osgerby, 2005, p. 124; Veno, 2009b). The first American style self-proclaimed 'one percent' OMC in Australia, the Gladiators, were formed in Sydney in 1965 (C. Campbell & Campbell, 2016, p. 12). A Sydney chapter (or charter) of the US based Hells Angels was established in 1968, although its charter was revoked after the death of its President in 1972, and two charters were subsequently formed in in both Sydney and Melbourne in 1975 (unattributed, 1973; Veno & Gannon, 2009, p. 26). The Finks and Gypsy Jokers were formed in Sydney in 1969 (although the Finks are often erroneously said to have been founded in Adelaide (Ferret 1%er & Harry 1%er, 2013, pp. 16-17)), as were the Rebels in Brisbane (Veno, 2008b, p. 13; 2009b). Many of these early Australian clubs simply emulated the image and organisational structure of the American outlaw clubs, although they still did most things entirely their own way. With the exception of the Hells Angels, clubs were typically much smaller, comprising of just one chapter with around eight to twelve members (C. Campbell & Campbell, 2016, p. 14). Given their size, the guiding subcultural principles of honour and respect were suffice, and in most cases a long list of formal rules seemed unnecessary (C. Campbell & Campbell, 2016, pp. 15, 91 & 108). During this period the mainstream Australian media recycled the images of lawlessness and violence associated with American outlaws and British rockers, and essentially re-wove those narratives to fit the Australian context (Vieth, 2005, p. 106). However, the Australian subculture was still in its infancy and despite its image in the early 1970s most Australian OMCs were basically little more than social drinking clubs that

enjoyed riding motorcycles and various other hedonistic pursuits. The clubs were a product of the era, and they did not show the now defining subcultural characteristics of structure, discipline, and commitment (Ferret 1%er & Harry 1%er, 2013, p. 17). In these formative years conflicts between the various clubs, and with police, influenced the direction of the subculture to a much greater extent than the American 'outlaw' image or template.

South Australian OMCs

Adelaide has had a large number of active motorcycle club since the 1920s, and despite the state's club membership traditionally being lower per capita than some of the other states with climates more conducive to riding, some of those clubs played a significant role in the development of the larger Australian OMC scene (Veno, 2008b, p. 14). The Adelaide based motorcycle clubs that embraced the 'outlaw' image started out in the same way as most other OMCs; that is, as a core group of friends who rode motorcycles together, lived in the roughly the same area and shared similar backgrounds (Veno, 2008b, p. 14). Several clubs were formed in the early and mid-1970s that eventually evolved into what could be considered OMCs, and a few local chapters of Eastern state based clubs were also established. There was little evidence that these original 'outlaw' clubs were initially a problem for police, and they were not yet what would be considered '1%' clubs. The clubs wore American style patches and many members rode Harley-Davidsons, but British and Japanese motorcycles were still common and there was not the same level of discipline or commitment. However, they were soon recognised as a criminal problem and after a violent brawl in 1974, public pressure began to mount and SAPOL established a specialist 'Bikie Squad' (Shand, 2013c, pp. 6-7; Veno, 2008b, p. 15). Although such brawls were not particularly uncommon in the subculture at the time, they had received little attention prior, thus it can be seen as a turning point in public and police perception and the response had a significant effect on the outlook of club

members and subsequently the nature of the clubs. Over the years since then their violent behaviour and links to a wide range of criminal activities have regularly made news headlines (Harvy, 2020; Veno & van den Eynde, 2008, p. 4), and the public concern these media reports generate has subsequently been targeted by politicians in an effort to be seen as ‘tough on crime’ numerous times.

‘Patching over’

Throughout the 1980s the American influence on the subculture grew much stronger and many of the smaller clubs began amalgamating and ‘patching over’ to become chapters of the bigger ‘1%’ clubs. As most of the original Adelaide based clubs disappeared, OMCs soon became a much more complex political and policing problem (Veno, 2008b, p. 15). The local clubs did not want American or interstate influence over their local affairs, but their support and protection made (and continues to make) sense given the increasingly violent nature of OMC realpolitik (which will be discussed further in relation to machismo and violence later in the chapter). A similar pattern has been observed in several other countries, and it has been noted that ‘patching over’ is a profound cultural shift (P. Edwards, 2017, p. 146). In many cases club membership went from being simply about riding bikes with mates and other hedonistic pursuits, to demanding a much higher level of commitment, compliance with rigid rules and structure, and an all-encompassing lifestyle (I. Harris, 1985, pp. 116-119). For ‘1%’ clubs, membership means complete devotion to the club, brotherhood, and lifestyle.

However, as many of the smaller local clubs became chapters of bigger national and international clubs, and members’ social networks began to grow, so did their criminal networks. Several commentators have questioned whether crime was a driving force behind the expansion of the American clubs internationally, and while it is difficult to say what drove it, the violence that it caused soon escalated in both frequency and intensity (Lauchs et

al., 2015, p. 11; Veno in Parker, 1999). Essentially the evolutionary processes saw the original motorcycle clubs that started the 'outlaw' myth in the 1940s and 1950s replaced by more aggressive OMCs in the 1960s and 1970s, which then either developed into or patched-over to become chapters of the larger and harder '1%' clubs during the 1980s, before finally evolving into the '1%' OMCs more widely known today in the 1990s and 2000s (which the 'anti-bikie' were created in response to).

The introduction of the South Australian 'anti-bikie' laws

In 1996 then Labor Party Opposition Leader Mike Rann told the South Australian Parliament that OMCs were franchising violence, drug dealing and prostitution 'like any other multinational business' and that their fortified headquarters function as 'drug supermarkets'. He further accused them of 'manufacturing drugs for sale to children' and argued that normal policing methods were completely ineffective and that if something drastic wasn't done immediately then they would become 'untouchable' (*Parliamentary Debates*, 1996, pp. 1785-1787). However, OMCs received little mainstream media attention and were largely perceived as more of a nuisance until July 1999 when a feud between the Rebels and Hell Angels stemming from a minor dispute escalated. The 'turf war' which was also thought to be linked to nightclub security contracts led to the Rebels clubhouse being bombed and three of their members being shot and killed in the CBD (Cox, 2005). Despite further violence in 2000, 'bikies' were still 'welcomed' by the Mayor of Port Augusta who described her interactions with them as 'pleasant', the National Motor Museum Director in Birdwood called them 'the best museum visitors of all', and the Western Australia Police publicly praised them for their good behaviour on a week-long national run (unattributed, 2000a, 2000b, 2000c). The turning point in public perception came in 2001 after an ultimately minor altercation between members of the Gypsy Jokers and SAPOL at a hotel in a tiny seaside

town and an unrelated car bomb explosion that killed a former senior police officer and his friend in Perth (Oakley & Owen-Brown, 2001). SAPOL then ‘cracked down’ on their illegal behavior, and the mass media spotlight became focused on their activities.

With an election looming at the beginning of 2002, Mr. Rann was essentially gifted the perfect target for a British Labour style ‘tough on crime, tough on the causes of crime’ election campaign (as will be discussed further in chapter two). He declared that OMC members were not just ‘meatheads on motorbikes’ but ‘the foot soldiers of organised crime’, reiterating that regular policing ‘was not enough’, and promising that if elected he would introduce the ‘toughest legislation in Australian history’ (Chapman, 2002; unattributed, 2001b). The ‘elimination of bikie gangs’, and more immediately the destruction of their clubhouses which were referred to as ‘bikie bunkers’, became a key pillar in the Labor Party’s election campaign and from then on much of the discourse changed from how best to deal with OMC related crime and violence, to simply how as a group they could be ‘outlawed’ (Veno & van den Eynde, 2008, p. 6). Once something is identified and constructed as a social fact by claimsmakers, it becomes politicised, and if it accepted by the public, it becomes incredibly difficult to later question. As the problem is grossly inflated, the solution only needs to be symbolic, and the claims are unlikely to face serious scrutiny, because there is little political advantage in critically examining what the public has already accepted as a fact (de Lint & Dalton, 2020, pp. 17-18). So, after investing significant resources and staking his reputation on the identification and construction of ‘bikies’ as a key issue, Mr. Rann and the Labor party’s political success became dependent upon their ability to offer a legislative solution.

Once elected Premier Rann reiterated his previous speech, proclaiming that OMCs’ heavily

fortified suburban headquarters were ‘simply manufacturing plants and laboratories for drugs sold throughout suburbs’, that members were ‘not conducting knitting circles inside’ and that he intended to ‘bulldoze’ his way in (Booth, 2003; Treccasi & O’Brien, 2002). A year later Premier Rann announced that the Government was ‘declaring war on bikies’ and the *Statutes Amendment (Anti-Fortification) Act 2003* was duly passed.⁶ The Act was essentially a copy of the Western Australian Government’s *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002* which was subsequently repealed, and it was largely symbolic as police already had the power to search clubhouses whenever they wished. While the Act gave the government the appearance of being tough on crime, it had limited practical application and after more than a decade it was revealed that it was rarely used (McGregor, 2015). When the Police Minister was later asked about its effectiveness, he said that while the laws appeared to have pushed OMCs underground, they had served their purpose by forcing members to change their behaviour (Holloway in James et al., 2007).

Under the protection of parliamentary privilege Premier Rann went on to publicly condemn OMCs, accusing them of numerous murders, rapes, drug deals, city and suburban shootouts and bombings (Craig, 2003; Kelton & Clemow, 2003). He then announced new laws which he described as ‘draconian’ to ensure that members of OMCs and their associates could not be employed in certain legitimate businesses such as in the hotel or security industries, and to confiscate criminal assets (Kelton, 2003). He said that the new ‘crowd controller legislation’ would judge a person’s suitability to hold a licence ‘by the company they keep’ in addition to their criminal history (*Parliamentary Debates*, 2005, pp. 2680-2681). However, the opposition countered the Premier’s claims saying that they were ‘deeply concerned’ he was

⁶ Political leaders use of war analogies and ‘declaring of war’ on various issues, as US President Nixon did when he declared ‘war on drugs’ in 1972, will be discussed further in the section on propaganda in chapter five. (Stuart, 2011; US President Richard Nixon, 1972)

trying to ‘cynically exploit the fears’ by leading people to believe the industry was a ‘lawless enterprise’ for ‘his own political purposes’ (*Parliamentary Debates*, 2005, pp. 1419-1421).

While the introduction of such laws might seem trivial, amendments to the *Gaming Machines Act 1992*, the *Liquor Licensing Act 1997* and the *Security and Investigation Agents Act 1995*, the ‘character clause’ enshrined the use of ‘criminal intelligence’ in making a legal decision (as will be discussed further in the chapters three and four), and the *Criminal Assets Confiscation Act 2005* subsequently radically shifted the onus for establishing an offence from criminal to civil standards of proof.

After the introduction of the ‘anti-bikie’ laws both local and national mainstream media sources started to regularly repeat claims such that OMCs were ‘the biggest threat to society’ after terrorism (Barrett, 2004), that they ‘control 75 per cent of Australia’s methamphetamine trade’ (Robinson, 2007), and that they were ‘expanding into in areas including people smuggling and sex slavery’ (unattributed, 2005). So, it is understandable if the public perceived that OMCs were monopolising organised crime, and particularly the methamphetamine market, despite there being very little evidence to support these claims. The South Australian Office of Crime Statistics and Research does not collect statistical data on OMC related crime and SAPOL release very limited statistics, so in most cases there is little or no authoritative publicly available information available on particular issues in SA (Veno, 2008a).

What is known about the extent of OMC members’ criminality

Australia-wide

Government and law enforcement agencies have often made generalised statements saying that OMCs are criminal organisations heavily involved in organised crime, but they have

rarely supplied any kind of evidence or statistical analysis to support such claims, and instead typically focus on their public displays of violence (Goldsworthy, 2015, p. 9). A slightly obscure exception came in a 2015 joint submission from the Attorney-General's portfolio agencies to the 'Parliamentary Joint Committee on Law Enforcement Inquiry into crystal methamphetamine (ice)' which stated that OMCs account for approximately 45% of the 'high-risk' targets in the methamphetamine market (Attorney-General's portfolio agencies, 2015, p. 5). However, in 2020 Hughes et al. (pp. 35-36) compiled a database of all the publicly available law enforcement data on criminal cases involving high-level drug trafficking and other serious and organised crime between 2011 and 2017 so they could explore the interrelationships of Australian criminal networks. They found that OMC members could only be linked to 4.7% of drug trafficking networks and that they were rarely part of those networks or involved in their criminal activities. This led them to conclude that if members of OMCs were heavily involved in drug trafficking it must be in a much less direct capacity. While any involvement in high-level drug trafficking is concerning, this research provides the clearest publicly available quantitative representation of the level of OMC member involvement in drug trafficking and organised crime in Australia.

Analysing Australian Criminal Intelligence Commission (ACIC) data on the criminal histories of the 5,669 known OMC members in Australia in 2020, Morgan et al. (2020, p. 7) found that 22% of known club members had been arrested for some kind of profit-motivated offence during the last five years, and that most clubs had at least one member who had been involved in an organised crime type offence within the same period. They suggested that as more than a third (around 39%) of clubs had both office bearers and other members involved in organised crime type offences they could potentially be classified as criminal organisations (2020, p. 1). However, this data also revealed that just 5% of known OMC members were

responsible for 42% of all offences, 47% of all violence and intimidation offences, and 85% of all drug supply offences; further, 70% of all criminal enterprise offences were committed by only 4% of known members (A. Morgan et al., 2020, p. 9). When researchers applied a modified version of the Western Australian Crime Harm Index in order estimate the level of harm various offences caused to both victims and the wider community, they found that 5% of members caused about 70% of the harm. This means that it is likely less than a few hundred OMC members nationally (at most) who warrant the kind of attention the whole subculture currently receives, a figure which includes many who are already incarcerated or otherwise in the criminal justice system (A. Morgan et al., 2020, p. 10). Although it must be noted that many of the figures in this study stemmed from arrests rather than convictions, which is problematic because over-policing has led to much higher failed prosecution rates for OMC members (available data shows it be 23% for OMC members compared to 6% for the general population in Queensland and 27% compared to 4% in the ACT (Goldsworthy & Brotto, 2021)), these findings highlight the extremely uneven distribution of crime within the subculture.

Since Wolfgang et al. (1972) initially observed that a small number of ‘chronic’ offenders are often responsible for a large proportion of crime, the analysis of numerous studies has found that in society as a whole around 10% of offenders typically account for about 41% of crime (Martinez et al., 2017, p. 10). The highly concentrated subgroup of serious offenders within the OMC subculture is thus far more unequal than in general society, and far more unequal than in many previous studies that have highlighted the advantages of more targeted police resources (Braga et al., 2019; Spelman & Eck, 1989). Proponents of the ‘anti-bikie’ legislation might argue that OMC members’ higher rate offending than the general population justifies specific laws. However, while these figures highlight that the protection and

networks membership provide is attractive to criminals, it does not prove that clubs are criminal organisations. Given the subculture's acceptance of drug trafficking as a source of income and the one for all and all for one approach to violence (as will be discussed later in this chapter), the variance in criminal involvement between members could indicate that a number of criminally inclined individuals are differentially 'nesting' in OMCs to camouflage or disperse the appearance of their own activities (Ouellet & Hashimi, 2019, pp. 60-61). Thus, if policy aims are taken at face value (as discussed further in chapters three and four) this shows a misattribution of crime, and rather than overly broad and cumbersome criminal organisation laws constructed around OMCs, a more effective approach to combatting organised crime would most likely come from more targeted measures which focus on particular higher-risk individuals, as previously noted by A. Morgan et al. (2020, p. 15).

Queensland, the Australian Capital Territory, and New South Wales

As a result of the severe 'anti-bikie' legislation passed in Queensland in 2013 (which will be discussed in more detail in chapter three) Lauchs and Staines (2019, pp. 78-79) analysed case judgements from the Queensland Supreme Court in conjunction with media reports and the 2012 QPS application to have the Finks MC declared a criminal organisation in 2019, and determined that while OMC members do have a higher than average rate offending, most have not been convicted of any kind of serious crime and most chapters do not have members with serious convictions. Of the claimed 900 Queensland OMC members, they found that 50 had been convicted of serious violence related offences, 29 of serious related drug offences, and there were only 7 who could be categorised as potentially being involved in organised crime (Lauchs & Staines, 2019, pp. 80-81). Further, the club structure did not appear to be used in aid of any organised crime activities, and they found no evidence to suggest that clubs were operating as criminal organisations (Lauchs & Staines, 2019, p. 85). Goldsworthy's

(2015) analysis of QPS data similarly revealed that 60% of Queensland OMC members did not have any criminal convictions, and the highest levels of crime were confined to just two clubs. The crimes committed by 4 of the 26 'declared' clubs made up 70% of all OMC related crime, and most of those crimes did not meet the ACC's definition of organised crime. The research of both Goldsworthy (2015, p. 14) and Lauchs and Staines (2019, p. 80 & 83) suggested that the majority of OMC related serious crime in Queensland stems from the members of just two clubs, the Bandidos and the Finks. These findings are similar to Morgan et al.'s (2020) and further support the misattribution of crime argument.

From the aforementioned QPS application Lauchs (2019, p. 287 & 296) found that the Finks MC did not meet the legal definition of a criminal organisation as set out by the Queensland legislation. 83% of members had no history of serious organised crime type offences, and their convictions were typically for violent and other deviant behaviours consistent with traditional OMC subcultural values. Further, there was no evidence that the club's hierarchy organised or controlled any criminal activities (Lauchs, 2019, p. 297). When Goldsworthy (2015, pp. 14-15) analysed further data obtained from the Queensland Government, he found that between April 2008 and April 2014 OMC members were guilty of just 0.17% of reported crime, of which low level drug possession, public nuisance, breach of bail and obstructing police were particularly prevalent and accounted for nearly a third of all convictions. When he analysed Gold Coast crime data from 2012-2013, he similarly found that while OMC members were responsible for about 0.4% of overall crime, breach of bail, unlicensed or disqualified driving, and low-level possession of dangerous drugs were the most prevalent offences (Goldsworthy, 2013). His analysis of data from the QPS's 2013 crackdown on OMCs found that club members were only charged with around 0.8% of the total number of drug supply offences and 1.3% of production (Goldsworthy, 2014b; Vogler & Ironside, 2013).

Goldsworthy and Brotto's (2019, pp. 75-76) analysis of nineteen years of ACT policing data in conjunction with information provided by the Director of Public Prosecutions (DPP), the Justice and Community Safety Directorate and the courts in 2019 revealed that OMC members were convicted for 0.04% of reported crime. Of the 409 charges against members of OMCs, most were minor such as traffic violations or offences against justice procedure, and only 16.5% were of a serious criminal nature. A NSW Police report from 2012 which analysed ten years of crime data found that OMC members had committed just 0.37% of the total number of offences. It further noted that while only 50.2% of known OMC members in NSW had been charged with an offence, they were over-represented in specific categories of crime such as violent offences. The report concluded that '[t]his percentage on its own does not portray a culture that is a threat to mainstream society or involved in consistent and broadscale crime.' However, these figures are still misleading as they do not discriminate between minor and major offences (the same flaw can be found in most figures coming directly from police), nor the difference between 'associates' and actual members (as will be discussed further in chapters three and four) (Gridneff, 2012).

The Queensland Taskforce on Organised Crime Legislation suggested that OMC members account for about 0.52% of crime (Department of Justice and Attorney-General, 2016b, pp. 2, 4, 12 & 26), however Goldsworthy (Goldsworthy, 2015, pp. 14-15) was critical of this figure suggesting it was inflated to some degree by over-policing and the figure's failure to differentiate members and associates. The taskforce also acknowledged that statistics in line with the ones noted above provide a realistic assessment of the situation, and that OMC members are not responsible for a large percentage of serious crimes (Department of Justice and Attorney-General, 2016b, p. 78). Goldsworthy and Brotto (2019, p. 8) found that while

some OMC members have committed serious and organised crime type of offences, they were not typically within the context of or on behalf of the club. They suggested that claims regarding the size and magnitude of OMC members criminal activities are greatly exaggerated, and that the public's perception of their involvement is unrealistic. Further, their minor contribution to the overall number of violent offences indicates that OMC members do not generally use violence in the way the media often suggest (Goldsworthy & Brotto, 2019, pp. 77-78).

Goldsworthy suggested that OMC members overall involvement in organised crime was insignificant, and rather than representing the greatest organised crime threat they could more accurately be classified as 'low-level players doing a bit of (drug) supplying here or there' (Goldsworthy & Brotto, 2019, p. 49; Goldsworthy & Byrne, 2015; Goldsworthy in Vogler & Ironside, 2013). Goldsworthy & McGillivray (in Elks, 2015) also noted that often when OMC members have been found guilty of trafficking narcotics it was often steroids or other performance and image enhancing substances rather than methamphetamines or cocaine. Goldsworthy (2014a; 2015, pp. 27-28) argued the evidence indicates that while some OMC members are small scale producers or middlemen, they are greatly outnumbered in the market by other individuals and groups who are not associated with OMCs. This highlights fundamental flaws in the way Australian governments' have conceptualised their organised crime legislation (particularly their declared organisation and control order models which will be discussed in chapters three and four) and Goldsworthy & McGillivray posit that the governments' preoccupation with OMCs has prevented them from creating usable laws that can be applied universally, leaving Australia vulnerable to the more concerning threat posed by transnational crime groups (Elks, 2015).

South Australia

Research stemming from privileged access to ACIC data in 2021 suggested that while South Australia only has 4% of the nation's OMC population, they are disproportionately responsible for 19% of the ongoing criminal enterprise offences attributed to the whole subculture (Dowling & Morgan, 2021, p. 7).⁷ While these figures imply that South Australian OMC members are involved in around five times as much organised crime as some of their interstate counterparts, they must also be read critically as they stem from arrests rather than convictions, and they are heavily skewed by both the varying levels of police resources focussed on OMCs in each state and the different policy focuses. This is specifically an issue in relation to South Australia where the Government has waged a 'war on bikies' over the last two decades, and as a result of the attention and resources focussed on them, the likelihood of any crimes being detected is much higher than in some other jurisdictions. Mirroring research interstate regarding the unequal distribution of crime within the subculture, the ACIC was also reported as suspecting that less than 20% of South Australian OMC members were involved in serious and organised crime in 2017 (N. Hunt, 2017a).⁸ These figures lend further support the argument made previously that policymakers are misattributing crime at a group level. One of the few other publicly available documents which shows the scale of OMC criminality in South Australia comes from the government's 2009 application to declare the Finks Motorcycle Club a criminal organisation. Statistics included in the application reveal that only 5% of their members (2 of the 46 known members) had served time in prison for serious offences, and that around 10-15% of members (between 4 and 6) had no criminal histories outside of minor traffic infringements at that time (Atkinson, 2009b, p. 36).

⁷ SA was said to have 146 OMC members in 12 chapters who had been involved in 300 ongoing criminal enterprise offences (Dowling & Morgan, 2021, p. 7).

⁸ It was reported that only 40 of the then 206 known OMC members were suspected of involvement in serious and organised crime (N. Hunt, 2017a).

Morgan et al. (2020, p. 6) found in their analysis of ACIC data that nationally while 52% of known OMC members had been arrested for a violence or intimidation type offence during their lifetime, only 23% had been arrested for such an offence in the last five years. Based on the number of crimes committed by members before they joined as compared to after, Veno (2009a) previously argued that membership in an OMC actually decreases the probability of someone committing crime, particularly those of a violent nature. He hypothesised that this is because the internal structure and discipline present in most genuine clubs can help moderate the violent tendencies of some members, as they generally have very little respect for society's rules or government authority but absolute respect for their club's rules and the authority of their peers (as will be discussed further in chapter six).

OMCs as criminal organisations

The Fitzgerald Inquiry (1989, p. 161) noted that the term 'organised crime' is often used but seldom defined, and that finding a generally acceptable definition is an ongoing source of confusion and debate for researchers and policy makers alike. One of the key difficulties in understanding what organised crime is, emanates not just the term's vague definition but also from its inconsistent usage (Hobbs, 1995, p. 441; Klaus von Lampe, 2016, p. 2). The term is typically used as if it was a distinct construct, however it represents a very obscure phenomenon, that is constantly changing and sometimes contradictory. As an illustration of the ambiguity, von Lampe (n.d.) collected more than two hundred definitions of organised crime, which includes seven just from Australia. While it is questionable whether strict legal definitions are particularly useful (Hobbs, 1997, p. 801), a fundamental distinction in the way those who define the term have approached it stems from whether they conceptualise it as either sophisticated crime that is organised in its methodology, or by crime that is committed by members of a criminal organisation (Brown & Smith, 2018, p. 2).

Crime and the club structure

OMCs are often discussed by journalists, politicians, and police in stereotypical terms of being organised crime groups, and the government has declared the ‘1%’ clubs to be criminal organisations. However, most of the available evidence suggests that while some members have been involved in criminal activities, such as drug trafficking, and use the various contacts and protections that membership provides to further those activities, the club itself is not a criminal organisation. Most of the crimes classified as organised require a complex network or structure, which incorporates a division of labour, but it is a mistake to assume the club structure or hierarchy has this function. Morselli (2009a, p. 123 & 145) analysed the police data which was used bring an end to the Canadian biker war between the Hells Angels and Rock Machine (Bandidos) in 2001. While OMCs have the kind of obvious hierarchical structures and explicit rules which might make drawing such conclusions tempting, he found no evidence suggesting that the ‘formal organisational structure is transferable to a criminal market of any scope’ and suggested that when participating in criminal markets ‘flexibility offers a better fit than the rigid confines of a formal organization’ (Morselli, 2009b). His analysis showed that the underlying criminal network did not behave like, and was not limited by the club hierarchy (Morselli, 2009a, pp. 157-158). He surmised that:

...that the top brokers in the street gang and Hells Angels case studies were not members of any gang or organization—they were independent entrepreneurs who co-participated with members from such fixed groups.

[and that]

The most important point that must be retained after all this is that we have to stop framing these criminal activities as formal organizational boundaries. (Morselli, 2009b, p. 160)

SAPOL is of the position that the various South Australian chapters of OMCs are operated as criminal franchises of larger criminal organisations. It has stated that OMC members and their associates play a significant role in various criminal networks and the illegal drug trade Australia wide, and that 'being a member of an outlaw motor cycle gang is no longer only about motor bikes, it is about generating power and money, and lots of it' (Bray, 2010, p. 19). While the literature on OMCs, gangs and machismo suggest that the more abstract goals of power and status are in many cases a key motivation, clubs do not exist to make a profit, and profit-making is not normally the reason why members join or stay involved (as discussed further in chapter six). When examining the some of the crimes individual OMC members have been convicted of, claims that hierarchically controlled 'franchises' allow clubs to dominate various illicit markets from manufacture to distribution might sound plausible, however there is little if any publicly available evidence to support them in the Australian context (Lauchs et al., 2015, p. 35; W. Marsden & Sher, 2007, p. 5). The 'franchise' terminology likens clubs to fast food restaurants, suggesting that the local chapters of larger national and international clubs kowtow to management decrees. However, there is significant debate even in law enforcement over whether or not chapters are autonomous, and there is generally very little direct control from the big international clubs over their local chapters (Quinn & Koch, 2003, p. 289).

The lifestyle associated with membership in an OMC is relatively expensive, and the club does not concern itself with what members do in order to cover those costs (Kerr, 2009, p.

11). It is also essential to the club as an organisation that its members can afford to participate, so there is a certain synergy between the profit-making activities of its members and the success of the club. However, while criminal behaviour is routine in the milieu that OMCs inhabit, and there is a well-established pattern of violence and drug-related crime in the subculture, it is not typically of an organised or instrumental nature. The ACC noted that many of the violent incidents the mass media report as serious and organised crime are actually more opportunistic 'street crimes', including alcohol-related crimes or violence targeted at an individual level (Australian Crime Commission, 2015b, p. 32). Conversely, organised crime is extremely rational, planned and usually complex, which means that it is committed by people who have made a rational choice to pursue it as the most effective way of achieving their economic goals (Cornish & Clarke, 1987, p. 933; 2002, p. 41). Thus, to assume that OMCs are criminal organisations ignores the pathology and impulsivity of many of the expressive or lifestyle related crimes OMC members are more commonly known to commit. The available evidence suggests that organised crime activities are generally tolerated by, rather than controlled by the club hierarchy (as discussed further in chapter six), and the idea that clubs are criminal organisations is further complicated by a history of failed organised crime prosecutions.

Internal political division

The club is completely integrated in many aspects of the lives of its members, so the distinction between personal and club business, or entrepreneurial crime and the role the club's structure plays in that, is not always apparent (Quinn & Koch, 2003, pp. 299-300). SAPOL has acknowledged that not all members of OMCs are necessarily involved in organised crime, but it still perceives them to be part of a criminal organisation because of their willingness to commit 'collective violence' for the benefit of the group or their

members, despite any of their own personal opinions or misgivings (Government of South Australia, 2008a, p. 20). Much of the power, strength and success of OMCs comes from their cohesion, so clubs will generally support their members whether they agree with their actions or not, even when it attracts significant attention from police or rival clubs. This cohesion at chapter level, ensures the complicity of other members in many crimes which can easily lead to charges for aiding and abetting or as accessories (Quinn, 2001, pp. 386-387). Thus, a legitimate concern is the way in which clubs provide protection for individuals with a propensity for violence, and that their involvement in crime, and particularly the drug trade, is still considered acceptable way of making money.

Within normal sized chapters (of 10 or more members) there are generally different views regarding crime. Members are likely to be split between moderates who focus more on the lifestyle, and extremists who focus more on the profitable aspects of membership. A gulf often divides those members who see the club as a way to express their freedom from societal obligations and those who are inclined to take advantage of their membership for financial gain (Quinn & Koch, 2003, pp. 291-292). The smaller informal extremist factions are typically responsible for the majority of illegal activities associated with the whole club, and often act without the full knowledge of other members. The officers of most clubs tend to be moderates, but there are a small number of clubs who are led by extremists (Quinn, 2001, p. 395). A former president of Adelaide's Southern chapter of the Mongols noted the difficulty saying:

I had a chapter with two factions in it, where one side didn't get on with the other side so that it was a full-time job trying to keep both sides from not smashing each other's heads in. (Ward in Eccleston & Jain 2020)

However, while moderates and extremists are not necessarily at odds with each other, they do have different priorities. Moderates will generally place subcultural values above all else, limiting club and business growth in order to protect those values; while extremists generally view club and business growth as the best way of preserving those values in the long run. The different ideologies are congruent in that moderates are not anti-entrepreneurial and extremists are not trying to change the subculture's traditional values (Quinn & Forsyth, 2011, p. 217).

The internal political dynamics of any club are in a constant state of flux, so trying to understand any actions or events requires more careful examination than the simple generalisations often repeated by the mass media (Quinn & Koch, 2003, pp. 292-293). When clubs grow too quickly and the core subcultural values become overlooked, the ideological balance can easily begin to favour extremist values which tolerate or encourage greater involvement in organised crime (Quinn, 2001, p. 387). It is also possible for moderates to become more extreme over time, and equally for extremists to become more moderate. However, while clubs where the organisational structure facilitates organised crime are an exception to the rule, it has become the rule of exception in the way the government approaches the subculture. A political and law enforcement presumption of subcultural homogeneity is not only ignorant but also aggravates the situation. In creating laws that attack the whole subculture the government further entrenches the 'us vs. them' mindset and their separation from mainstream society, and increases cohesion between the factions (Lauchs et al., 2015, pp. 47-48).

Analysis and criminological theory

There seems to be a general consensus in much of the literature that crime is endemic among the more hard-core '1%' OMCs, although the degree of criminality within these clubs is still highly contested (Veno & van den Eynde, 2008, p. 2). The level of criminality within any OMC can vary from those clubs where any illegal acts are committed by individual members, are not structured or organised, and are not the concern of other members; those clubs where small subgroups engage in criminal behaviour, some of which may be structured or organised and other members may or may not know about it; and those clubs where all members are engaged in crimes for profit and under the control of the leadership. The first group is an authentic OMC where members subscribe to the deviant lifestyle and any serious organised crime is frowned upon as it brings significant police attention. The second group is a social criminal organisation, where the silence or ignorance of some members toward the activities of others is essentially tacit consent. The third group are pseudo-OMCs, that is, criminal gangs which label themselves OMCs, these small number of groups are at the heart of the problem and demand significant attention (Barker, 2014, pp. 21-22).

Authentic OMCs	Social/Criminal Organisations	Criminal Gangs
<ul style="list-style-type: none"> • Crime is committed at an individual level • Criminal activities are not organised • Any criminal behaviour is ignored by other members 	<ul style="list-style-type: none"> • Crime is committed by members in small sub-groups • Some criminal activity is organised • Other members may or may not know about any criminal behaviour 	<ul style="list-style-type: none"> • Crime is committed by all members • Criminal activities are organised and controlled by the leadership

Members of OMCs typically revel in their outsider ‘outlaw’ status, and most of their needs are met within the club environment. Hirschi’s social-bond or control theory examines the significance between connection, attachment, social involvement and positive beliefs about society. He suggests that social bonds encourage people to conform to accepted standards and refrain from criminal behaviour, and that people with low levels of self-control are much more likely to commit a variety of crimes (Hirschi, 1969; Tumminello et al., 2013, p. 1). Members are known for often exhibiting violent and impulsive behaviour, and they are renowned for their live in the moment attitude (Barger et al., 2005, p. 37; Christie, 2016, p. 161; Mandelkau, 1971, p. 150). Gottfredson and Hirschi’s later theory of crime argues that people with less self-control will not usually consider the long-term consequences of their actions, instead focussing more on immediate gains. They suggest that these individuals typically commit crimes impulsively based on opportunity rather than through careful planning or a specific skillset (Gottfredson & Hirschi, 1990; Nieuwbeerta et al., 2011, p. 5).

Thus, traditional theories of crime indicate that while the typical club member is likely prone to criminal behaviour, they are not ideally suited to the successful commission of ongoing sophisticated organised crime type activities.

Violence

Violence and intimidation are key components in black market transactions that ensure what essentially amounts to contract compliance and debt repayment. Violence is implicit in relations, and while a violent reputation might be extremely useful, its actual use is often much less than one might assume, and it should not be emphasized in such a way that exaggerates its prevalence. There are individuals and networks that utilise violence, or at least the threat of violence, to both maintain their position in the market and discipline internally, but drug markets typically operate according to more common business principles (G Pearson & Hobbs, 2001, pp. 40-42 & 47). Criminological research suggests that in so far as the illegal drug market and organised crime are concerned, the actual use of violence typically has a negative effect. Violence is conceptualised as being detrimental to a criminal's credibility, because someone who uses violence defensively and for protection is also likely to use it offensively. With the very rare exception of those people who have a reputation for fairness and impartiality, violence is generally more likely to impede business transactions and negatively affect relationships (Abadinsky, 2013, p. 231; Gambetta, 2009, p. 35).

Proponents of the criminal organisation concept argue that OMCs' violent reputations form the foundation of their criminal business model, and that continued violence serves to enhance that reputation, providing them with necessary power needed to control markets (Quinn & Koch, 2003, p. 286). SAPOL suggest that OMCs' reputation for violence gives them the ability to intimidate, coerce and control criminal activity, which it conceptualises as

having similar benefits to 'goodwill' in a legitimate business setting (Government of South Australia, 2008a, p. 18). Such arguments typically link much of the violence associated with OMCs to disputes over drug markets, however unsophisticated and violent behaviour, territorial disputes, and a 'war mentality' have always been a large part of the subculture and do not necessarily imply involvement in organised crime (Lauchs et al., 2015, p. 39 & 41). Pearson and Hobbs (2003, p. 346) found that in contrast to the ideas of competition, monopolisation, and turf wars, drug networks showed more of a tendency toward stability, co-operation and trust. They hypothesised that rather than stemming from success and expansion, conflict and violence in the drug market is typically the result of failure, disorganisation, market dysfunction, and instability. Contrary to the image often offered by politicians, police, and the media, violence is undoubtedly 'bad for business.' However, it is also important to note that displays of machismo are evident throughout criminal networks, and any perceived insult or disrespect can lead to violent outbursts which have no economic rationale (G Pearson & Hobbs, 2001, p. 46).

There are two distinct forms of violence, expressive and instrumental (Feshbach, 1964). Expressive violence stems from a lack of self-control, typically occurring as an impulsive and emotional response to some kind of stimuli and is motivated by a desire to cause harm or injury. Whereas instrumental violence is more rational and driven by a desire for material gain or elevated status rather than by aggression (Feshbach, 1964, pp. 270-271; Toch, 2017, p. 131; Youngs, 2004, p. 107). Research into the psychology behind violent behaviour suggests that when most violent offences are examined individually, the violent acts themselves typically appear to have little reason or logic behind them (Toch, 2017, p. 8).

The role of machismo and expressive violence within the subculture

OMCs are unquestionably violent, and clubs have become infamous for their extreme, and often public displays of violence. It is an ever-present characteristic of the subculture, it is central to the lifestyle, and it is implicit in club rules (Dobyns, 2009, p. 311; Dulaney, 2006, p. 85; Veno & Gannon, 2009, p. 145). Men do not join OMCs to be humble or passive, they are not known for being cautious, and much of the violence stems from their tendency to act rather than react (Christie, 2016, p. 204; Kerr, 2009). The high social value its members place on the utility of violence is perhaps the most apparent manifestation of the attitudes and practices they maintain which are based on traditional conceptions of machismo and hypermasculinity. The ideology of machismo is structured around a series of chauvinistic beliefs and the idea that a 'real man' is fearless, callous, and violent, and whenever a macho man perceives that his masculinity is being challenged, he will escalate anger, daring, or callousness until his dominance is re-established (Mosher & Sirkin, 1984; Mosher & Tomkins, 1988, p. 64 & 79; Zaitchik & Mosher, 1993, p. 230). Machismo essentially amounts to the appearance of being powerful, and to this end guns (which OMCs have become infamous for having and using as the discourse analysis in chapter four highlights) are a potent symbol of machismo (Gutmann, 2006, p. 193 & 195). In modern society this puts men who subscribe to the macho ideology and celebrate violence at extremely high risk of crime and criminal careers which will result in lengthy jail sentences (Zaitchik & Mosher, 1993, p. 228).

Studies of Hispanic gangs in East Los Angeles found that machismo typically manifests through an exaggerated sense of honour, hypersensitivity towards any perceived slight, obstinance, sexual promiscuity, callousness and cruelty toward women, overt physical aggression, and a lack of respect for human life. Within the gang subculture machismo also

meant showing courage, not backing down and aggressively responding to any challenges. Thus, in this context machismo means more than just acts of physical aggression, and it is most commonly the result of an inability to respond to challenges while maintaining face, rather than the subculture or various situations demanding it (Erlanger, 1979, p. 238). These observations are reflected in the OMC subculture where reputation and respect are similarly of utmost importance, what constitutes disrespect is not always clear, and any affront can have serious consequences. The intense pride, loyalty, bravado and rivalry inherent in the subculture makes conflict largely inevitable (Quinn, 2001, p. 396). The idea of losing respect or being humiliated in front of their brothers is a significant problem, and many minor conflicts escalate because neither one of the parties involved can deescalate in a way that doesn't involve the appearance of weakness (Hirst, 2009, p. 21).

Individual displays of machismo show are typically amplified in the company of other macho men (Zaitchik & Mosher, 1993, p. 236), and it is an OMC subcultural rule that the whole club will always stand behind a member, whether he is right or wrong. Any member's fight becomes his brothers' fight, and if a member were to fail to respond it would be perceived as a sign of both weakness and cowardice (Giusto, 1997, pp. 131-132; Kerr, 2009, pp. 12-13). Thus, while individual members' violent behaviours are concerning it is the pervasive threat of group violence that is particular subcultural problem (Barker, 2018, p. 50). Further, the approval of violent behaviour within a group setting encourages differential association, and if violence is not seen as inherently negative, then its members do not need to feel any guilt or remorse in employing it (Wolfgang & Ferracuti, 1967, p. 314). As well as brotherhood, loyalty, pride, territory, drugs, animosities, and rivalry, some members also just love to fight in general (Falco & Droban, 2013, p. 83; Matter & Omodt, 2014, p. 60; Winterhalder & De Clercq, 2008; Wolf, 1991b). While violence can easily result in serious injuries or death, the

risk is part of the subculture's appeal for its members (Zito & Layden, 2002, p. 90). The constant threat of violence contributes to the feeling of living on the edge which is central to the subculture, and inter-gang conflict further helps to promote strong group cohesion (J. Gilbert, 2010, p. 190).

Some clubs are more extreme than others, but the potential for spontaneous, unpredictable, and irrational physical violence can make any interaction challenging, and things can also change quickly in any encounter with members whose feelings and actions are amplified by the effects of alcohol and other drugs (Christie, 2017, pp. 32-33). In celebrating their macho ideology, it is common for club members to abuse alcohol and other drugs, particularly stimulants (and based on their long association we might also speculatively add Performance and Image Enhancing Drugs (Australian Crime Commission, 2011b, p. 69; Goldsworthy & McGillivray in Elks, 2015; Ereckson, 2010, p. 52)), and to act violently while under their influence (Zaitchik & Mosher, 1993, p. 235). The viciousness and ferocity shown frequently in altercations has caused several experts to label OMC members as sociopaths, and while some undoubtedly are, the majority are not (Quinn & Forsyth, 2011, pp. 227-228). It is more common for young men from a low socioeconomic background to express masculinity this way, as it requires little skills or education, it validates their ego, and violence is often viewed like a sport within their subcultural groups (Wolfgang & Ferracuti, 1967, pp. 259-261; Zaitchik & Mosher, 1993). Certain parallels can be drawn with football hooliganism in this regard (Hobbs & Robins, 1991; Spaaij, 2008). The level of violence that exists within the subculture means that there is potential for innocent people to be injured or killed and that is one of the reasons why law enforcement takes the threat that OMCs pose so seriously (Barker, 2014, pp. 45-46; Matter & Omodt, 2014, p. 84). However, nearly all of the violence is club on club, so while it may be both concerning and intimidating to the general public,

club members generally pose little threat to those who do not directly challenge them (Veno & Gannon, 2009, pp. 145-146; Yates, 1999, p. 185).

'If it bleeds, it leads' might be something of a cliché, but there is little debate that violence is also a central feature of news reporting (see chapter five) (Carter, 2003, pp. 21-22), and because of their overt displays of violence the media often pay them significantly more attention than they otherwise would. As OMCs thrive on the notoriety from their violent behaviour both the media and OMC members can be seen as inclined to greatly amplify any claims of violence. The combined amplification thus creates a situation where the public perceive OMC members to be responsible for significantly more crime and violence than they actually are. However, despite the level of violence within the subculture often being exaggerated, it is still a serious problem that cannot be ignored (Haslett, 2007, p. 71; Nichols, 2017, p. 14). While this section argues that much of the violence stems from machismo, the subculture, and the milieu they inhabit, it does not suggest that violence is not used by some members instrumentally for a variety of reasons including organised crime.

Gang theory and use of the term 'gang'

Many theories have been developed in an effort to better understand and explain youth and street gangs, and gang theory is hence not a singular theory but plurality of theories.

Sutherland (1947) proposed the theory of differential association whereby individuals learn and develop values, attitudes, behaviours, and motives through social interaction. He theorised that people adopt the favoured behaviours of their peer group, and that criminal behaviour stems from criminal associations. Developed from Durkheim's (2004) concept of Anomie, Merton's (1938) strain theory, Cohen's (1971) status frustration, and Cloward and Ohlin's (1960) theory of deviance, Agnew's (1992) general strain theory spoke of 'stressors'

which influence criminal behaviour. While Goffman (1981), Matza (1969), Becker (1963), Gottfredson and Hirschi (1990), and Wolfgang and Ferracuti's (1967) theories have or will be looked at in more detail as they apply to violence or labelling and deviance, and each of these theories offer significant insight into the OMC, none provide a complete or definitive explanation. Given that each club and chapter's outlook can be so different, trying to apply a single theory of gang culture to the whole subculture or to discuss the nature of its members' criminal involvement can be problematic, and in trying to shoehorn existing theories to fit we must be careful not to distort our understanding of the problem (Lauchs et al., 2015, p. 61 & 104).

A dictionary definition of gang is 'a band of people going about or working together, esp. for some antisocial or criminal purpose' (*The Australian Oxford Paperback Dictionary*, 2007, p. 335), and considering both the violent and criminal activities of some members it is easy to see why many people perceive OMCs to be gangs. However, the issue of whether a group is a gang is obscured by the fact that there is no universally accepted definition of what a gang is or is not, and this lack of conformity has proven to be a continual stumbling block for both researchers and lawmakers alike (Esbensen & Tusinski, 2007, p. 22). One of the main reasons police favour the term is because it makes catchy news headlines (Morri, 2020, p. 250), and as at least some of the violent offences OMC members commit are on behalf of the clubs it is arguably the more appropriate term (Klement, 2019, pp. 22-23). Use of the term 'gang' is problematic in relation to OMCs though because it does not fully encapsulate the nature of the subculture and it is highly political. It may accurately describe various aspects of clubs, but its use has real world consequences in the way they are treated by politicians, police, the mass media and society in general (Barker, 2015, p. 47; Shand in *Reference: Legislative arrangements to outlaw serious and organised crime groups*, 2008, p. 41; Veno & Gannon,

2009, p. 59). The stigma attached to the label is far from trivial given the current laws, and the gang label affects all club members and many of the people who they associate with, despite most never having been directly implicated in any serious crime (Barker, 2015, p. 47). Genuine OMCs are primarily based around riding motorcycles, brotherhood, partying and other debauchery, thus it is not necessarily what they do as much as how they are perceived that makes them gangs (J. Gilbert, 2010, pp. 184-185). Miller noted this vital point of perception in relation to youth gangs:

‘Put in general terms, if youth groups in a particular community appear to present a problem, they are perceived as gangs; if they do not, that community has ‘groups’ but no ‘gangs’.’ (W Miller, 1974, p. 292)

The biggest difference between gangs and organised crime groups is not in the amount of crime they commit, but kinds of crime. Street gangs tend to commit more symbolic acts of violence, while organised crime groups prefer to avoid the attention. Both are violent but entrepreneurial violence is typically much less visible. OMCs often commit both symbolic and entrepreneurial violence, along with lifestyle crimes or deviant behaviours that also attract attention. Their motivations range from purely subcultural to purely economic, and as such in most cases cannot accurately be described as either one or the other (K von Lampe & Blokland, 2020, pp. 546-547). While it is more accurate to describe most OMC members as being violent and unruly rather than as serious criminals, one of the biggest problems with the subculture is (as previously noted) that even the less criminally inclined members will go to great lengths to protect those club mates who do commit serious crimes.

Conclusion

OMCs have been highly visible in Australia since the 1960's and they have typically been very easy to recognise; groups of men on loud Harley-Davidson motorcycles, wearing vests with patches on the back that identify which club they belong to. During this time, they have developed a reputation for extreme violence, general contempt for both the law and law enforcement, and involvement with crime and drugs. While a small minority of the public accept OMC members as somewhat anti-social outsiders, most see them as violent and disruptive criminals. Given that OMCs have shown a propensity for crime and overt violence, and that their hierarchical structure is similar to more traditional concepts of organised crime groups like the Mafia, they have often been labelled by politicians, police, and the media as criminal organisations. Over the last two decades, the authorities have increasingly portrayed them as part of complex transnational criminal networks, interconnected with all kinds of other crime groups, and whose members dominate organised crime (Quinn & Koch, 2003, pp. 294-295). However, there are two distinct views on the criminality of OMCs and the view of many people who have interacted with their members is that they are not particularly capable or willing to move away from the deviant, impulsive, violent and hedonistic outlaw lifestyle, which is at odds with the subtlety and sophistication required for ongoing serious organised crime success. While these views are not necessarily mutually exclusive, the dominant view tends to dismiss or negate most of the impulsive violence and other expressive crimes that club members commit.

The central premise of the 'anti-bikie' laws is that they monopolise the methamphetamine market. Although, in this chapter we have seen that OMCs do not monopolise, dominate, or control the methamphetamine market (Hughes et al., 2020, pp. 35-36), that the vast majority of crimes are committed by individual members for their own purposes, rather than by or for

the club, and that the majority of the crimes that members do commit are opportunistic, overt, and expressively violent crimes, rather than the planned, profit driven, or instrumentally violent crimes typical of organised crime (Goldsworthy, 2015; Quinn & Koch, 2003, p. 300; K von Lampe & Blokland, 2020, pp. 546-547). The data shows that OMCs are not typically sophisticated criminal syndicates that run extensive transnational underground networks comprised of associates and subordinate clubs, and the vast majority of crimes members are convicted of cannot justify the criminal organisation label (Lauchs, 2019, p. 297; Lauchs et al., 2015, p. 11; Osgerby, 2005, p. 136). Thus, despite a higher-than-average rate of offending, and what ACIC data suggests is greater involvement in crimes for profit in South Australia than in other states per capita (Dowling & Morgan, 2021, p. 7), clubs cannot be seen as posing the level of threat to the community that numerous commentators have claimed. This does not suggest that OMC members do not commit serious crimes, or that some members do not commit organised crime type offences, just that the majority of crimes that the most members do commit do not involve significant profits. However, in an effort to convince the public that special legislative tools are required to combat organised crime activities, politicians and police have essentially enhanced the reputation of all but a few of the more serious criminals (Quinn in Gillis, 2006, p. 26). While it is important not to minimise the public danger of OMC related violence and it does require a strong response from police, it is a separate issue to that of organised crime and does not require the same kind of extraordinary legislation.

In Young's (1971a, 1971b) seminal work he examined the ideological role the media play in constructing meaning and amplifying deviance, and from there how interactions between the media, the public, interest groups and the authorities can develop into a moral panic. In this case we can observe the emergence of the OMC subculture, and its image being by generated

and subsequently refined by the mass media's portrayal of it. The deviant image was glorified and through the process of secondary deviance (which will be explained and discussed in the following chapter), that image was then integrated back into the subculture as some of its members took on the behaviours of their fictitious identities (Goffman, 1981; Lemert, 1972). The process of deviance amplification is emphasised in the moral panic model, and theorists explain that once the claimmaker has identified a 'suitable enemy', the resulting folk devil is constructed in the mainstream media as the 'personification of evil'. After their identity is established in simple terms, with few if any redeeming traits, they are essentially stigmatised (Goode & Ben-Yehuda, 2009, p. 27). They become instantly recognisable and through the media's constant focus on their negative characteristics they come to evoke 'unambiguously unfavourable feelings' from the public (S. Cohen, 2002, p. 37). When the construction of the folk devil is complete, and they have been diagnosed as a danger to society, no further investigation of their activities is necessary and the powers of the state can be mobilised to neutralise them (Goode & Ben-Yehuda, 2009, p. 28). Thus, as McRobbie and Thornton (1995, p. 570) suggest, 'social reality is experienced through language, communication and imagery', and 'social meanings and social differences are inextricably tied up with representation'.

Throughout the years we can see that the activities of OMC members, and the way they have been portrayed by the mass media as 'folk devils', have created waves of fear, which governments have responded to with various initiatives largely driven by crime-based politics. The following chapter will further explore the literature on moral panics so that we can begin to evaluate whether the situation in South Australia meets the criteria.

Chapter Two: Moral panic, power, and subjugated knowledge

This chapter outlines the moral panic concept and discusses labelling and deviance amplification, crime reporting, claimsmaking, ‘tough on crime’ political campaigns, quantification and narrative. The term moral panic implies that there is some kind of hysteria or at least an overreaction to a social issue that is perceived as posing a significant threat to the moral order. Led by claimsmakers and moral entrepreneurs, and encouraged by the media, moral panics use social problems as symbols that prey on people’s fears to effect change on policy or law (Driscoll & Parkinson, 2002). Labelling and deviance amplification were the conceptual basis on which Cohen based his original model, and it similarly provides a basis for interpreting whether the ‘anti-bikie’ laws were and are still part of a moral panic or if, after nearly twenty years, they have become a self-fulfilling prophecy. This chapter will then examine how the mass media reports crime, claims are made, politicians emphasize crimes severity, how it is quantified, and how narrative is constructed, in order to further explain how a moral panic develops. This this chapter will then delve into preemption, disciplinary power and subjugated knowledge, and explain why discourse analysis and interviews with OMC members were pursued in order to further unpack the problem and explain the government’s response.

The ‘anti-bikie’ laws can be seen as an example of the way in which lawmakers have come to perceive the nature of control over the last few decades. This conceptual shift toward risk and risk management has meant that governments now approach unpredictability as a problem, and they have responded with an extraordinary increase in preemptive action (Anderson, 2010, p. 777). When the other is identified and fear is activated, the preemptive paradigm and its associated rhetoric can make law reform appear to be the most logical or viable solution.

In cases such as terrorism and OMCs where highly visible expressive acts of violence are widely perceived as being a significant problem, already heightened fears are susceptible to claimsmaking that can lead to panic. Governments have increasingly responded to such panics with preemptive strategies and techniques that use particular discourses and practices to further define the problem and mobilise the various other actors in support of their control measures. In this way the language of fear and risk is essentially a weapon to be wielded against other discourses or courses of action (Furedi, 2007; Raco, 2002, p. 25). Hier (2002b, p. 52) suggests that Foucault's writing on power and discourse provides another way of conceptualising issues, from which we can better examine moral panic. Foucault (1978, p. 93) argues that power is everywhere and comes from everywhere. This means that rather than being wielded by individuals or groups, power is diffused throughout society and is constantly being re-negotiated. His concept of power/knowledge explores the idea that power comes from knowledge and truth, and that regimes of truth stem from discourse and institutions. In this way power essentially produces truth and plays a significant role in discipline and conformity (Foucault, 2020). This chapter thus examines how Foucault's concept of power can be used to help further clarify the role and motivations of the various actors in their struggles over knowledge and truth, and how disciplinary power is used to define the other, preemptive symbolic laws are enacted to mark moral boundaries and define the norm.

Moral panic

Stanley Cohen (2002, p. 1) defined a moral panic as:

A condition, episode, person or groups of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and

stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially-accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible. Sometimes the object of the panic is quite novel and at other times it is something which has been in existence long enough, but suddenly appear in the limelight. Sometimes the panic is passed over and forgotten, except in folklore and popular memory; at other times it has more serious and long-lasting repercussions and might produce such changes as those in legal and social policy or even in the way a society conceives itself.

According to Ronald Burns and Charles Crawford (1999, pp. 148-149):

A moral panic typically focuses on evildoers – or supposed evildoers who come to be defined as the enemy of society. Therefore, in the eyes of claims makers, or moral entrepreneurs, these ‘folk devils’, deviants, or outsiders deserve public hostility and punishment.

Erich Goode and Nachman Ben-Yehuda (2009, p. 35) further explain:

The moral panic, then, is characterized by the feeling, held by a substantial number of the members of a given society, that evildoers pose a threat to the society and to the moral order as a consequence of their behavior and, therefore, ‘something should be done’ about them and their behavior. A major focus of that ‘something’ typically entails... strengthening the social control apparatus of the society,

including tougher or renewed rules, increased public hostility and condemnation, more laws, longer sentences, more police, more arrests, and more prison cells.

Goode and Ben-Yehuda (2009, pp. 37-43) then list five elements that constitute a moral panic: public concern, hostility (toward the group in question), consensus, disproportionality, and volatility.

There are two distinct articulations of a moral panic, a moral panic as an event or panic that is taking place and a moral panic as an analytical concept or theory. Before using the model to interpret any phenomenon it helps to contextualise its formulation. Prior to its development sociologists and criminologists had typically examined deviance through the lens of 'outsiders'. The traditional moral panic model of analysis stemmed from Howard Becker's (1963) study of the *Marijuana Tax Act 1937* (US), and the term 'moral panic' was first used to reference this concept by Marshall McLuhan (1964, p. 82). The concept was then further defined by Jock Young (1971a) in 1971. However, it was Stanley Cohen (2002) who first developed the 'moral panic' as an analytical concept in his book 'Folk Devils and Moral Panics' in 1972. These studies were undertaken during a period of social upheaval when authority was being increasingly questioned through a number of new approaches to sociology. The scholars who pioneered it had a common understanding of the role and relationship between the state, media, moral entrepreneurs, agents of social control, the general population, and the people who came to be labelled 'deviants'. These approaches were incorporated in critical criminology, and moral panic analysis combined labelling and sub-cultural theory in departing from positivist criminology to concentrate on the representations and reactions to deviance rather than the causes of it (Rohloff et al., 2013, p. 3). Hall, Critcher, Jefferson, Clarke, and Roberts (1987) further developed the literature when

they examined the moral panic as an instrument by which dominant groups could shape the public's understanding of ongoing events and protect their position in 1978. Goode and Ben-Yehuda (2009), continued to extend the concept by examining moral panics as generated by the claims making of moral entrepreneurs in 1994. A thorough examination of the literature suggests that there is a valid argument for the application of this concept and this study will explore if and how the moral panic model can be used as a logical theoretical basis for understanding the current South Australian situation. As moral panics often result in the introduction of new politically motivated social control measures, determining if an event meets the criteria may provide grounds for questioning the continued their necessity.

In Cohen's (2002) analysis of the mass media's role in the construction of a moral panic he identified several key features: Exaggeration, distortion, misreporting, misleading headlines, multiple reporting of the same incident, and demonology. He further suggested that the control culture of the police, courts, and politicians, and pre-emptive and disproportionate punishment could potentially increase the level of deviance. Cohen tends to present these groups as essentially defenceless victims of the way the mass media and other elites have chosen to depict them, whereas many subsequent researchers attribute them significantly more responsibility for the way in which they are perceived and their joint roles in the amplification of their deviant image (Koetsenruijter & Burger, 2018, p. 126). Cohen was influenced by Becker's theory of symbolic interaction which suggested that separated and marked as outsiders, deviants would live up to their label (Moore, 2014, pp. 105-107). This fits with the Foucauldian idea that discourse is part of the process of social construction. A sociological constructionist approach to social problems suggests that if people cannot see something, then they cannot perceive it as a problem (McCorkle & Miethe, 2002, p. 11).

Examining the processes involved in the construction of social problems can help explain why people fear various phenomena. How something is more widely understood stems largely from the language that it used to define it. Social problems are the product of claimsmaking and only exist once they are defined as such (Best & Horiuchi, 1985, pp. 495-496). The particular behaviour in question may be relatively common, but until it is defined as a departure from the norm or is deemed as immoral, it is simply a social condition. The concept of a social problem is inextricably linked to moral consciousness and the subjective awareness of what is considered the norm. Thus, what makes a social condition a problem is the way people perceive it, and perception is subjective, so social problems are whatever people perceive them to be (Nisbet, 1971, pp. 2-3; Spector, 2019, p. 175). Those who seek to manipulate attitudes toward a particular condition define it using language and themes that resonate powerfully with their audience (Watney, 1996, p. 42). Thus, social problems are defined in terms that reflect the attitudes of those who have defined it and provide suggestions about why it is considered offensive or objectionable. Individuals and groups often compete for control over the definition, with the dominant party's definition becoming institutionalised over time while the others fade into obscurity (Spector & Kitsuse, 2001, p. 8). From this perspective, we can see that it is not only possible but, in all likelihood, very common for large numbers of people to have intense feelings and fears about issues which objectively pose little or no harm to society. While these moments of intense emotion are typically short lived, during that time groups of people are identified as deviants, stereotyped, and cast out as folk devils (Goode & Ben-Yehuda, 1994, p. 149).

As a central element in construction of a moral panic, a 'folk devil' is the identifiable target deemed responsible for a particular problem that endangers society. They are depicted as the personification of evil by the media, and essentially become 'visible reminders of what we

should not be' (S. Cohen, 2002, p. 2; Hier, 2002a, p. 313). Although it is important to recognise that although the 'folk devil' typically represents a legitimate social issue, claimsmakers choose them as a 'cultural scapegoat' specifically because the group's behaviour intimidates people and their image can easily be shaped to serve as the ideological embodiment of some deeply held unconscious fears, even if the vast majority of the group are essentially law-abiding (S. Cohen, 2002, p. xxxvii; Garland, 2008, p. 15; Hier, 2002a, p. 313; Walsh, 2017, p. 645). Politicians and media sources grossly exaggerate the problem, and once a folk devil is successfully portrayed as posing a significant threat to the security and stability of moral and social order, the reaction to them is 'out of all proportion to the actual threat offered' (S. Hall et al., 1987, p. 16). The concept's key architects also highlight that as well as symbolising social unrest, the moral panic symbolises a threat to the prevailing social order in terms of its structures and institutions. Hall et al. (1987) took a particularly Marxist viewpoint of class conflict, and Welch et al. (2002, pp. 20, 23-24) continue the discussion from the position that moral panic is driven by upper-class influence over social institutions (such as the media, government, and the criminal justice system). In this way a moral panic serves the social elite by diverting public attention away from other issues, particularly in moments of socio-economic hardship, preserving the status quo and maintaining order.

Analysts need to be mindful that a moral panic is not simply a thing, it is a model of a process and at best an abstract concept. Cohen's model provides an example of an 'ideal type' of moral panic and it can be used as a tool for measuring and comparing other examples. It also gives us a way of understanding and interpreting how and why actual examples might differ (Cricher, 2003, p. 2). Moral panic analyses in the modern context must consider several features which are now quite different than they were when Cohen first expressed it, such as technology and the proliferation of media sources, a more risk conscious society, and the

various activities of folk devils. Moral panics require enormous resources and energy from both the individuals involved and society as a whole, and thus have not historically been able to sustain their momentum for long periods (S. Cohen, 2002; Goode & Ben-Yehuda, 2009). Many have left behind legacies that are prone to episodic resurgences, but when they reoccur multiple times they are often perceived as false alarms. In contrast, today some moral panics do seem to be more permanent in nature, such as those concerning terrorism and gangs. Perhaps these panics can best be described as having a more common anxious moralizing and regulating dynamic rather than that of the traditional moral panic as defined by Cohen, despite retaining many of the features. Given the short-lived nature of most of the events that have been labelled as moral panics, there are potentially both advantages and disadvantages in extending the use of the concept beyond the way it was originally articulated.

There are a number of criticisms often directed at the use of the moral panic model, and one of the principal objections stems from the way its definition has been pushed and pulled in an effort to shoe-horn various phenomenon to fit over the years (Best, 2016, p. 67 & 76; Dandoy, 2015, p. 417; D. Miller & Kitzinger, 1998, p. 221; Rohloff & Wright, 2010, p. 404 & 406). Overuse of the phrase 'moral panic' has also caused problems, partly 'because of its connotation with irrationality and being out of control', and partly because imprecise and ironic use of the term in the media has further exacerbated its ambiguities (S. Cohen, 2002, p. xxxiii; Critcher, 2003, p. 132). Both the concept and the term moral panic have spread from a purely academic setting to the wider cultural debate in the media and politics and influenced the practices of journalists and politicians (Garland, 2008, p. 9). All kinds of events that trigger public concern and thereby receive prolonged or excessive media coverage routinely become labelled as moral panics, however on closer examination most of these issues fail to meet even the basic criteria (Moore, 2013, p. 33). Journalists tend to like using the term to

make a point when perhaps moral concern would be more appropriate, even if not quite as rhetorically emphatic (Lashmar, 2013, pp. 65-66). The application of the original model, and its early revisions, have become slightly complicated because of advances in technology and that the once explicit and unambiguous voice of the media is now fractured by a multitude of voices competing for traction across a variety of platforms. The once uniform social response is now tempered by a large number of social groups with which those different voices connect (McRobbie & Thornton, 1995, p. 560). The line separating moral and immoral has also blurred somewhat since Cohen wrote his thesis and in an ever more risk conscious society another way of expressing contemporary moralisation is through discussion of risk management and harm avoidance (Hier, 2008, p. 174). So, while the concept can act as a guide to understanding various phenomenon, rather than attempting to simply shoehorn the data into the model, by exploring the data inductively (and constantly identifying and comparing themes within the data throughout the course of the study) we can reach more objective conclusions.

The concept of moral panic has been used by various scholars to understand and interpret a wide variety phenomena and social reactions, however one of the concept's more problematic elements is establishing that a response is disproportionate to an observable, verifiable, or rational perception of threat (Garland, 2008, pp. 22-23). As Waddington (1986) observed:

...the principal difficulty with this notion of 'moral panics' is that of establishing the comparison between the scale of the problem and the scale of response to it...

Conceptually, the notion of a 'moral panic' lacks any criteria of proportionality without which it is impossible to determine whether concern about any crime problem is justified or not. (p. 246)

Without some clear criteria of proportionality, the description of publicly expressed concern, anxiety or alarm as a 'moral panic' is no more than a value judgment. It simply says that the person using the term does not believe that the particular problem is sufficiently serious to warrant these expressions of concern or actions designed to remedy the problem. (pp. 257-258)

Essentially, it is extremely difficult to empirically measure an emotional response and disentangle a rational reaction from that of panic (Garland, 2008, p. 16). Risks are unpredictable and often incalculable, so it can be difficult if not impossible to unequivocally establish that a reaction is objectively disproportionate to the issue (Ungar, 2001, pp. 287-288). Further, without privileged access to all SAPOL data regarding the level of threat the OMCs and their members pose, proving conclusively that the response is disproportionate might not be possible. However, given that the magnitude of numerous claims made about that threat are also unsupported (such as that OMC members and associates dominate the Australian methamphetamine market (South Australia Police, 2015, p. 19), or that that they 'run' organised crime, drug racketeering, and prostitution in the state (Hamilton-Smith in *Parliamentary Debates*, 2008, p. 1977)), and given what we do know (that they can only be linked to 4.7% of drug trafficking networks (Hughes et al., 2020, pp. 35-36)) it is reasonable to suggest that those claims may be exaggerated. While several elements of moral panic are evident and determining if the state's response is disproportionate to the problem in 2021 is one of the key aspects of this study, as one of the hardest things to measure objectively, it may ultimately be unachievable. In an effort to answer the question, the following chapters this thesis examines what is known about the problem, how other jurisdictions have approached controlling it, the level of inflation in claims that were made regarding its nature,

where the public's main concerns lie, and the effectiveness of the solution.

Critcher (2009, p. 32) highlights that the moral panic model was developed so that researchers would have a tool to unpack the differences between the reality of a problem and its representation. He argues that moral panics are discursive events, and that they can be deconstructed by analysing the language used to create them (Critcher, 2008, p. 1139; 2009; Wright Monod, 2017, p. 7). Wright (2015, p. 1246) stresses the importance of conceptualising moral panics as narratives, and suggests researchers pay greater attention to both language and the melodrama in their analysis. Critcher (2003, p. 131) states that 'moral panics are unthinkable without the media', and Wright's (2015, p. 1259) narrative approach emphasises the public's emotional involvement in the outcome of a battle between good and evil. Thus, this study will trace the discourse in order to inductively and critically examine both the rhetoric surrounding the 'anti-bike' laws and the broader narrative frame in chapter four (Legreco & Tracy, 2009, p. 1520).

Labelling and deviance

The work of Young (1971) and Cohen (1972) on moral panics in early 1970s provided a new way of examining deviancy. It was a new direction in sociology which showed that deviant behaviour was dialectical in nature and was typically the result of a complex process social of interaction rather than simply being an individual or environmental predisposition for criminal behaviour (McRobbie, 1994, p. 197). A key tenet of the moral panic process involves creating a suitable other to show the difference between 'us' (the moral majority) and 'them' (the enemy). Social groups define themselves by identifying outsiders, and who 'us' refers to is redefined every time a new 'them' emerges. It has been noted that when we meet someone, we form 'normative expectations' and make assumptions about who they are

based on what we observe. By characterizing and stereotyping them, we group them into very broad categories. However, our perception of a person may have little in common with who they actually are (Goffman, 1981, p. 12 & 68). A person constructs an image of themselves based on many of the same observable features that others use to identify them, although they also have meaningful beliefs about who they are as an individual. Many of the observable characteristics that both we and they use to identify them with stem from their group affiliations, and a person who strongly identifies with a particular group will often make an effort to express the stereotypical attributes or celebrate the significant beliefs and values of that group (Goffman, 1981, p. 130 & 138). Given the right circumstances, a person who is inclined to particular deviant behavior will gravitate toward it and the social groups that it is associated with (Matza, 1969, pp. 91-92). As the person spends more time around the group their behavior generally changes to match the other members (Matza, 1969, p. 101). The person's continued experiences with the group gives those behaviors new meaning and their perception of the activity changes (Becker, 1953, p. 235). As their behavior changes and new terms of reference are incorporated, the person then begins to reexamine their concept of self. That concept of self is then the image that the person actively projects to society (Matza, 1969, pp. 119 & 121-122).

It is the role of the state as the authorized definer to investigate and control deviance. But by proscribing and prohibiting deviant behaviors and activities, those who engage in them will often try to deviate further. While prohibition does not guarantee further deviance, it exacerbates deviance in those people who are committed to those behaviors (Matza, 1969, p. 145 & 148). The secrecy and security that prohibition necessitates also further intensifies deviance. To proscribe something as deviant exemplifies it and makes it more meaningful. In being labelled, someone who among many other things happens to have committed a deviant

act, is transformed into a deviant and begins to represent deviance. To be labelled as a deviant thereby exacerbates the transformation process of becoming deviant, but the label only has power when the person is already committed to deviance (Becker, 1963, p. 34; Matza, 1969, pp. 155-157). The continued and intensified suspicion and scrutiny generated by the label reinforces the deviant image and drives the process of becoming deviant by increasing the likelihood of further offending. Once police have identified someone as deviant, more intense scrutiny typically leads to further convictions. A combination of these factors then makes the person appear markedly different from the rest of mainstream society. Once a person has been clearly defined and proven to be deviant the almost inevitable outcome is segregation and confinement. The state's initial definition and prohibition of deviance, and subsequent actions to police and sanction, are vindicated and legitimized from a moral perspective as good appears to triumph over evil (Matza, 1969, pp. 195-197).

Leading early social reaction theorists looked at the issue from the perspective of what society considers to be deviant or criminal stems more from political expediency than any kind of scientific reasoning, as it is politicians rather than scientists who define them.⁹ A crime is not necessarily morally or ethically wrong, it is simply the result of behavior which contravenes the law (Gottfredson & Hirschi, 1990, p. 3). Even when crimes are widely considered morally and ethically wrong, those assessments only carry weight if they are based on objective evidence (Wilkins, 1964, p. 3). The truth has little to do with what might be considered right and discussions of deviance and crime are based on relative norms,

⁹ However, the issue of who defines what is considered to be 'true' will be discussed in more detail in relation to institutional discourse and inflation in later chapters. Discourses are ideologically positioned representations of social practices, meaning that they are not organic and must originate from somewhere. Discourses about social events and phenomena are normally contested, as there are multiple, often contradictory, discourses competing to give meaning to the social world. The different discourses stem from different institutional locations. In many cases the political party forming government or the incumbent political leader is perceived as having a privileged position which gives them significant influence over the discussion of particular issues, and can lead to inflation (Block, 2019, p. 10).

essentially revealing more about society than they do about a particular act (Gottfredson & Hirschi, 1990, pp. 75-76; Parsons, 1951, p. 250; Wilkins, 1964, p. 25). The deviant or criminal label and the contrasting right and wrong or good and bad moral judgement are also a problem because the actions that lead to these conclusions are not normally representative of the entire scope of a person's behavior (Claster, 1992, p. 254; Wilkins, 1964, p. 202). But essentially, it becomes much easier to categorise them simply as 'bad guys' and create laws which criminalise them if we believe that they only do bad things (Holmes, 2016, p. 63; Levi, 2007, p. 778). Thus, the process of labelling and deviance amplification can be conceptualised as part of the dramatisation of evil (Claster, 1992, p. 202; Tannenbaum, 1938).

Crime reporting

The mass media have frequently been accused of pandering to the 'lowest common denominator' with 'dumbed down' stories that either amuse or revolt, especially when focusing on crime and violence (Bachman & Schutt, 2014, p. 2; Beare, 2000, p. 2; R. Burns & Crawford, 1999, p. 158). Audiences are often fascinated by unusual and violent crimes that stimulate the imagination, and as a result the news often features stories about an unsafe, unpredictable, and obscenely violent world. This experience of crime plays on feelings of fear, anger, resentment and fascination. The mass media's overreporting of statistically uncommon crimes often blurs the line between fact and fiction and perpetuates an unrealistic perception of the nature and prevalence of many forms of crime (Barak, 1995b, p. 5; R. Burns & Crawford, 1999, p. 161; Chermak, 1995, p. 99; Garland, 2001, p. 158; Katz, 2011, p. 238; Sunstein, 2005, p. 87). The long-standing Western folklore tradition expressed through the actions of heroes and villains acts to simplify moral ambiguities and makes stories much easier for audiences understand (Claster, 1992, pp. 1-2). The traditional story-telling practice

is still the basis for much of today's popular entertainment and similar narratives in fictional accounts carry over in news stories, producing a similar emotional response. This exaggerated view of crime with a good versus evil plotline, and the melodramatic imagery has far reaching consequences, often influencing and affecting journalism, politics, and more serious discussions of crime in academia. As the line between fact and fiction becomes harder to distinguish, news and entertainment fundamentally begin to fulfil the same role (Barak, 1995a, p. 22; Claster, 1992, p. 3). As the real social relationships and the cultural mythologies surrounding those relationships merge, an understanding is formed which is grounded more in emotion than logic. This, however, creates a two-dimensional image of crime with little relation to the realities or complexities of the situation either factually or morally (Chermak, 1995, p. 97).

Contemporary Western societies are often characterised as 'risk' societies where many of their fears and anxieties stem from primal concerns about safety. However, potential and sometimes unlikely dangers to the individual or society often take precedence over the more ordinary and commonplace dangers that people are more likely to face on a daily basis. Crime, and especially violent crime, is a comparatively uncommon occurrence in Australia (Australian Bureau of Statistics, 2016), and relatively few of people have any in-depth personal experience of how the criminal justice system addresses serious crime.¹⁰ As a result, the public's view of crime, criminals, police, courts, and prisons is heavily influenced by how the mainstream media portray it (Indermaur & Roberts, 2009, p. 2; McCorkle & Miethe, 2002, p. 4). Violence has become omnipresent in society today, and despite making the news, it is often reported in an ordinary everyday fashion with little context or further analysis. The

¹⁰ The 2007 Australian Survey of Social Attitudes showed that while about 40% of respondents reported having had some kind of direct contact with police in the previous year, only 5% had had direct contact with a criminal court (Indermaur & Roberts, 2009, p. 3).

violent and dramatic crimes which can be easily sensationalised and fit into a simplified narrative make headlines while the less sensational crimes such as white-collar crime and corruption, or individual cases of domestic violence and child abuse, are often downplayed or ignored (Chermak, 1994, p. 571; Jewkes, 2011, pp. 58-59).

Serious crime is often presented as random and unpredictable in mainstream media reports, and much of the discussion about crime prevention and personal safety is focussed on offences committed by unknown offenders, further reinforcing the popular stereotype of violent criminals attacking victims indiscriminately (Greer, 2003; Kitzinger, 2004, pp. 128-129; William Spencer, 2005, pp. 48-49). Yet crimes such as murder and rape are overwhelmingly committed by offenders who know their victim, and there are readily distinguishable patterns of offending in particular geographical areas and socio-economic groups (Jewkes, 2010, p. 217). It is not 'crime' that people fear, it is the burglars, muggers, and rapists; the unknown 'alien' outsiders who strike violently and without reason or notice. It is the perceived threat of random violence that has the biggest impact on how many people conceptualise crime, and some of the least common crimes are reported the most frequently (Gross & Ellsworth, 2003, p. 14; McCorkle & Miethe, 2002, pp. 78-80; Roberts & Indermaur, 2009, pp. 9-10).¹¹ In most Western democracies the crime rate has steadily fallen for more than two decades. Yet when a new or novel crime is reported on, public interest often leads journalists to search for more examples, and a single event or incident can easily begin to appear as part of a much larger problem (Gans, 1979, p. 170). When a label like 'crime wave', 'spate' or 'epidemic' is used, concern is raised over something which does not

¹¹ The 2007 Australian Survey of Social Attitudes showed that respondents rated television and newspapers to be the most important sources of information about crime. While less than 10% of reported crime involves violence or the threat of violence, 96.3% of the survey respondents perceived it to be much more prevalent, most by a significant amount, with the largest group of respondents believing 71-80% of crimes involved violence (Roberts & Indermaur, 2009, pp. 9-10).

really exist, and creates potential for the construction of a moral panic (Moore, 2014, p. 1 & 3).

While a sensationalised narrative can increase newspapers circulation and television ratings, support 'tough on crime' policy platforms, and make arguments seem more persuasive, it also deceives and alarms the public, and makes effective policies much harder to formulate and institute (Best, 1999, pp. xi-xiii). The terminology used and the labels applied to crime and various other social problems can have far reaching consequences, especially when the imagery and discourse are designed to scare its audience (Best, 1999, p. 22 & 27). As McRobbie observes, at its core 'the moral panic is about instilling fear in people' and encouraging them to forget the more complex and visible social problems. They thus feel hopeless, powerless and do nothing, or adopt a 'something must be done' attitude (McRobbie, 1994, p. 193). These kinds of high visibility crimes are of equal important to the media, police and politicians, and although they can lead to calls for innovative control strategies, in most cases there are numerous points of view on both the root of the problem and possible solutions. The various state and non-state actors (the media, police, politicians, and interest groups) often struggle to successfully negotiate a suitable remedy, and consensus is uncommon. Even when there is consensus, there are numerous further limitations and constraints that make the 'detonation' of an issue into a moral panic unlikely (Jenkins, 2009, pp. 44-45).

Claimsmaking

In Jenkins' analysis of why some issues can be over-reported and heavily sensationalised but do not 'detonate' moral panics he found that the key to ignition was claimsmaking.

Essentially, he found that if there was no one to make claims about scale of the problem,

there was no panic. While issues might attract significant attention from the media, it is only possible for a moral panic to erupt when agencies or political interests align. Panic conditions must include: a diversity of claims which contest the issue, the issue must be overt and relatable to the public, the characters and narrative must be easy to understand with identifiable villains (or folk-devils), the story must have strong imagery and relate to pre-existing stereotypes, there must be a plausible solution, and to gain maximum traction it must match previous expectations and knowledge of the subject. Potential panics fail to develop if: official information or interpretation is limited or absent, both the agency and the public fail to understand the issue (i.e. technologically), the narrative is too complicated and agencies do not simplify and summarise the issue, a powerful agency or interest group are opposed to the panic, the public do not view the issue as an immediate threat they are likely to encounter, or due to one or more of these factors the media only examine fringe or marginal elements of the core issue. Essentially this means that small, isolated folk devils make for much more successful panics than large or well-connected ones capable of exerting political pressure (Jenkins, 2009, pp. 44-45).

As the final stage of the social construction of crime and as potential instigators of a moral panic, political leaders and law enforcement officials have the opportunity to offer the media both primary and statistical data coupled with their ideological and organisational definitions of crime. Various agencies and officials are essentially gatekeepers for the information the media require, and as such the media often act as a mouthpiece for the state's propaganda machine. Together those agencies or officials and the media define what is part of the discourse and socially thinkable. By virtue of their higher levels of credibility, those agencies and/or officials also have the ability to advance and legitimise their 'law and order' or 'tough on crime' political agendas. The various processes and propaganda techniques that shape the

social construction of crime often manipulate, distort and misrepresent the original issue or problem. However, it should not be automatically assumed that this distortion is intended as part of a wider conspiracy, as it is often simply the result of the institutionalised and routinised news making process (M. Welch et al., 1998, pp. 220-222). The net result of the media-constructed version of crime and justice is that it only supports one approach to crime policy, the continued expansion of a primarily punitive criminal justice system (Surette, 1994, pp. 148-149).

‘Tough on crime’

As the British Shadow Home Secretary in 1992, Tony Blair pledged to be ‘tough on crime, tough on the causes of crime’, and despite the slogan being somewhat ambiguous, it became enormously popular (Newburn & Reiner, 1997, pp. 318-319). ‘New’ Labour borrowed heavily from the public relations approach of Bill Clinton’s 1992 US presidential campaign, focusing on the process or ‘spin’ as much as the content. After winning the election and embracing the ‘third way’ political synthesis, ‘New’ Labour devoted significant time and resources to image management and more specifically; devising and announcing what were expected to be popular policies, announcing crime policies in a way that diverted attention away from other more politically damaging issues, and ensuring that policies were regularly announced to support the perception of the Prime Minister and Government being ‘tough on crime’ (Newburn & Reiner, 1997, p. 333). ‘Tough on crime’ election campaigns have subsequently proven to be very successful because public concerns about crime are typically driven more by the political discourse than they are by facts and statistics (Beckett, 1997, pp. 15-16).

Tony Blair himself had lived in Adelaide as a small child and continued to maintain a close

personal friendship with the future Premier of Western Australia Geoff Gallop (Scott, 2000, pp. 1-2). The British Labour and Australian Labor parties re-established close ties after Blair's 1995 visit, and after Blair's 'tough on crime' rhetoric struck a chord with the British people and 'New Labour' overwhelmingly won the 1997 British general election, his friend Gallop adopted a similar approach when he introduced his version of 'anti-bikie' laws in Western Australia. Following both Blair and Gallop's lead, South Australian Premier Mike Rann, who subsequently became known as 'Media Mike' (Lucas, 2005) and the 'King of Spin' (Manning, 2005), implemented his own 'tough on crime' campaign which later developed into the 'war on bikies'. His role as claimmaker in a 'tough on crime' political campaign in 2001/2002 that this thesis will argue developed into a moral panic was mentioned previously in chapter one and will be discussed in chapter four.

Quantification

Australian governments have provided very little concrete data regarding the OMC problem, and the limited publicly available data must be read critically. When discussing controversial policy issues, the media and the public both appreciate 'hard facts'; the use of unquestionable numbers that 'tell the whole story'. Numbers often play a leading role in discussions about crime control, and statistics are commonly used in both politics and the media as a kind of 'social barometer'. The standing of any new social policy is likely to be determined by how persuasive the numerical illustration of 'the scale of the problem' is, and much of the weight afforded to any argument stems from the proponent's ability to 'objectively' quantify or measure a problem, or demonstrate the success of a solution. Figures are similarly significant in any academic discussion of crime, and even for those criminologists primarily focussed on qualitative research, quantitative data is routinely used to bolster and legitimise any conclusions (Maguire, 1994, p. 237). Statistics are the benchmark because a precise and

authoritative statement of ‘fact’ seemingly leaves little room for debate, and while there is no question over the pre-eminence of numbers as a means of description, analysts must also be careful not to place too greater emphasis on quantification as crime statistics are never unquestionable and rarely tell the whole story.

Crime-related statistics can offer invaluable insights, but it is important to appreciate that they are social constructions and when presented without clarification, they can be very misleading and greatly distort the social meaning of events. There are numerous challenges in the collection of any kind of accurate data regarding the number of crimes or criminals in society, and the numerous decisions made during the analysis of any data further complicate the issue of objectivity in the resulting statistics (Maguire, 1994, p. 236). Statistics are typically used to monitor areas of particular social concern, but in regard to crime they have often been found to paint a severely distorted picture (Bottomley & Pease, 1986, p. 20; Maguire, 1994, p. 237). When a particular group is identified as have a disproportionate offending rate, it is logical and reasonable for police to target their resources. However, once police focus on them the amount of crime attributed to that group will likely be multiplied, and paradoxically the correlation is reinforced. Thus, Harcourt (2003, pp. 118-119) suggests the use of actuarial models in crime prevention may be self-reinforcing. In relation to statistics on South Australian OMC related crime, while the considerable resources focussed primarily on OMC members could make the data less reliable than other crime data, it is puzzling why more data has not been released in order support the government’s sensational claims and further justify their extraordinary legislative response.

The police, media, and politicians all, at times, selectively use data, selectively report on the facts, and give somewhat deceptive reports (Weatherburn, 2011, p. 13). Despite appearing as

factual accounts or neutral commentaries of crime and governance, statistics are generally open to interpretation and susceptible to manipulation in order to suit various political and organisational interests (Bottomley & Pease, 1986, p. 159). In this respect, the generation and manipulation of numbers and statistics is too often confused with, or used to obscure, accomplishing a policy's stated objectives and outcomes (Andreas & Greenhill, 2010, p. 271). Thus, statistics often tell us less about the 'objective reality' that they are perceived as representing than they do about the organisations that produce them (Maguire, 1994, p. 242). The value of crime statistics is largely dependent on how those crimes were uncovered, classified, recorded, and analysed (Skogan, 1974, p. 26; Von Hofer, 2000, p. 77), and while a range of factors can influence them, both the resources employed in creating them and their intended purpose play a key role in shaping them. For example, police collect data for several reasons, but proving that there is a crime problem, and thereby a need for their services and to justify their resources and expenditure provides great motivation to share it. The potential for crime statistics to become obscured by political spin is concerning, and when contentious issues are the subject of considerable attention it is unavoidable that those people responsible for collecting and analysing the data may, either intentionally or unintentionally, present the information in a way that is sympathetic to the government's position (Maguire, 2012, p. 237). This has the long-term effect of weakening the public's belief in the justice system and hindering their understanding of what crime prevention and control strategies actually work (Weatherburn, 2011, p. 15).

Organised Crime is one area where statistics have particularly pronounced effect in determining patterns and indicators for emerging trends and in guiding future policies and legislation. There is something about the images associated with organised crime that seems to captivate the general public and instil the kind of fears that allow for the acceptance of

extraordinary claims in regard to its size and the level of threat it poses (Andreas & Greenhill, 2010, p. 5). However, obtaining accurate and objective data is extremely difficult, and it is particularly difficult to measure the size or extent of organised crime activities based on the small amount of quantitative data that is available (Katz, 2011, p. 235). Crime is ultimately a social construction, and part of the problem associated with separating different categories of it is that often, rather than any obvious shared characteristics, the only thing these behaviours have in common is that they violate the law (as defined by legislators). Although statistics play a key role in how crime is perceived it is important to recognise that they are not the only source of information about it. If we can look past official statistics as a means of accurately describing criminal activity and instead examine them as an object of social enquiry, we can see the importance of various other sources of information about crime, including data from agencies outside the criminal justice system, and ethnographic or participant observation studies (Maguire, 1994, p. 243).

Narrative

Based on the explanatory nature of the physical sciences, it has traditionally been assumed that events are caused by preceding actions, and there is a rich history of philosophical debate reconciling the deterministic position with that of human agency and free will.¹² During the last century people and their habits have been studied and enumerated to a greater degree than ever before, and more sophisticated methods of quantifying social phenomenon subsequently led to dramatic changes in the way societies are governed. Numbers are often thought of as clear and detached representations of reality, but numbers do much more than simply represent objects, they make it possible to categorise, order, and control them (Hansen

¹² However, during the twentieth century metaphysical arguments countering causal or historical determinism gained weight, and studies of thermodynamics further revealed that while earlier states can be observed as determining all later states, equally later states can be observed as determining all earlier states (Hofer, 2016).

& Porter, 2012, p. 410). Statistics can be used to accomplish a wide range of institutional goals, from measuring, analysing, and predicting, to ensuring accountability and for resource bargaining, amongst others. They can also be used politically to either lend support for and legitimise decisions or to highlight problems and criticise failures (M. Lynch, 2019, p. 31). While it might not be possible to foresee random events or actions, numerous behavioural factors can be observed, and in a society driven by numbers, predictions are often expressed today in terms of probability.

The use of actuarial logic began transforming the way many departments and organisations functioned as numbers emerged as a way of measuring people, defining what was normal and what could then be characterised as deviations from the norm (Hacking, 1990, p. 1). Actuarial tools had a particularly pronounced impact on the field of criminal justice, where risk assessments can be used to identify and categorise ‘risky’ people and justify intervention when it is deemed necessary. However, as a tool of social control, group-based risk prediction quickly began to overshadow individualised moral-laden determinations of criminal guilt (M. Lynch, 2019, pp. 32-33). This then links in with previously noted concerns from discussions of labelling and deviance, that the way a person is classified can essentially create a new kind of person, as the application of a label can change the way the person conceives themselves and how they experience the world, which in turn reaffirms the classification (Hacking, 2007, pp. 285-286). Today, we have a largely numerical understanding of the world, in that we assign quantitative values to nearly everything, and define how things are and how they ought to be (Hacking, 1990, p. 5). While the well-intentioned aim of quantification might be to remove the narrative, any biases, sympathies, irrationalities or power imbalances from an evaluation, it presupposes that the analysis is based on observable, reliable, and objective data, and ignores that how it is subsequently

translated through narrative will ultimately give it meaning (M. Lynch, 2019, p. 37).

If we assume reality is ‘there to be observed’ then the challenge becomes how we should record what we see (Bruner, 1991, p. 1). We have traditionally recorded our experiences primarily through narrative accounts, in the form of stories, reasons, and myths, and these accounts have then spread socially and culturally through interpersonal relations (Bruner, 1991, p. 4). However, narratives do not simply exist; they are constructed when an author identifies specific ‘facts’ or events, summarises them, and then sequences them in a way that gives them meaning (Bruner, 1991, p. 8). A narrative tells a story that links events, and although a causal link is rarely identified, it is typically understood in terms of one event having led to or caused another. Time in the sequence is thereby relative and only given meaning by the events, so the relationship between time and causality is particularly significant (Bruner, 1991, p. 4 & 6). Every event in a narrative’s timeline can be true, and there does not need to be any causal relationship between them, but by identifying a chain of events causality is implied. While narratives order ‘facts’ and events just as statistics order numbers, the difference is that a narrative largely dictates how ‘reality’ is more widely perceived.

Narratives are often labelled as either true or false, but they are merely a version of reality that an author has constructed either by finding a way to link the ‘facts’ or by finding the necessary ‘facts’ to support a preferred narrative. Unlike ‘facts’ that are generated through logic and science, which are underpinned by transparent mathematical computation and can be tested to ensure accuracy, narrative ‘truths’ are often produced through much more obscure logic, with unclear motivations and focussed on much more specific outcomes, and can only be judged on the appearance of being true or real (Bruner, 1991, p. 13). The narrative ‘truth’

is thus inextricably tied to how easy it is for its audience to understand and connect with it (M. Lynch, 2019, p. 37). The narrative plays a powerful role in how people perceive the world, and together the various narratives form part of what is referred to as a history or culture, and more broadly as a tradition (Bruner, 1991, p. 18). Narratives are also fundamental in how society functions, organisations are structured and actors understand their roles. One of the most challenging aspects of discussing the impact of narrative can be in determining the extent to which reality mirrors the narrative and the narrative reflects reality (Bruner, 1991, p. 21).

Preemption

Since the mid-twentieth century there has been a gradual change in the nature of social control and the relationship between the individual and the state, as governments have steadily pushed the limits of what the public consider reasonable. This very slow but continuous process has reduced civil liberties and the rights of the individual in criminal law, and cumulatively can be seen to have altered some of the basic legal principles. The most significant changes have been driven by a widely held belief that traditional crime control measures are no longer effective or adequate, and that a new kind of response is needed (Garland, 1996, p. 446; Maguire, 2003, p. 449 & 455). In response to the increased threat of twenty-first century terrorism many Western governments introduced extraordinary new measures which further deviate from the accepted traditional legal principles and violate civil liberties. The introduction and spread of broad and invasive anti-terrorism legislation then fundamentally changed the way the way the law functions (Maguire, 2003, p. 455). Today it seems to be common practice for governments to respond to uncertainty with criminalisation; and when faced with insufficient knowledge of potential threats to create more legislation, intensify surveillance, reduce standards of due process, and increase penalties. Such changes

would have previously been politically untenable, but in a culture of fear the notion of security seemingly made them more palatable (Bronitt, 2008, p. 77; Zedner, 2009b, p. 12). By utilizing the incredibly powerful rhetoric of prevention, and by presenting policies as desirable, necessary and politically neutral, governments have been able to avoid much of the scrutiny that would normally accompany changes of this magnitude (Zedner, 2009b, p. 144).

Although September 11 was a watershed moment in this regard, it essentially only accelerated and amplified a broader conceptual shift that was the result of societies adjusting to globalization, populism, and the decline of the welfare state (McSherry et al., 2009, p. 3). Key changes to the criminal justice system essentially began with moves toward the identification and management of risk, and over time the public policy discourse changed from one of risk assessment and cost/benefit analysis to the need for 'preventative' action (Ashworth, 2009, p. 87; Bronitt, 2008, pp. 78-82; Janus, 2004, p. 576). However, in this case rhetoric of prevention actually referred to preemption. While prevention presupposes that it is possible to objectively measure a threat's potential, in 'striking first' and acting on a threat before it can be empirically determined as a threat, preemption is based entirely on the perception of a threat potential (Massumi, 2007, p. 2). The traditional model of social control was reactionary, and policies of deterrence were centred around arresting, convicting, and punishing offenders. In contrast, the preemptive paradigm is based on more permanent outcomes aimed at reducing recidivism rates by identifying and placing limits on potential offenders' liberties before they can offend (Maguire, 2003, p. 455). Thus, traditionally sanctions are only imposed after someone is found guilty of having committed an offence, but the preemptive paradigm is based on identifying, categorising, and controlling people thought to be threatening.¹³ Under preemption, anyone identified as being a potential threat

¹³ In terms more specific to the criminal justice systems this is also known as the shift from a post-crime to pre-

can potentially be sanctioned regardless of whether or not they commit a specific offence (Zedner, 2009b, p. 146). The resulting shift has reduced the traditional standards of due process and procedural fairness, blurred the line between evidence and intelligence, and eroded various inbuilt accountability mechanisms. Further, use of the term 'prevention' in this context is misleading because implies that the laws are both effective and capable of achieving their stated aims (J McCulloch & Pickering, 2010, p. 13; Pickering et al., 2008, pp. 96-97). One of the main points of contention with this rationale comes from how sanctions proportional to anticipated harms rather than any actual harm can be justified (Zedner, 2009a, p. 38). In terms of crime control, risk is not an objective or observable reality as much as it is a social construct advanced and defined by those seeking to govern, and as a government technique of maintaining control is very susceptible to changing political priorities (Zedner, 2009a, p. 44).

Based on the insurance industry's concept of risk, new laws, policies, and technologies in relation to security and surveillance were implemented in an effort to maintain order (Ericson & Haggerty, 1997, p. 48 & 85). While direct physical security controls make the aim of either managing or neutralising any potential threat very apparent, the state's traditional monopoly over violence is today supplemented by control through surveillance, which can perhaps be best conceptualised in terms of manipulation (Hörnqvist, 2004, p. 41). Essentially, both the increased physical security controls and surveillance communicate the principle of control, and to people as objects rather than as citizens or participants (D. L. Altheide, 2006b, p. 435). It is quite extraordinary how this approach to control which was once only applied criminals has now applied indiscriminately in the broadest ways with little or no public objection (Marx, 1988, p. 220). There is precedence for this style of control, although it has more

crime approach in order to 'pre-empt' criminal threats (J McCulloch & Wilson, 2016, pp. 17-18).

commonly been associated with autocratic regimes and has little basis legally or ethically (Dershowitz, 2006, pp. 3-5).

Policies based on identifying ‘risky’ people are largely based on the concept of the ‘other’.¹⁴ The process of identifying and categorizing ‘us’ as separate from ‘them’, interprets ‘them’ as being distinct and against the rest of society. They, or the ‘other’, is exemplified as a person whose existence threatens society, and as such is not a citizen of the state (Finnane, 2009, p. 443). They are then marginalized and excluded from the normal protections provided by the law, making them vulnerable to civil rights violations and denial of due process (Norrie, 2009, pp. 31-32). The rule of law is a fundamental pillar of society, and a key component of it is that people are not persecuted or imprisoned by the state unless they have committed a crime (Hörnqvist, 2004, p. 31). However, crime prevention does not always focus solely on crime, and both police and other government agencies have begun paying much greater attention to noncriminal deviant behaviours during the last few decades (Hörnqvist, 2004, p. 35). Thus, the boundary between deviant behaviour and a criminal offence has slowly been blurred, and as fear has become one of the dominant factors dictating social policy, any form of non-conformity can potentially be construed as a danger (Hörnqvist, 2004, p. 30).

Fear essentially made the idea that assessing, predicting, and preventing crimes before they could occur seem reasonable. This rationale authorizes the state to take action based on presumptions that the degree of danger certain people pose can be accurately predicted. The fundamental problem with preemptive logic stems from the complexity of quantifying a threat and balancing a proportionate response. There is no set formula on how calculations

¹⁴ Although this study is critical of the processes involved in identifying ‘risky’ individuals especially in terms of lawmaking, it does not suggest that looking for indicators of risk is unproductive or solely the result of a cynical political process.

predicting bad behaviour should be weighed against the deprivation of liberty (Ashworth & Zedner, 2014, p. 5). Despite governments' growing reliance on surveillance, intelligence gathering and increasingly sophisticated actuarial risk assessment methods, human behavior cannot be predicted with absolute certainty (Zedner, 2009a, p. 35). There are a number of difficulties and complications inherent in preemptive logic which have serious implications for liberty and equality (Dershowitz, 2006, p. 7). The ability to assess someone's dangerousness is at the core of current thinking, however in terms of crime control much like risk, dangerousness is essentially a social construct which is defined by those in power (Zedner, 2009a, p. 37). Simple categorizations, such as dangerous or not dangerous, do not adequately encompass the complexities of human behavior. While the logic of risk assessment stems from the increasingly sophisticated ways in which data and statistics can be scientifically analyzed, and computer analysis can have enormous benefits in numerous fields, any conclusions are only as accurate as the data they are based on. Risk potential is determined largely by the way in which the data is interpreted, and numerous processes and prejudices can easily change the outcome (Furtado et al., 2019, p. 3). Despite its growing sophistication, risk cannot be accurately measured, statistical probabilities do not guarantee results, and the future cannot always be predicted. Longo (2017, pp. 223-224) argued that role of data analytics in the pre-emptive paradigm is a perversion of democracy, and that we should all fear the 'tyranny of the algorithm'.

Data science tends to be biased toward quantitative data rather than the more complex qualitative descriptions which are often part of criminal intelligence. It is unusual for anyone who is risk profiled to conform wholly to the mean, and no one person can ever be considered completely normal. Variation is normal, and variation is risk, but whether someone is considered a risk is based solely on the specific criteria used for the actuarial measurement.

Because risks stem from specific institutional knowledge they can be socially constructed in numerous ways, they are open to dramatization, marginalisation, and other interpretations based on different knowledge. One of the fundamental problems with legislation stemming from the idea that it is reasonable and acceptable to categorise people based on their group associations is that it will have completely different results based on the particular method chosen to divide people into groups. By prioritising group identity over individual identity, guilt is attributed to groups rather than to individuals, and the dangers of such an approach far outweigh the potential benefits. Risk analysis based on scientific knowledge produces the most accurate definitions possible, however once the information is shared it becomes politicised by different and conflicting institutional logics. Different professions, interest groups, businesses and the media all have distinct logics which interpret information independently (Ericson & Haggerty, 1997, p. 101). So, although scientific knowledge is pre-eminent, its conclusions are not necessarily the same socially accepted version of the 'facts' (Beck, 1992, p. 156). The idea of who and what is normal is essentially a fallacy, but it prevails because it conveniently allows the population to be categorised and because the measure is widely perceived as objective. When people believe in the validity of the assessment, they are much more likely to behave according to the label they have been given (Ericson & Haggerty, 1997, p. 92).

A large number of new laws have been introduced to deal with risk and uncertainty in Australia since 2005. The extraordinary measures introduced in response to terrorism were used as a legislative template and the preemptive concept quickly took root in normal criminal law. While some of the more controversial legislation was created with extensive input from law enforcement and the security services who have expert knowledge on potential threats, their legal reform credentials are questionable (Bronitt, 2008, p. 76).

Terrorism is traditionally understood as a crime against the political order rather than crime against the social order (although people are unquestionably killed and maimed), and the proactive rather than re-active measures implemented in the anti-terrorism legislation as an issue of state security were written with an intelligence approach based on risks, threats, suspicions and associations rather than criminal law approach based on acts, accomplices and guilt (Macken, 2010, p. 30; Roach, 2010, p. 49). Although the idea of being able to prevent acts of violence and crime is clearly very appealing, the justification is problematic because it is extremely difficult to respond proportionately when risks cannot be accurately measured. This means that legislation has to be worded in exceedingly broad terms so that authorities have sufficient discretion in making assessments and enough flexibility to counter any threat at any time (A. Lynch et al., 2010, p. 4). However, ambiguous wording and broad powers is what traditional legal principles, such as the rule of law, were designed to prevent (Zedner, 2009a, p. 51).

The rule of law is considered one of the cornerstones of good governance, and although there is no one recognised legal definition, it is universally accepted to mean that all people are equal before the law and that the law should be knowable and willingly followed by the people (G. Walker, 1988, p. 17). The rule of law also incorporates other concepts such as new laws being enacted in accordance with established procedure, that there is equal application, there are checks and balances on the use or abuse of power, the independent judiciary is preserved, due process is protected, the presumption of innocence, and the right to a fair trial (United Nations, n.d.). Thus, the concept of preemptive justice is perilously at odds with it. Laws governing preventative measures cannot be overly broad or vague in any way as leaving these measures to the discretion of government officials could see them misapplied, and sections of the community unfairly targeted (Ashworth & Zedner, 2014, pp. 264-265).

The margin for error when judging an uncertain and unknowable outcome, and without a scientific basis for making the judgement, is immeasurable. The state's role to protect its citizens is often seen as taking precedence over all else, but limits must be placed on how the state uses its power in this respect (Ashworth & Zedner, 2014, p. 266).

It is one of the functions of the liberal democratic state to actively reduce or prevent its citizens from undue harm so that they are free to make choices and act as they see fit.

Providing security thus necessitates laws protecting individual rights and equality (Ashworth & Zedner, 2011, p. 279; Ericson, 2007a, pp. 3-4). Citizens consent to the powers of the state, either directly or tacitly, through their participation in the democratic process. This forms the basis of a hypothetical contract through which citizens agree or accept the state's authority in exchange for the numerous benefits it provides (Ashworth & Zedner, 2011, p. 280). While one of the conflicting principles of liberalism is that 'the freedom of some must at times be curtailed to secure the freedom of others', discussions of balancing liberty and security generally seem to presume that more of one automatically means less of the other (Berlin, 1969, p. 5). The protection of civil liberties and due process does not necessarily hinder effective law enforcement, and if in certain circumstances the invasion of an individual's rights is absolutely necessary then it should be proportionate to the threat (Bronitt, 2008, pp. 69-70).

What is considered criminal does not necessarily have any moral or ethical basis and is ultimately dependent on the political interests of the day.¹⁵ The ostensibly foundational principles of criminal law are thus often tempered by the prevailing political beliefs (Ericson, 2007a, p. 2). Lawmakers are first and foremost politicians, and they want voters to see that

¹⁵ However, this does not suggest that most criminal laws have no moral or ethical basis.

they are doing everything possible to address security concerns (N McGarrity & Williams, 2010, p. 143). As such, they tend to stress the effectiveness of security measures rather than meaningfully assessing those claims, their proportionality or their continued necessity (A. Lynch et al., 2010, p. 4; Nicola McGarrity et al., 2012, pp. 307-310). In this fashion ‘effectiveness’ was prioritized over ‘proportionality’, at least rhetorically, pushing the once extraordinary anti-terrorism measures into the sphere of normal criminal law. This rationale has driven the expansion of criminal law in an unscrupulous way, and an approach to lawmaking has been taken which focusses on preemption and circumvents the traditional legal safeguards in ways that cannot be justified (Ashworth & Zedner, 2011, pp. 302-303). Although generally well intentioned, new crime laws are often ill-conceived, and if responses are not carefully considered then resulting laws can easily turn out to be ineffective or harmful (Dershowitz, 2006, p. 2). While the criminal justice system is not expected to be able to solve the problem of crime, it is fundamental that it does not to cause any unnecessary harm, and it is here that it unfortunately often seems to fail (Claster, 1992, pp. 143, 144 & 147).

Both terrorism and organized crime are legitimate threats. However, ‘fevered imaginations’ create myths about evil villains lurking in the shadows, and heightened fears too often lead to intolerance. This way of thinking has led policy and practice to become increasingly focused on fear and threat, which is in stark contrast to statistics showing a trend toward falling crime rates (Ericson, 2007a, p. 155; Zedner, 2009a, p. 58). In a liberal democracy the law is intended to protect rights and due process, however this makes successful prosecutions more difficult and criminal justice outcomes more uncertain. Thus, authorities often consider it as a hurdle to be overcome (Claster, 1992, p. 60; Ericson, 2007a, p. 206). Governments thereby use preemptive laws as the most effective and compelling way to convey certainty,

demonstrate their authority, and preserve the enduring myth of society's capacity to be successfully governed (Ericson, 2007a, p. 207). However, if the criminal potential of everything is studied and everyone is suspected, then crime becomes the governing principle and citizens live under the constant threat of legal sanction (Ericson, 2007a, p. 214). Fear drives preemption, which is paradoxical because it attacks the very freedoms and safeties it was intended to protect. Ericson (2007a, p. 203; 2007b, p. 7) posits such instances that when security is prioritized over justice, it creates uncertainty, and insecurity becomes a self-fulfilling prophecy.

In a representative democracy it is both expected and advantageous for lawmakers to respond to the fears of those to whom they are accountable. Fear is an essential response to danger, and if humans did not feel a sense of fear, then they would not properly protect themselves from genuine threats. However, a combination of scientific research, expert opinion, community consultation and deliberation should form the basis any important decisions. Efficient and effective governments should aim to uphold the principles of liberal democracy without bowing to simple populism (Sunstein, 2005, p. 2 & 226). The true nature of crime is different to how it is more widely perceived, because public perception is heavily influenced by the by media reports and various political initiatives (Janus, 2006, pp. 2-3). As previously discussed, the media typically emphasize particularly unusual dangers, leading to fears disproportionate to the actual threat. However, if a government wants to further stimulate community fears it can appeal to people emotionally through a clear and powerful narrative and vivid imagery depicting a worst-case scenario and offer little factual information regarding its actual prevalence or probability (Sunstein, 2005, p. 124). When properly stimulated in this way fear can be leveraged to allow the almost unlimited expansion of governmental power (Janus, 2006, p. 26).

The changing approach toward uncertainty which has become more obvious since September 11 demonstrates how disasters can lead to knee-jerk reactions and the introduction of symbolic legislation that quickly become permanent (Bronitt, 2008, p. 77; Ericson, 2005, pp. 669-670). The subsequent preemptive rationale has created a situation where threats are identified and legislated against based on practical and political considerations (Ericson, 2007a, p. 157; 2007b, p. 6). Through the progression of this logic, the state now seems to be perpetually under threat, and what was originally considered an emergency response is now become normal (N McGarrity & Williams, 2010, p. 145). In establishing suitable enemies as folk devils and using the law to criminalise them, governments have fundamentally altered the concept of justice and moved in an increasingly authoritarian direction. The state now has huge range of legal measures at its disposal and in using them there is a risk that it may not give proper consideration to civil liberties or due process, particularly in situations where similar outcome could be achieved through more traditional means (A. Lynch et al., 2010, p. 6). The preemptive paradigm is firmly entrenched, and the question is not whether it is good or bad, but rather whether it is used effectively or in ways that cause harm (Dershowitz, 2006, pp. 18-20). It can be seen as part of the emergence of a wider 'culture of control', and it raises concerns over a need for protection from the state instead of what should be protection provided by the state (Garland, 2001, p. 12). In a culture of fear and control, security governs society, so governing security becomes critical (Zedner, 2009b, p. i).

The state of emergency now seems to be the norm rather than the exception, and the temporary interruption of the rule of law and due process that are implied by it have become permanent (Agamben, 2000, pp. 6 & 112-113). The emergency rationale has given governments a way to rationalise and legitimise new powers, the consequence of which is

system that cannot function on any basis other than emergency. Governments are thus predisposed to maintain the pretext of new and exceptional threats perpetually (Agamben, 2000, p. 6; 2005, p. 2). Maintaining the state of emergency has become essential, and creating, re-enforcing and manipulation the public's sense of fear and concern has become a vital instrument of socio-political regulation (McLoughlin, 2012, p. 696). State power has traditionally been conceptualised as stemming from a monopoly on the legitimate use of coercive force, however today it is probably more accurate to envisage it as stemming from control over perception (Agamben, 2000, p. 95). This form of biopolitical regulation attempts to control the state by manipulating public opinion, which is achieved through the use of language emphasising threats and war. As fear is now central to governability, politicians are inclined to overstate potential threats. Such language emphasises differences between citizens and a distinct other, and in order to perpetually maintain fear and the state of emergency a growing number of 'others' must be deprived their freedoms and rights (Agamben, 2000, pp. i-ii).

The increased use and success of government propaganda has allowed them to manufacture consent for the collection and analysis of their citizens' data, and then act upon it in a way that makes it seem legitimate. Despite their actions running counter to the fundamental liberal democratic concepts of openness and transparency, neoliberal economic principles will continue to drive broader security controls and make preemption seem ever more reasonable and necessary. Secrecy and a growing security infrastructure which has expanded both within and between states guarantees that the information citizens need in order to give informed consent is now known only by a small number of officials (de Lint, 2014, p. 223). Numerous 'tough on crime' election campaigns have encouraged the perception that crime rates are increasing (as will be discussed further in chapter four in relation to the 'anti-bikie' laws), and

heightened fears have allowed governments to pass conservative policies increasing their powers in a way that is detrimental to individual freedoms and rights. These incursions have typically been expressed in terms of order maintenance and zero-tolerance policing approaches which targeting deviant social groups (de Lint, 2014, p. 224). The post September 11 preemptive security paradigm has seen various claimsmakers prioritise ‘the greater good’ over consent, and the structures and practices of the security and intelligence apparatus have been widely accepted and supported by society. The preemptive paradigm embodies a kind of government authoritarianism which extends far beyond the traditional limits of liberal democracy, hitherto accepted state security measures and criminal law (de Lint, 2014, p. 222 & 226). This approach to lawmaking shows a complete disregard for legitimacy and highlights a growing crisis in the principles of liberal democracy.

Disciplinary power and subjugated knowledge

Today we often tend to think of liberalism and democracy as united, forgetting that their harmony is the result of intense conflict (Mouffe, 2000, p. 3). The two concepts are essentially at odds, and democracy rests on the shifting borders of inclusion and exclusion (Mouffe, 2000, p. 43). The liberal democratic system exists as part of the ongoing process of negotiation and renegotiation, through various expressions of power, of this fundamental paradox (Mouffe, 2000, p. 45). Hier (2002b, p. 52) suggests that Foucault’s writing on power and discourse provide a way to conceptualise the complex relationship between the various actors, a fragmented media, and the gap between perception and reality, from which we can better examine moral panics. In ‘the Fourth Face of Power’ Digeser (1992, p. 994 & 1003) examines Foucault’s writings to argue that the oppressive nature of power will always be resisted. He argues that resistance to disciplinary power is evidenced by the people within society who do not conform with the accepted norm. Through constant observation,

measurement, and threat of exclusion, most people self-discipline, and those who do not are driven toward the margins by their 'otherness'. As more deviants are identified and marginalised, they essentially become problems to be solved (Digeser, 1992, p. 993). However, by marginalising and then subjecting an individual to various disciplinary control measures, a stronger foundation for resistance is built. As those who deviate from the norm are targeted directly, all citizens are targeting indirectly and reminded of the need for self-control. The modern form of authority is hence based on Jeremy Bentham's panopticon prison design whereby our response to potential surveillance is self-discipline, and we become our own jailors perpetuating society's disciplinary practices (Digeser, 1992, p. 994). Disciplinary power is concerning because it normalises society, eroding individual expression, creativity, and inquisitiveness, or in short, our individuality. The more people defined by their similarities, the easier it is to notice people who differ in some other way, and the more vulnerable they become to various strategies designed to neutralise them.

Just as we can analyse things that have happened in the past, we can attempt to imagine modern practices as they will be looked back on in the future so that we can critique them. In doing so, we can then decide as individuals if and how we should resist (Digeser, 1992, p. 995). Politics and law bolster and legitimate the various disciplinary techniques and strategies in what Foucault refers to as governmentality or the art of government. He suggests that criminal law has become more concerned with who the criminal is rather than what they have done, essentially concentrating on the offender rather than the offense. The actions of government convey their disciplinary power, and Foucault notes for instance, that there has been a discernible shift in goals of policing from maintaining peace and justice to ensuring citizens continued physical well-being, health, and longevity. As police powers grow, self-discipline emanates, and the people become an object of state regulation. He refers to the

numerous techniques governments use to control the people as 'biopower', which scrutinises such things births, deaths, sexual practices and health in an effort to define the norm and standards of the disciplined subject (Digeser, 1992, p. 996). While it is not possible to normalise everyone and disciplinary power always requires a target, it is neither possible nor desirable to achieve complete freedom from such power. However, the potential for 'subjugated knowledges' to proliferate and be incorporated into the larger structures of knowledges is essential in defending those who are being oppressed and maintaining some balance between liberty and democracy.

Foucault (1980, p. 93) highlights the political nature of knowledge, arguing that we are subjected to a truth produced by those in power and that we can only exercise power by producing truth. He examined the creation and institutionalisation of what he referred to as 'global unitary knowledges', which have over time subjugated whole other sets of knowledges. These older seemingly foolish or unsophisticated sets of knowledges have been disregarded as flawed or incomplete, and below the necessary level of comprehension, rationality, or lacking the requisite scientific basis. However, in rediscovering these disregarded and often ignored localised and specific knowledges we can critique the dominant established regimes of thought (Foucault, 1980, pp. 81-82). To begin with as researchers we must endeavour to leave behind any preconceived ideas we have about what we know, that we are objective observers, and that those we observe are merely passive subjects (Hartman, 1992, p. 484). We must also be willing to consider ideas that conflict with the claims of unitary knowledge and any arbitrary notions of what can and cannot be considered scientific (Foucault, 1980, p. 83). We should not try to own those who we would attempt to learn from, nor their experiences by interpreting what they have to say from an expert viewpoint. Instead, we should listen to their voices, narratives, and constructions of

reality in a collaborative manner and make every effort to ensure the study stays grounded in their experiences. Subjugated knowledge will inevitably challenge our views, but this is not to suggest that we should abandon everything we know, simply that we must open to hearing the truths of our subjects particularly when it differs, is contradictory or paradoxical to accepted truths if we want to broaden our understanding (Hartman, 1992, p. 484).

Qualitative research

Foucault argues that we cannot know the absolute truth, we can only know versions of truth as they are perceived from different perspectives. While terms such as ‘objectivity’ and ‘scientific method’ make persuasive rhetoric, the dominant construction of truth ultimately stems from power (Foucault, 2020, pp. 74-75). Haraway (1988, pp. 577-583) suggests that in order to obtain power one must convince people of the pre-eminence of their manufactured knowledge and separate the knowing subject from everyone else. If we then seek to challenge the dominant social construction of reality, we need to be able to at least partially translate knowledges from these power-differentiated communities. She argues that ‘unlocatable’ and ‘irresponsible’ knowledge claims must be called to account, and highlights the importance of the peripheral perspectives. In researching the need for the South Australian ‘anti-bikie’ laws, both the dominant view of the ‘bikie’ problem will be examined (in chapter four), and the peripheral perspective of the ‘bikies’ themselves was sought out (as discussed in chapter six) in order to counterbalance some the claims made about them.

Most scientific approaches are based on experience. However, one of the most difficult parts of examining a problem stems from organizing, interpreting, and weighting the available recorded experiences, or in the methods used to obtain new experience (Wilkins, 1964, p. 7). Limited information about OMCs is available because of their insular, secretive and strictly

‘invitation only’ nature, and there are few potential sources of information inside the subculture because their members have little interest in being studied, and they have little to gain by inviting academic research to take place. Infield research on OMCs has traditionally proven extremely difficult as their reputation for unpredictable violence can make direct contact challenging and asking questions about members as individuals or as members of a club is heavily frowned upon within the subculture. In taking great care not to generalise and acknowledging that members can be quite different as individuals, they do typically share a strong anti-authoritarian stance and often display aggression toward authority figures (Nichols, 2012, pp. 75-76). Compounding this, previous negative experiences with police, media, and academia mean that if members do say anything, they will rarely allow it to be recorded. While this means that the majority of research has been forced to draw almost entirely on scarce official data or other more conjectural sources, the perceived injustice of the ‘anti-bikie’ laws has created a small window of opportunity for limited research to take place. By allowing the ‘bikies’ to speak for themselves about their subculture and effects the new laws and additional attention has had on them this research seeks to counter-balance various claims and provide additional data for informed debate and new reference points for future organised crime laws. However, it must be noted that although a lot can be learned by simply being in a privileged position able to ask questions as a welcomed outside observer, it is an altogether different proposition to know exactly what goes on behind closed doors (Devereaux, 2013, p. 69).

It is widely accepted in the literature that in order to gain any accurate information a good rapport with members is needed and some level of participation in the culture is required. However, gaining access and establishing relationships in a potentially dangerous environment while maintaining academic integrity is a complicated task. Researching this

subject is both practically and ethically difficult, and research protocols that satisfy university ethics requirements have proven to be a significant stumbling block. One of the main difficulties facing any researcher studying a deviant or criminal group is that normal research methods such as observations, questionnaires, surveys, samples, focus groups and formal interviews are either extremely difficult or impossible to utilise effectively. While a more systematic, empirical, and quantitative approach producing 'hard facts' (numbers and statistics) would be desirable, however generating any kind meaningful and relevant data within reasonable time constraints, the reality of the environment, and the availability of sources, makes such an approach impractical in this setting. One of the main advantages of utilising qualitative research methods is that they can give a more complete and nuanced understanding of the nature of the phenomena as it is experienced by the study's participants. Information can be 'unpacked', insights into what the issues are and how these people are affected by them can potentially be understood much more clearly (Ritchie & Ormston, 2014, p. 31). Therefore, a naturalistic study in the form of an ethnography with informal research procedures, using qualitative methods and analysis would seem to be the most promising empirical approach to data collection. However, given the current academic climate in Australian universities and the constraints ethics boards place on less experienced researchers, this kind of less rigid study is unfeasible.

When new South Australian 'anti-bikie' legislation was proposed in June 2015, several of the Adelaide based clubs and chapters were involved in protesting, and their members' renewed interest in organisations such as the United Motorcycle Council and the FREE (Freedom Rights Environment Educate) Australia (political) Party created a potential opening for research into the hitherto largely closed subculture. The research was initially conceptualised during this period as an ethnographic study modelled after Veno's (van den Eynde & Veno,

2007; Veno & Gannon, 2009; Veno & van den Eynde, 2007) previous research in South Australia, Gilbert's (2013) research in New Zealand, and Hopper and Moore's (1990) research in the US. However, after consultation with representatives of the university ethics board it became apparent that this kind project would not be possible. Discussion about what was acceptable limited the study to being a much more formal, rigid and structured interview process without any significant engagement with the community or prior contact with interviewees. Ethics approval was granted in November 2016, but by that time much of the initial vigour of OMC members to publicly oppose the legislation had abated, and in absence of any meaningful contact with the community and without the flexibility to cater to the nature of the subculture or the individuals being interviewed the project nearly stalled. When interviewees were identified, approached, and found to be open to discussing the research questions, on two separate occasions the researcher was invited to join other members of prominent '1%' clubs at private locations to talk more, but the researcher had to decline which ultimately meant that he was not able to build a sufficient level of rapport and the opportunities were lost. Further, having to read club members their 'rights' prior to interviews much like a police caution (at which point several members disengaged), pause contact every hour to update supervisors (which interrupted the conversational flow and left two interviews incomplete), and not being able to follow the natural rhythm and direction of a conversation due to the formal script meant that valuable information was not uncovered and future (snowballing) opportunities were also lost.

Nevertheless, this area requires further research and the opportunity to interview current and former OMC members was pursued in an effort to provide a deeper insight into the local environment, what clubs mean for their members today, and how the South Australian 'anti-bikie' suite of legislation has affected their way of life. While the imposed restrictions were

extremely limiting, a more complete and holistic understanding of the subject matter was achieved through the infield stage of the research. The result is that this research can provide detailed new information about South Australian OMCs and the effects of the South Australian 'anti-bikie' laws have had on their membership.

Ethical regulation of research

The advantages of systematic, accurate, and transparent approaches to data collection are self-evident. However, in focussing on more objective but also more impersonal scientific quantification, the dominant methods of criminological enquiry often risk further separating the researcher from the research environment. Hagan (1992, p. 4) noted the side-effects in relation to youth crime as being that; 'schools replaced the streets as sites for data collection', 'delinquency replaced crime as the behaviour to be explained', and 'the more common self-reported adolescent indiscretions were also less likely to be the crimes of more general concern to citizens'. The difficulty is that criminology is a field where researchers often investigate sensitive subjects, and the institutions that have privileged access to the necessary data are not always forthcoming especially if there is any possibility that the results might compromise their position or interests in some way (Israel, 2004, p. 18). Thus, qualitative studies with human subjects are often more necessary than in other fields. Facing such difficulties with official data, the infield component of this research was designed to engage with the target population in a way that could give a more in-depth and immersive understanding of the human experience (Greer, 2010, p. 4). Or as Ferrell et al. (2008, p. 175) succinctly wrote, 'understanding this world requires researching it on its own terms, on terms of representational dynamics, symbolic discourse, and stylistic ambiguity'. This approach is particularly vulnerable to any conditions imposed on it by ethics boards. The researcher found that in this case as soon as the official university ethics documentation was produced

and explained, the opportunity to continue any research was greatly reduced. While an examination of the impact of the 'anti-bikie' laws would benefit greatly from further scholarly investigation and interpretation, without greater access to data from law enforcement or the courts further infield study that adheres to similar ethical constraints is likely to bear little fruit.

Unfortunately, there is little clarity regarding what exactly ethical means in terms of university ethics boards and ethical regulation (Hammersley, 2015, p. 442). Whether something is ethical, that is essentially either good or bad, is largely dependent upon the particular circumstances and people involved (Hammersley, 2009, p. 211; 2015, p. 445). Strict regulation is undoubtedly warranted in fields where serious danger or harm exists, but in many situations similarly rigid guidelines are imposed when there is relatively minimal risk (Hammersley, 2009, p. 217; Israel, 2004, p. 1). The ethical regulations which limit how research is conducted were developed in an effort to minimise the harms and risks associated with the medical field, where restraint is essential (Israel, 2004, p. 5). However, the extension of the medical research ethics model to other unrelated fields has placed unnecessary limits on research which is carried out in more complex environments, with more nuanced needs and where harms can be more subjective (Israel, 2004, p. vi). While some limitations are undoubtedly necessary, when the same standards are applied to social research it has a particularly pronounced effect (Hammersley & Traianou, 2011, p. 379 & 382).

There are legitimate ethical concerns in many areas of social research, however attempts to increase accountability often overestimates potential problems and do little to address them (Hammersley, 2010). The ethical regulation of research using qualitative methods is one example where conflict often occurs, and the imposed regulations ultimately change the

nature of the research, to the detriment of the field (Hammersley & Traianou, 2011, p. 379). Social researchers often face significant hurdles when gaining access to the people and places necessary to collect specific data, and increasing ethical regulation threatens their ability to produce high quality research when addressing a number of critical questions (Hammersley, 2010). Numerous researchers have questioned whether the level of ethical regulation and restriction applied to the social sciences can be seen as any more than the ongoing bureaucratisation of research (Hammersley, 2009, p. 218). Such processes stem from institutional needs for risk management and fail to consider whether the resulting restrictions are beneficial (Israel, 2004, p. 9). When the restrictions have significant repercussions on the kinds of research carried out and unnecessarily prevent researchers from studying some of the more complicated issues, it is cause for real concern (Israel, 2004, p. 56).

While the details are very important in fields such as sociology and criminology, we also must be wary of focussing too heavily on ‘theoretical hair-splitting and overly subtle distinctions’ to the detriment of the bigger issues (Spector, 2019, pp. 177-178). The kinds of projects we tackle can be messy, sometimes it is difficult to separate our own story from that of our subjects, and the research tools we utilise are occasionally flawed. Yet the projects we pursue are extremely valuable and even when the research is constrained, we must persist, even if it is only to question various assumptions and highlight the need for further research, so that future researchers have a better idea of where to look and can identify potential roadblocks they might face as they continue build on the foundations we lay.

Conclusion

From Cohen and the other theorists who followed we have developed an understanding of what moral panic is, some of the limitations in the use of the concept, and how to deconstruct

an event through discourse. Cohen explains how a moral panic unfolds as; a folk devil is identified, a stereotypical image of their activities is presented, moral objections are made, problems are diagnosed and solutions are proposed, control measures are taken, and the problem subsequently disappears from sight only to later re-appear as a bigger problem. He further identifies several key elements in the way the media construct/present a moral panic; exaggeration, distortion, misreporting, misleading headlines, multiple reporting of the same incident, and demonology. Goode and Ben-Yehuda define the key elements as; concern, hostility, consensus, disproportionality, and volatility. From these explanations, the main difficulty in applying the model to an event stem from the lack of a clearly defined way of accurately measuring the scale of a problem and thus the proportionality of the response. An examination of labelling, deviance and criminalisation revealed that distinctions are often political rather than scientifically based, moral, or ethical divisions; which can have significant legal repercussions and potentially amplify the level of deviance. Building on a political division, we can see that crime reports often further blur the line between fact and fiction.

Goode and Ben Yehuda (2009, pp. 76-77) suggest that one of the primary ways of determining whether a response is disproportionate to the problem is to examine if the figures cited have been exaggerated, as such quantification often plays a central role in claims made about the problem. However, through an examination of crime statistics, quantification, and narrative this chapter has showed that even simple figures can sometimes obscure rather than clarify a situation, and do not necessarily make measuring the problem or the proportionality of the response any easier. This discussion has further highlighted how the 'anti-bikie' laws relate to the contemporary shift toward risk and risk management and the way in which many Western governments now conceptualise control measures. However, it emphasises that

while a person's membership in an OMC might be an indicator of risk, determining the risk that person poses based solely on their status as a member is invariably flawed. Although the notion of governing through fear is concerning, preemptive logic itself is not necessarily undemocratic or untransparent, even when various claims exaggerate and distort the level of threat. Thus, in order to preserve the balance between liberty and authority, and counter the constant expansion of government powers, guarantees that human rights and civil liberties will be observed become increasingly important (as discussed further in chapter seven). In exploring the extensive literature on moral panic, this study has further stressed some of the difficulties in utilising Cohen's original model several decades after it was first proffered. The original theory was based on modern concepts of top-down power, universal truths, conscious political manipulation, and was expressed in terms of binaries. However, post-modern applications using Foucault's conceptualisation of power relations, whereby power is dispersed and pervasive, perceive the issue as stemming from the struggle between various discursive and disciplinary truth claims.

One of the key problems in determining whether the South Australian 'anti-bikie' laws are the result of an ongoing moral panic stems from the lack of available data regarding the threat OMCs pose, which makes it incredibly difficult to measure the extent to which that threat is being exaggerated. However, given that the magnitude of numerous claims about the threat are unsupported, it is reasonable to suggest there is some level of exaggeration. Thus, while some features of moral panic are evident, as will be discussed in later chapters, and it is possible to show that claims are inflated, it may not be possible to prove disproportionality. Nonetheless, with a better understanding of how to interpret whether a phenomenon is a moral panic, and what needs to be established in order to do so, the following chapters will

address the control measures, the more specific claims made in the construction of the problem, the media's reporting of it, and the underlying issues.

Chapter Three: Organised crime, legislative responses, and cross-jurisdictional borrowing

Moral panics are often expressed as events; however, the moral panic idea is also an incredibly useful tool for conceptualising how social problems are constructed and presented in a broader sense. This chapter examines what is known about both the scale of the drug problem in Australia and South Australia, and the level of OMC member involvement in it, so that we can better judge what a reasonable response to the threat they pose might look like. As noted in the previous chapter in regard to moral panic analysis, proving the response is disproportionate to threat may be too high of a standard, however we can show that claims and reports were inflated so that later chapters can discuss how the ‘anti-bikie’ laws fit within the moral panic paradigm. This chapter will then further examine the legislative responses of other Australian states, and their subsequent reviews, so that we have strong foundation for a more in-depth discussion of the introduction and evolution of the South Australian legislation in the next chapter. Finally, this chapter addresses the role of symbolic laws as moral boundaries, criminalisation and the tendency of Australian states and territories to simply borrow new legislation from each other, regardless of its practical utility.

Drug abuse and methamphetamine in Australia

It is a paradox of modern governance that lawmakers often criminalise goods and services that people desire, which creates opportunities for those people willing and able to supply those goods and services to make extraordinarily large tax-free profits (Levi, 2007, p. 785). The manufacture, trafficking, and sale of illicit drugs is often one of the first issues that comes to mind when organised crime is mentioned, and today narcotics make up a significant part of the black market (Holmes, 2016, p. 15). Mass media discussions of the problem are

typically superficial, relying on tired stereotypes, but despite various claims, simplified depictions of hierarchical criminal organisations dominating the market, such as Colombian drug cartels and OMCs, are not a realistic way of conceptualising illegal business in the twenty-first century (Chambliss & Williams, 2012, p. 52; Naim, 2006, pp. 5-6). Drug abuse has been a documented problem in Australia since at least the 1870s. The use of opiate and cocaine-based medicines was legal until the 1920s, and a black market flourished once they were banned. Draconian legislation such as the *Vagrancy (Amendment) Act 1929* (NSW) was introduced, and severe consorting clauses combined with dogmatic policing almost managed to eliminate the problem during the 1930s (as will be discussed further in chapter seven). However, by the 1960s and 70s it was clearly becoming a problem again, and after the Woodward (1979) and Williams (1980) royal commissions harsh new drug laws were enacted in most Australian states during the 1980s (Jiggins, 2005, p. 5; McCoy, 1980, pp. 42, 137 & 140). In the 1990s fears grew over a rising ‘heroin plague’ and overdoses became a prominent feature in news reports by the mid to late 90s (W. Hall & Degenhardt, 2009, p. 651).

The amphetamine group of stimulants were relatively unheard of in Australia prior to 1980 but since then have become increasingly common. Over time the market has shifted from a variety of more traditional illegal drugs toward amphetamines, and by the early 2000s it appeared as if it was going to overtake marijuana as the highest selling illegal drug (Groves & Marmo, 2009, p. 424). ‘Speed’ (a powdered form of amphetamines) was the first readily available form of amphetamines and in the mid-1990s ‘crystal meth’ or ‘ice’ (a crystallised form of methamphetamine) became more prevalent. Amphetamine and methamphetamine are very similar, and both are commonly referred to as ‘amphetamines’, although methamphetamine is a more powerful form (National Drug and Alcohol Research Centre,

n.d., p. 2). Methamphetamine is an exceptionally addictive psychostimulant, which releases high levels of the two neurotransmitters dopamine and noradrenaline, which are primarily responsible for making people feel euphoric, excited and alert (National Drug and Alcohol Research Centre, 2014, p. 3). Even a relatively small amount of the drug can have these effects, giving it greater effect per dose, and thus making it more cost effective for users than other comparable substances (Groves & Marmo, 2009, pp. 413-414). Users experience an intense 'high' but also an even more intense comedown, which increases the likelihood of addiction and ongoing problems both physically and mentally.

Despite rhetoric like 'ice epidemic', self-reporting surveys suggest that amphetamine use peaked in the late 1990s and has generally declined since (3.7% in 1998, 2.1% in 2010 and 2013, and 1.4% in 2016) (Australian Institute of Health and Welfare, 2015, p. 61; 2017, p. 55). These studies indicate that in 2020 amphetamines are no longer even one of the top five most commonly consumed illicit drugs in Australia (Australian institute of Health and Welfare, 2020, p. 223). However, countering these figures and bucking the long-term downward trend, wastewater analysis reveals that the consumption of amphetamines increased from an estimated 9.8 tonnes in 2018 to 11.5 tonnes in 2019 (Australian Criminal Intelligence Commission, 2018, p. 4), meaning that it is now the most consumed illicit drug in Australia (Australian Criminal Intelligence Commission, 2019b, p. 3). The ACIC notes that methamphetamine use is a particularly pervasive problem in South Australia, with Adelaide having the highest average rate of consumption of Australian capital cities (Australian Criminal Intelligence Commission, 2019b, p. 24). Several commentators have argued that the drug culture is now thoroughly entrenched throughout all levels of Australian society, and it is overwhelmingly clear that the prohibition of drug use has failed (Jiggins, 2005; McKoy, 2002, pp. 82-83; Quaadvlieg, 2020).

While Australian law enforcement seized 9.4 tonnes in 2019-2020, an estimated 11.1 tonnes were consumed during the same period (Australian Criminal Intelligence Commission, 2021, p. 37 & 40). Thus, although law enforcement agencies continue to seize large quantities of the drug and make arrests, the amount coming into the country is clearly a significant problem. Cracking down on the illegal drug trade is essentially a zero-sum game for law enforcement because even when shipments are seized, traffickers are arrested, and syndicates are eliminated, the profits involved mean that they are quickly replaced. The methamphetamine market is incredibly lucrative in Australia and people pay the highest price of anywhere in the world (N. Hunt, 2018). Police suggest that traffickers pay around \$100,000 per kilogram, which they then sell at an average street price of around \$75 per 100 milligrams (Australian Criminal Intelligence Commission, 2018, p. 9). In 2014 researchers estimated that in Australia a drug trafficker could earn between \$16 and \$17 for every dollar they invest; a distributor about \$5, and a dealer between \$2 and \$3 (McFadden et al., 2014, p. 28). In 2018 the ACIC suggested that Australian methamphetamine market is worth approximately \$7.3 billion annually (Australian Criminal Intelligence Commission, 2018, p. 9). A combination of high profits, the availability precursor chemicals, and the ability to both manufacture and distribute the drug if they desire has been a clear incentive for many organised crime groups to become involved in the amphetamine trade, although much of the literature largely ignores the multitude of different individuals and groups involved (National Drug and Alcohol Research Centre, n.d., p. 2; Reding, 2009, p. 242). The ACIC estimate that in 2021 80% of methamphetamine is imported as a finished product rather than as pre-cursor chemicals because greater control measures have meant that there is considerable risk and little advantage in producing the quantities needed to meet demand locally (Australian Criminal Intelligence Commission, 2021, p. 3). A significant proportion of the drug comes

from China;¹⁶ however, shipments have been traced to Europe, Asia, Mexico, and the USA (N. Hunt, 2018). While law enforcement agencies are trying to reduce the supply of illegal drugs, it has also been widely recognised that greater efforts are needed in reducing both the demand for and the harm caused by amphetamines and other synthetic drugs (Parliamentary Joint Committee on the Australian Crime Commission, 2007b, pp. 37-57).

An immense amount of crime is related to drugs such as methamphetamine, and not just in the axiomatic sense of buying and selling an illegal product, but more so with addicts committing crime in order to feed their expensive habits (Payne & Gaffney, 2012). It has been speculated that up to 80% of crime today could be classified as in some way ‘drug-related’ (White in D. Robertson, 2015), and in 2018 it was found that 78% (690) offenders detained by police (who provided urine samples) tested positive to at least one drug, with 54% (470) testing positive for amphetamines (A. Voce & Sullivan, 2018, p. 3 & 5). The economic impact must be measured in the traditional policing, court, and prison costs, as well as in regards of psychotic patients in emergency departments, mental-health costs, rehabilitation, and car accidents (Toohey, 2015). Drug abuse harms the addicts and it creates unnecessary emotional turmoil for family members, so while it is both a crime and economic problem, the pain and suffering it causes cannot be accurately quantified (Reding, 2009, p. 11). However, the media have traditionally reported illicit drug use in narrow, biased, and sensationalised terms, largely excluding the other structural and social factors that influence it, and it would appear that Australia is prone to experiencing reoccurring waves of moral panic over illicit drug use, which is currently focussed specifically on ice (Fredrickson et al., 2019, p. 106 & 108). Hall et al. (1987, p. 223) noted on the convergence of moral panics that,

¹⁶ Guangzhou in Southern China is said to be a ‘production powerhouse for global ice production’, and the intersecting borders of Myanmar, Laos and Thailand (known as the ‘Golden Triangle’), which has been a centre of heroin production and trafficking for decades, has also been able to transfer its infrastructure to the manufacture of ‘ice’ (Quaedvlieg, 2020, pp. 171-172 & 214-215)

‘...the net effect is amplification, not in the real events being described, but in their ‘threat-potential’ for society.’ Thus, if we accept the argument that there is a moral panic surrounding the use of ice, just as this thesis examines suggestions that there is a moral panic surrounding the activities of OMCs, then we can see that these two moral panics may have potentially converged, and that the fear and anxieties that each generates may have amplified the OMC threat-potential and help to explain the emergence of the extreme new ‘anti-bikie’ legislation that now exists in many Australian jurisdictions.

The role of OMCs in Australian organised crime

Drugs are part of the OMC subculture, and the use of amphetamines (as a party drug) is widely accepted within it (C. Hopper & Moore, 2007, p. 330; Kirby & Renner, 1988, p. 50). Initially aimed at simply supplying demand within the subculture, the Melbourne chapter of the Hells Angels started producing methylamphetamine in 1981. However, demand for the drugs quickly grew in the wider community and they went on to become the first large scale Australian producers (Noble, 2000, pp. 93-94). Victorian Police clamped down on the Hells Angels and stopped their production in 1982, and the supply of amphetamine type stimulants has subsequently been filled by a wide range of different crime groups. Nonetheless, OMCs are still often depicted as the principal producers, suppliers and sellers of the drugs. Since the ‘Milperra Massacre’ in 1984,¹⁷ Australian OMCs have also become notorious for sudden and excessive public displays of violence. The combination of their history of involvement in organised crime related activities and high-profile displays of gratuitous violence has led to the wider perception that clubs are criminal organisations. While there is no doubt that the Australian OMC subculture has changed significantly since the 1960s, the actual percentage

¹⁷ Which was a gun fight between two OMCs at a motorcycle swap meet in NSW which killed seven people and injured a further twenty-eight (G. Morgan et al., 2010, p. 581; Stephenson, 2004).

of serious and organised crime that is directly attributable to their members is, although difficult to accurately measure, still much smaller than the political rhetoric suggests (Australian Crime Commission, 2013c, p. 1).

A number of different politicians, government departments and law enforcement agencies around Australia have made sweeping claims regarding the role of OMCs in the amphetamine market, yet most of the available data paints a contrasting picture of the situation. Most of the claims stem from an Australian Bureau of Criminal Intelligence (2002, p. 36 & 42) (which subsequently became part of the ACC and later the ACIC) report which stated in 2000-2001 that ‘most jurisdictions reported outlaw motorcycle gangs continue to play a dominant role in methylamphetamine manufacture’ (although not in Queensland or Victoria) and that they also ‘dominate the distribution market’. Despite noting the diversity of the Australian amphetamines market in its 2001-2002 report, the ACC (2003, p. 47 & 54) also suggested that OMCs exerted a controlling influence on distribution, although only the NSW Police reported that they controlled both the manufacture and distribution.¹⁸ The Parliamentary Joint Committee on the Australian Crime Commission (2007a, p. 26) report in 2007 then seemingly repeated those claims stating that OMCs were ‘largely responsible’ for the production and distribution of amphetamines and other synthetic drugs. However, the quote cited in the report in drawing this conclusion may have been misinterpreted as what was actually said to the committee was that OMCs were ‘heavily involved’ in the production and distribution of amphetamine in Australia (Barnett in *Reference: Future impact of serious and organised crime on Australian society*, 2007, p. 23).

¹⁸ It is important to highlight that during this period much of the ATS supply was locally produced. However, with much tighter controls on locally available pre-cursor chemicals, and a much bigger market, this is no longer the case.

In 2008 the ACC's Director of Intelligence explained that their main strategy for identifying serious organised crime targets is through analysing criminal business structures and tracing suspicious money trails. He argued that while organised crime groups are typically flexible and entrepreneurial, forming and disbanding according to gaps in the market, OMCs have a more rigid and permanent structures, and were much easier to identify than most of the groups the ACC focussed on. He said that OMCs were not typical of the kind of organised crime groups that generally attracted ACC attention. While it was not uncommon for crime syndicates or networks to share a mutual ethnicity or ethos, it was seldom their defining characteristic, and the majority of those groups do not publicly self-identify (Kitson in *Reference: Legislative arrangements to outlaw serious and organised crime groups*, 2008, p. 3). He believed that while OMCs were part of Australia's criminal landscape, there was a difference between their structure and operation and any criminal enterprises of their members. He clarified that it was beyond doubt in many instances that members act entirely as individuals (Kitson in *Reference: Legislative arrangements to outlaw serious and organised crime groups*, 2008, p. 18). So, whilst not discounting the criminal activities of OMC members, he pointed out that clubs did not meet the ACC's definition of 'criminal business structures' and as such should not be seen as a priority (Gilling & Small, 2011, pp. 200-201; Parliamentary Joint Committee on the Australian Crime Commission, 2009, p. 27). The agency was of the position that rather than focussed new laws the best way to tackle organised crime is through a broader whole-of-government approach focussing on key individuals, money trails, and asset confiscation (Koch, 2009).

The ACC described OMCs as a 'high-risk serious and organised crime target' that 'continue to represent a real and present criminal threat to Australia' in 2009 (Australian Crime Commission, n.d.-a; Lawler in *Reference: Australian Crime Commission annual report 2007-*

08, 2009, p. 14). However, the CEO reiterated the view in 2010 that organised crime today more strongly resembles ‘networked groups of organised criminals, across cultural divides, across national and international boundaries... absolutely focused on profit [and] power’, than the traditional image of isolated and self-contained organised crime groups (Lawler in McKenzie, 2010b). While the agency identified OMCs as involved in importing, manufacturing, and distributing methylamphetamine and/or its precursor chemicals in 2011, and that they recruited partners from their own social networks to this end, it highlighted the fact that OMCs were just one group among a large number of Middle Eastern, Eastern European, West African, Vietnamese, Chinese, Canadian, US and Mexican serious and organised crime groups involved (Australian Crime Commission, 2011a, p. 17 & 25; 2011b, p. 51 & 58; 2015a, p. 11; Commonwealth Attorney General’s Department, 2009, p. 7). In 2013 the ACC again acknowledged that OMCs ‘do not engage in organised crime as a collective unit’, but rather their members ‘conspire with other criminals for common purpose’ as individuals who are then able to utilise the advantages proved by club membership to support their criminal activities (Australian Crime Commission, 2013c, p. 2). It then suggested that the biggest danger OMCs pose to the community stems from their ‘culture of violence’ which increasingly seems to be expressed in public, where the likelihood of members of the public becoming unintended or collateral victims is relatively high (Australian Crime Commission, 2013b, p. 28; 2015b, p. 32). The ACC’s appraisal of the Australian methylamphetamine market in 2015 stated that while organised crime groups were entrenched at all levels, no one group was dominant (Australian Crime Commission, 2015a, p. 11). It also repeated its view that the traditional model of organised crime is nothing more than a stereotype (Australian Crime Commission, 2015b, p. 6).

The Parliamentary Joint Committee's 'Inquiry into the legislative arrangements to outlaw serious and organised crime groups' in 2009 acknowledged that it was 'difficult to clearly establish' the level of involvement OMCs had in serious and organised crime, and that it varied significantly in different jurisdictions. It noted that evidence and testimony presented by the ACC convinced them that OMCs are prominent targets for both politicians and the media because of their high visibility, but that the serious and organised crime they are often associated with frequently 'involves a level of sophistication or capacity above that of many OMCGs' (Parliamentary Joint Committee on the Australian Crime Commission, 2009, p. 32). It also recognised that it is incredibly difficult to link all or even most of the violence committed by OMCs directly to organised crime (Lauchs et al., 2015, p. 98). The deputy chair of the committee questioned the direction anti-bikie laws were headed saying;

One of the things that has troubled me about evidence over a decade in this committee... is that we are constantly hearing that outlaw motorcycle gangs are the driving force for the distribution of amphetamines, and that they are growing in power and influence. They have been the subject of references for the former National Crime Authority. They continue to be a focus of the Australian Crime Commission. It seems odd that a group that self-identifies its membership in such an overt way would be so difficult to contain. I am puzzled at the failures of, I suppose, a decade of law enforcement to really get a grip on outlaw motorcycle gangs... On its face, it is surprising that a group that stands out in such an identified way is not capable of being addressed in a pretty straightforward manner. (Kerr in *Reference: Future impact of serious and organised crime on Australian society*, 2007, p. 10)

The head of the committee further argued that specific legislation was unnecessary saying;

We've heard [of] people that have a Rolls-Royce for summer and a Rolls-Royce for winter and they're in the social pages of the Sydney papers... To me, I find them far more objectionable than some boofhead bikie. That's where we should be putting our resources, not the corporals and the sergeants, but the colonels and generals... from my point of view, bikies beating to death some bloke at Sydney airport, do you really see that as some sort of covert criminal operation? They weren't even in colours. I think police around the country have got enough authority to deal with this. I don't think they need specific legislation on it. (Hutchins in Maley, 2009a)

Over the last forty years a large number of OMC members have been convicted in relation to the production and distribution of amphetamines, making them perhaps one of the most visible participants, however there is no evidence to suggest that they are 'largely responsible' for it. As a result of the continued political and media attention, the sheer amount of police resources focussed solely on OMC members has in all likelihood led to a massive over-inflation in related statistics (Goldsworthy, 2015, p. 15; Goldsworthy & Brotto, 2021). Confusion between the terms member and associate further complicates the process of understanding whether a person is in fact a member of a criminal organisation, and media reports of 'bikie' arrests and claims of membership in an OMC have often disappeared when scrutinised by the court (Goldsworthy, 2014b; 2015, p. 20). This point was readily acknowledged by the head of the Queensland Police Service's 'anti-bikie' squad (then known as Taskforce Hydra):

I just want to point out that a bikie associate is not an OMCG member. That person may have very, very tenuous links with an outlaw motorcycle gang, yet they're referred to as an associate and suddenly this becomes a big bikie issue, that's certainly not the case at all. A bikie associate is not a member and really it's very, I think it's irresponsible to link those people with an outlaw motorcycle gang... if the person's not a member of an outlaw motorcycle gang that's involved in the offence then it's not really bikie related. It doesn't have the same effect; an associate is not a member... Just because an associate is involved doesn't mean that it's got anything to do with outlaw motorcycle gangs whatsoever. (Watts in B. Young, 2013)

Claimsmakers have often accused OMC members of playing a leading role in the production and distribution of methamphetamines, and various governments and police forces around Australia have heralded their laws as an answer to the OMC dominance of the methylamphetamine market. However, there is little if any evidence to suggest that this is actually a problem (Goldsworthy & McGillivray, 2015), and it is the diversification of supply in the methylamphetamine market which has often been noted by the ACC that is of particular concern given the targeted nature of the 'anti-bikie' laws (Australian Crime Commission, 2015a, p. 5). Lauchs et al. (2015, pp. 45-46) further highlight that research on the Australian drug market suggests that the locally produced supplies of amphetamine are more likely to be made up by small groups of two or three producers selling small amounts through social networks rather than whole OMCs selling large quantities, and there is nothing particularly unique about club membership that makes it in any way a requirement to participate in such a venture. In 2020 the ACIC reported that around 70% of Australia's serious and organised crime threats are either based or linked offshore (Australian Criminal Intelligence Commission, 2020, p. 14). Thus, it is a range of transnational organised crime

groups, which ‘anti-bikie’ laws cannot readily be applied to, that seem to represent the biggest organised crime threat. For criminal legislation to be effective it must be based on the problem as it manifests in that region, and in creating very specific organised crime laws the government needs to be careful not to overlook other serious and less visible threats.

The role of OMCs in South Australian organised crime

SAPOL have described OMCs as ‘prominent’ in drug trafficking and suggest that their members and associates dominate the Australian methamphetamine market (South Australia Police, 2015, p. 19). Commissioner Grant Stevens said as of April 2015 that 62% of South Australian OMC members had convictions for drug offences, which he called their ‘signature criminal activity’ for profit. He also linked OMCs with increasing rates of amphetamine use and said that they are involved in large-scale manufacturing and distribution operations which were facilitated by their national and international criminal networks. The agency has further highlighted that blackmail and extortion are some of the most concerning crimes OMC members are involved in (Holderhead, 2015b). Extortion and blackmail can be very profitable are particularly problematic to detect and prosecute because they are rarely reported.¹⁹ SAPOL suggests that OMC members encourage and use their reputations for extreme violence in order to take control of various criminal activities (Government of South Australia, 2008b, p. 18).

In 2017 official statistics released by Correctional Services indicated that 62% of the state’s OMC members were in jail and that South Australia’s chapters of the Comanchero, Bandidos, and Nomads Motorcycle Clubs only existed inside the state’s jails (N. Hunt,

¹⁹ Successful prosecutions are extremely difficult as victims and witnesses seldom file complaints or give evidence due to concerns over their safety and wellbeing, and it is therefore also extremely difficult to measure the scale of these problems (South Australia Police, 2007, p. 4)

2017b). However, these claims are somewhat confusing as two years prior SAPOL stated that only about a quarter of known OMC members were either in custody or under some sort of condition (such as parole) (Dickson in Dillon, 2015), and the more authoritative ACIC figures indicated that in the five years prior (2013-2017) only half of known OMC members nationwide had been charged with any offence other than minor traffic offences (A. Morgan et al., 2020, p. 6). The ACIC figures further reveal that 23% of OMC members nationally had been arrested for a violence or intimidation offence, and 22% had been arrested for a profit motivated crime (A. Morgan et al., 2020, pp. 6-7). While government and media sources typically link any involvement in crime as proof of the criminal nature of OMCs, crimes differ in terms of seriousness, impact on the victim/s, and the function or meaning to the offender (von Lampe & Blokland, 2020, pp. 534-535). Given the extra sanctions that apply to members of declared organisations, the amount of law enforcement resources that are focussed solely on them (as will be discussed in the following chapter), and other reports that indicate a number of OMC members were being prosecuted for all sorts of minor crimes such as not filing a tax return, this means that interpreting more general figures such as those supplied by Correctional Services may not be as straightforward as they first appear (Morri, 2017). The difficulties in determining whether someone is or is not a member means that the accuracy of figures such as those written in newspaper reports is often open to debate and do little to clarify the situation, as if the Correctional Services figures are taken at face value they also raise questions regarding how much of a threat clubs currently pose and why such significant resources are required on an ongoing basis if there are so few members active in the community.

The government has only released publicly a very small amount of information, and other sources of data such as court transcripts are simply not available in most cases. If

governments truly believe that OMCs present a significant threat to the community then clarifying the situation by making more information available would be in their best interest (Lauchs, 2019, pp. 298-299). However, significant resources have been directed toward the investigation of OMCs and their involvement in serious and organised crime in recent years, and the agencies responsible have very little to gain by publicly disclosing their activities and allowing outsider researchers to evaluate their data and performance. SAPOL in particular has also shown an aversion to hiring outside consultants in recent years (N. Hunt, 2012). Inviting outside scrutiny and potential criticism could complicate their work, and the recommendations of any outsiders would likely be perceived as questioning their methods and efficiency, thus there is little incentive for cooperation (Reuter, 1987, p. 178).

The Australian approaches to organised crime laws

Both ‘organised crime’ generally and OMCs more specifically have been judged as posing a significant threat in many countries and governments have responded in a number of different ways. Most jurisdictions have found that specific OMC legislation only has limited effectiveness, and in some cases overly harsh responses have proved counterproductive (Adelstein, 2011; Ayling, 2014, p. 15 & 18; Blokland, van der Leest, et al., 2019, p. 2; Blokland, van Hout, et al., 2019, pp. 30-31; Gabor, 2003, pp. 56-59; Schloenhardt in Macey, 2009; Quinn, 2001, pp. 386-387; Reilly, 2014, pp. 801-802 & 829; Veno & van den Eynde, 2008, p. 10). A number of governments and law enforcement agencies around the world have identified OMCs as criminal organisations, but it has been an extraordinarily difficult claim to substantiate in court, as while members are not necessarily involved in crime, the relationship between the clubs and criminal behaviour is often obscured by members’ tolerance of or actions which help facilitate the criminal activities of their ‘brothers’ (Tore

Bjørgero, 2019; T Bjørgero & Horgan, 2009).²⁰ One of the most apparent differences in the way legislators have addressed the problem from a criminal law perspective is by whether they have focussed on individuals or groups, although regardless of the specific approach, a common complaint is that the laws often end up being overly broad, complex, resource-intensive, and difficult to prosecute (Department of Justice and Attorney-General, 2016, p. 56). In an effort to remedy this and make prosecutions easier, Australian governments decided to pursue legislation that declares clubs to be criminal organisations and then applies various sanctions against individual members. These laws thus focus on membership of criminal networks as being a crime (as was previously discussed in chapter one), however in doing so they radically depart from traditional legal principles and protections.

Since the South Australian Government first proposed its specific OMC focussed declaration and control order scheme in 2007 (*Serious and Organised Crime (Control) Bill 2007 (SA)*) with its novel preemptive approach, all Australian states and territories except the ACT have introduced some form of ‘anti-bikie’ laws.²¹ However, numerous reviews have found that none of those states’ police forces have been able to use any of the specific ‘anti-bikie’ control order schemes with any success (Department of Justice (NSW), 2018; Department of Justice (WA), 2019; Department of Justice and Attorney-General, 2016b; McDonald & Gayler, 2016, p. 9; Moss, 2015; Ombudsman Western Australia, 2017; Victoria State Government Department of Justice and Community Safety, 2020). In 2009 the Commonwealth, State and Territory Attorneys-General, and the Commonwealth Minister for

²⁰ For example, OMCs were one of the first groups targeted under the RICO Act in the US, but in more than sixty attempts they have only been successfully prosecuted four times (Veno & Gannon, 2009, p. 206).

²¹ *Serious and Organised Crime (Control) Act 2008 (SA)*; *Criminal Organisation Act 2009 (QLD)*; *Criminal Organisations Control Act 2012 (WA)*; *Criminal Organisations Control Act 2012 (VIC)*; *Serious Crime Control Act 2009 (NT)*; *Crimes (Criminal Organisations Control) Act 2009 (NSW)*; *Police Offences Amendment (Consorting) Act 2018 (TAS)*

Home Affairs agreed that as a national issue, organised crime required a nationally coordinated response (Standing Committee of Attorneys-General, 2009, p. 8). Although, as criminal law is largely outside the Federal Government's mandate, its primary response has been in developing an administrative framework.

Federal response

South Australia's Premier Rann had called for a national approach to the anti-bikie laws numerous times since 2008, and Attorney-General Rau continued to do so, despite the Federal Parliament having limited legislative powers in this sense (Lawrence & Saurine, 2009). With few exceptions the Federal Government's power to legislate comes from s51 of the Constitution, which does not cover criminal law (Schloenhardt, 2010, p. 152). The Commonwealth Parliamentary Joint Committee on the Australian Crime Commission's examination of organised crime legislation dismissed South Australian style anti-association laws as 'complex, and fraught with legal and constitutional difficulties' (Parliamentary Joint Committee on the Australian Crime Commission, 2009, p. 94), but the Federal Government nonetheless offered to establish organised crime laws in 2012. However, as this would mean that the states had to concede their powers to the Commonwealth, the states overwhelmingly rejected the offer (McGregor, 2012a). While each state has different legislation with varying levels of compatibility, and a nationally coordinated initiative would be politically complicated, it has been pursued at the executive level (N. Hunt, 2017a; McKenzie, 2010a; Shepherd, 2013). Queensland's Premier Newman proposed a slightly different approach when he began calling for national legislation during his Government's 'war on bikies' in 2013, suggesting the mandatory deportation of any foreign citizen associated with an OMC (McKenna & Schliebs, 2013).

After the Migration laws were strengthened under former Minister for Immigration and Border Protection Scott Morrison in 2014, his successor, Peter Dutton, went on to use Section 501 of the *Migration Act 1958* (Cth) to eject 168 ‘senior’ members of OMCs from the country. This was done based on his belief that OMCs are the largest distributors of illegal narcotics in Australia and that they are responsible for extorting a large number of small businesses (Meers, 2016). Section 501 states that an individual's visa can be cancelled by the Minister if they:

are or have been a member of a group or organisation or had or have an association with a person, group or organisation that the minister reasonably suspects of being involved in criminal conduct. (Moor, 2018)

Mr. Dutton justified his decision saying, ‘Criminal motorcycle gang members don't have jobs or pay taxes - they sell drugs, run prostitutes, steal, extort and kill’ (Moor, 2017). Even when the High Court declared one of one of the visa cancellations invalid, the Minister simply re-cancelled it for the third time, showing what commentators referred to as a ‘cavalier’ attitude toward the Court (Aird, 2017; *Graham v Minister for Immigration and Border Protection; Te Puia v Minister for Immigration and Border Protection [2017] HCA 35*, 2017). What was initially seen as an ‘anti-bikie’ measure was then expanded to also include any foreign citizens convicted of domestic violence (unattributed, 2019). As of 2020 more than 5770 people had had their visas cancelled under the legislation, 300 of whom were said to be ‘bikies and organised crime figures’ (N. Hunt & Mott, 2020; Hurley, 2020). In October 2019 Mr. Dutton introduced further legislation to the Parliament which he said prohibits ‘criminals, particularly bikies, who are the biggest distributors of drugs and amphetamines in our country’ from working in secure areas of airports, seaports, and offshore oil and gas facilities

(Dutton, 2019a, 2019b).

Despite its contentious nature, police believe the federal government's cancellation of foreign OMC members' visas has had a significant effect on both the day-to-day operations and the greater national command structures of several clubs (N. Hunt, 2017a; N. Hunt & Mott, 2020). SAPOL's Crime Gangs Task Force is of the position that the sudden absence of a number of key members led to reduced focus and a weaker leadership structure, particularly in clubs such as the Mongols, as the increased influence of a younger generation upset the 'traditional status quo' (Fitzgerald in N. Hunt, 2017a). However, newspaper reports state that other sources closely aligned with law enforcement have revealed an unintended consequence of these deportations is that they may have helped push Australian OMCs to expand into Southeast Asia and Eastern Europe as former members have relocated there. They claim this has given them access to important pre-cursor chemicals, 'manufacturing bases and embarkation points' that 'help [them] direct the ice flow', although no evidence has been supplied in support of these claims (Toohey, 2015).

Interstate events and laws

New South Wales

The New South Wales Government first introduced 'anti-gang' legislation to criminalise participation in a gang and gang related activity after a spate of shootings in Sydney in 2006 (*Crimes Legislation Amendment (Gangs) Act, 2006*; Stewart in *Parliamentary Debates, 2006*, p. 1142), and following both Western Australia and South Australia it also introduced fortification removal orders (*Crimes Legislation Amendment (Gangs) Act, 2006*). Then when a violent altercation between the members of two OMCs at Sydney Airport grabbed national headlines in 2009, the Government responded by immediately redrafting their 'organised

crime' laws based on the South Australian declaration and control order model in what was likewise labelled by commentators as a moral panic (Godfrey, 2011; G. Morgan et al., 2010). The laws were similarly described as 'anti-bikie' or 'gang' laws but the same issues of vague terminology that had plagued the South Australian legislation also gave the NSW laws much broader reach than the Government seemed willing to acknowledge (D. Welch et al., 2009). Although NSW had an Independent Crime and Corruption Commission to monitor the way the police used any new powers, the laws lowered the burden of proof to a civil standard and they had the potential to be applied in variety situations which they had not been in intended and in ways that could not be anticipated (*Crimes (Criminal Organisations Control) Act, 2009*). Proceeds of crime legislation was added in 2010, but unlike similar laws in WA and SA, an unexplained wealth order could only be made if, on the balance of probabilities, the Court had reasonable grounds for suspicion that the respondent could be linked to serious crime (*Criminal Assets Recovery Amendment (Unexplained Wealth) Act, 2010*).

After the declaration and control order scheme was struck down in the High Court in 2011 (*Wainohu v New South Wales [2011] HCA 24, 2011*), the act was subsequently repealed and replaced by the (*Crimes (Criminal Organisations Control) Act, 2012*) which increased the declaration and control order scheme's transparency. The NSW Government also updated its provisions for consorting, participation in a criminal group, and increased penalties for circumstances of aggravation (*Crimes Amendment (Consorting and Organised Crime) Act, 2012*). In 2013 it amended its criminal organisations legislation bringing it in line with Queensland's *Criminal Organisation Act 2009*, and added the *Firearms and Criminal Groups Legislation Amendment Act 2013* which introduced a new offences for an owner/occupier of a premises to face fines and/or jail if 'reputed criminals attend, control or manage the premises' and expanded police powers to search for and seize any weapons on the premises (in addition

to any alcohol or drugs) (New South Wales Ombudsman, 2015b, pp. 6-7). In 2016 it introduced a version of UK style Serious Crime Prevention Orders (which will be discussed in more detail later in the chapter), and in 2018 it increased police powers for searches carried out under the *Restricted Premises Act 1943* ([unattributed], 2018; *Criminal Legislation Amendment (Consorting and Restricted Premises) Act*, 2018).

Queensland

In 2009 the Queensland Government introduced the *Criminal Organisation Act* which was a slightly more open and transparent approach to comparable interstate legislation. After surviving a High Court challenge in 2013 (*Assistant Commissioner Michael James Condon v Pompano Pty Ltd [2003] HCA 7*, 2013), it became the legislative template for other states (McDonald & Gayler, 2016, p. 11; Victoria State Government Department of Justice and Community Safety, 2020, p. 24). However, after a violent brawl in Broadbeach and subsequent ‘siege’ of Southport police station on the Gold Coast later that year, the Government introduced a more aggressive model (*Vicious Lawless Association Disestablishment Act*, 2013). One of the most compelling claims in support of the new ‘anti-bikie’ laws came from the Queensland Police Service (QPS), suggesting that most OMC members were criminals and that clubs were responsible for two thirds of organised crime in Australia (Pointing in Vogler, 2014). Although the laws’ stated intention was to bring an end to the public violence and other criminal activities of OMCs, then Premier Campbell Newman clarified, ‘They are not designed to just contain or manage the gangs; they are designed to destroy them’ (*Parliamentary Debates*, 2013, p. 3114). After a change of government and an unfavourable independent review, the Queensland Government subsequently repealed both the *Criminal Organisation Act 2009* and the ‘VLAD’ suite, replacing them with the *Serious and Organised Crime Legislation Amendment Act 2016*.

While politicians still relied on familiar ‘anti-bikie’ and extraordinary threat political rhetoric in order to justify overly broad consorting laws, its post-conviction control order scheme is much less objectionable (O'Sullivan, 2019, pp. 264-265; Victoria State Government Department of Justice and Community Safety, 2020, p. 25). However, forms of mandatory sentencing were retained and a similar consorting warning/offence regime to that in NSW was added, so it essentially amounted to only a partial roll back (Department of Justice and Attorney-General, 2016a).

Western Australia

Western Australia was the first Australian state to introduce unexplained wealth laws in 2000 (*Criminal Property Confiscation Act*, 2000), and the first to propose specific ‘anti-bikie’ legislation in 2001. Although the latter *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002* was quickly repealed after community backlash, it essentially planted the seed for what would later become South Australia’s *Statutes Amendment (Anti-Fortification) Act 2003*. The Act removed the right to remain silent and lawyer-client privilege, provided for up to five years imprisonment for noncompliance during questioning, and gave the police the power to freely enter premises without a warrant, seize property and arrest suspects (Veno, 2002). The stated aim of the Act was to deal with OMCs, but its potential to be applied much more broadly led to fears that it could be used against groups of protestors and that it might eventually lead to the state becoming the site of a nuclear waste dump (Ferret 1%er & Harry 1%er, 2013, p. 70). However, parts of the act were largely replicated and additional police powers were added under the *Corruption and Crime Commission Act 2003*, which was later renamed the *Corruption, Crime and Misconduct Act 2003*. A criminal organisation control scheme was then established under the *Criminal Organisations Control Act* in 2012, bringing WA in line with NSW’s amended legislation.

Victoria

Although the Victorian Government had long been at odds with the rest of the states and territories in regard to the need for specific ‘anti-bikie’ legislation (Hulls in Griffiths, 2009), when law and order became a major political issue in the 2010 Victorian state election the newly elected Baillieu Government enacted the *Criminal Organisations Control Act 2012* (VIC), which was broadly similar to legislation in WA, NSW and the NT. While the laws varied slightly between the states and territories, they all focussed formal and hierarchical structure of the groups, making them impossible to utilise against the vast majority of criminal organisations. The big difference between the Victorian laws and other comparable legislation is that it has much tighter constraints on the use of criminal intelligence (stemming from the *Major Crime Legislation (Amendment) Act, 2009*) which reflects the previous Government’s commitment to protect human rights. The *Fortification Removal Act 2013*, *Criminal Organisations Control and Other Acts Amendment Act 2014*, *Justice Legislation Amendment (Confiscation and Other Matters) Act 2014*, and *Criminal Organisations Control Amendment (Unlawful Associations) Act 2015* all followed. The new laws allowed for fortifications to be dismantled, lowered the threshold considered to constitute ‘serious criminal activity’, lowered the burden of proof need to declare an individual to a civil standard, and created two categories of declared organisations based on whether they were declared at a criminal or civil standard. The threshold required for the issuing of a control order was also lowered, the ‘patching over’ loophole (which will be discussed further in chapter four) was closed, stronger unexplained wealth laws similar to those in NSW were introduced, and consorting laws were reintroduced.

Northern Territory

The Northern Territory Government introduced unexplained wealth laws based on WA's model in 2002 (*Criminal Property Confiscation Act, 2000*), it then added loitering, 'violent disorder', and anti-consorting laws in response to youth gangs in 2006 (*Justice Legislation (Group Criminal Activities) Act, 2006*). Despite acknowledging that there was only a 'small number' of OMC members in the Northern Territory, the Government introduced laws similar to those in NSW in 2009 (*Serious Crime Control Act, 2009*) over fears that the tough new laws interstate might cause OMCs to relocate (Lawrie in *Parliamentary Debates, 2009*, p. 3191). It then subsequently followed NSW's lead in updating their laws in 2012 after the High Court decision (*Wainohu v New South Wales [2011] HCA 24, 2011*).

Tasmania

Although Tasmania is not thought to have a significant organised crime problem (Bartels, 2010), its Government did introduce fortification removal orders (*Police Offences Amendment Act, 2007*) and unexplained wealth orders (*Crime (Confiscation of Profits) Amendment (Unexplained Wealth) Act, 2013*). As part of a national effort to ensure that 'no jurisdiction can become a safe haven' (Hulls in Unattributed, 2009a), the Government also followed neighbouring jurisdictions and passed legislation to prevent OMC members from wearing colours in public and consorting laws to prevent them from associating (Carlyon & Humphries, 2018; *Police Offences Amendment (Consorting) Act 2018, 2018*).

Conflicting institutional views

In 2008 Victoria Police was of the position that OMCs were essentially an 'unhealthy distraction' as there was little evidence suggesting that they were a significant problem (Hulls in Griffiths, 2009; Nixon, 2008, p. 1; Hollowood in *Reference: Legislative arrangements to*

outlaw serious and organised crime groups, 2008, pp. 4 & 11-13; Overland in Shand, 2013c, pp. 246-247; Hollowood in Silvester, 2008). They said that while certain clubs and certain individuals within clubs were a problem, simply focussing on those involved in criminal activity was the best approach (Overland in Epstein, 2009; Moloney in unattributed, 2009b). The then Queensland Government similarly suggested around the same time that a broadly worded ‘one-size-fits-all’ legislative approach to OMCs was not an effective solution to the more complex problem of sophisticated organised crime groups, and QPS reiterated that conceptualising organised crime in the traditional way and focussing on observable and familiar groups was a mistake (Shine in *Parliamentary Debates*, 2007, p. 4010; Stewart in *Reference: Legislative arrangements to outlaw serious and organised crime groups*, 2008, p. 18).

Following the introduction of NSW’ *Crimes (Criminal Organisations Control) Act 2009* both the then NSW Director of Public Prosecutions and a former NSW Police Assistant Commissioner questioned the need for more legislation and suggested that better enforcement of the existing legislation was the simplest answer (Cowdery, 2009, p. 2; Small in M. Edwards, 2010). NSW Police Operation Ranmore had previously shown that existing crime laws were sufficient when they were used to successfully target the criminal activities of OMC members in 2008-2009 (Jacobsen, 2009). The NSW DPP was openly critical of the state’s version of the ‘anti-bikie’ laws saying he thought the only reason why politicians felt they could create legislation which offended the rule of law was because the precedent had already been set in other jurisdictions (an argument which will be discussed further in relation to criminalisation and cross-jurisdictional borrowing later in the chapter) (Cowdery, 2009, p. 2; Cowdery in Maley, 2009b). The former general counsel of the National Crime Authority and deputy director of the Commonwealth DPP’s office was also outspoken about the

legislation calling it ‘obnoxious’, saying that any statistics showing the number of people being charged under the new laws were not a true indication of success (as charges do not necessarily lead to convictions and those people who are members of the organisations which have been declared criminal are not necessarily those largely responsible for organised crime type activities), and that any effort to properly address organised crime would take much more long-term commitment, planning and resources from politicians (Le Grand in Koch, 2009). Former Supreme Court Judge Tony Fitzgerald and assisting counsel Gary Crooke QC made scathing comments regarding the Queensland ‘VLAD’ laws saying:

Arrogant, ill-informed politicians who cynically misuse the power of the state for personal or political benefit are a far greater threat to democracy than criminals, even organised gangs. (Cooke & Fitzgerald, 2014)

Queensland’s ‘VLAD’ laws

The Queensland ‘anti-bikie’ legislation became known as the ‘VLAD’ laws, although the *Vicious Lawless Association Disestablishment Act (2013)* was only one part of the larger suite which also included the *Tattoo Parlours Act (2013)*, *Criminal Law (Criminal Laws Disruption) and Other Legislation Amendment Act (2013)*. The title of vicious lawless association was criticised for being emotive, prejudicial, and political, as the people, associations and offences covered by the Act would not necessarily be called either vicious or lawless under any other circumstances (Bar Association of Queensland, 2015a; Rule Of Law Institute Of Australia, 2015), and the Chief Justice of the High Court described it meaningless rhetoric and potentially misleading in regards to the scope and substance of the law (*Kuczborski v Queensland [2014] HCA 46*, 2014). One of the main differences between

Queensland's laws and those in other states were the grossly disproportionate mandatory sentences designed to force cooperation with police. It was one of the more contentious aspects of the laws because numerous studies into mandatory sentencing have found them to have no perceivable deterrent effect, and their rigid nature introduces greater potential for disproportionate and unjust outcomes (Bar Association of Queensland, 2015a, p. 5; Cowdery, 2014, p. 4; Department of Justice and Attorney-General, 2016b, pp. 230-235; Doob et al., 2014, p. 3; Roche, 1999, pp. 5-6). Another problem with the broadly worded and yet quite specific anti-association laws which were designed to prevent club members from gathering in public became immediately apparent when police arrested five men for drinking together in a suburban pub, another five for buying ice-creams while on holiday, and a middle-aged mother of three for meeting her partner and a friend in a local bar (Goldsworthy, 2014b). It was revealed in 2014 that only 1% of the people convicted under Queensland's 'anti-bikie' laws were found to be committing criminal activities on behalf of OMCs (Finance and Administration Committee - Premier and Cabinet, 2014, p. 11). In essence, the way police were using the laws was not in line with how the government had said they would be used (which was to stop OMC violence by targeting their illegal activities (Queensland Government Advertisement in "Gruen Planet," 2013)), and a wave of negative publicity led to public unrest (Goldsworthy, 2014b).

Serious Crime Prevention Orders

Both the 2015 Queensland Taskforce on Organised Crime Legislation and the 2009 Parliamentary Joint Committee on the Australian Crime Commission suggested that control orders based on the British model would be a better way of approaching organised crime legislation in Australia (Department of Justice and Attorney-General, 2016b, p. 56; Parliamentary Joint Committee on the Australian Crime Commission, 2009, p. 33). Based on

similar control orders already used in the UK in relation to terrorism, sexual offences and anti-social behaviour, Serious Crime Prevention Orders (SCPOs) have been claimed to be very effective (Home Office (UK), 2015). They are used as either a sentencing option when someone is convicted of a serious offence or as something the DPP can apply to the High court for. In either case, the court must 'believe that the order would prevent, restrict or disrupt the person's involvement in serious crime'. There are numerous differences between British SCPOs and the various Australian control order regimes, with the two main ones being that they primarily focus on individuals rather than groups, and that when criminal intelligence is used in court proceedings it is disclosed to the defendant (Department of Justice and Attorney-General, 2016b, pp. 54-55). While the *Serious Crime Act 2007* (UK) states that evidence of previous criminal conduct only needs to be established to a civil standard, the House of Lords subsequently ruled that a criminal standard of proof is required (Department of Justice and Attorney-General, 2016, pp. 54-55). Further, the court's broad ability to impose conditions is tempered by the UK's *Human Rights Act 1998* which stipulates that any interference with human rights be necessary and proportionate to a legitimate purpose. The NSW Government introduced a version of the SCPO regime in addition to pre-existing laws in 2016, however in absence of those protections the legal community condemned the laws as being far too broad, unjustified, without the necessary legal constraints or judicial oversight, in contravention of fundamental individual freedoms and the rule of law, and circumventing the basic rules of evidence (*Crimes (Serious Crime Prevention Orders) Act*, 2016 ; Hutley in Gerathy, 2016; NSW Bar Association, 2016). The Queensland Government also introduced a version of the SCPO regime in 2016 under its post 'VLAD' amended organised crime legislation.

Reviews and reflection

The NSW Ombudsman reviewed the state's specific 'anti-bikie' laws in 2016 and found that although the NSW Police Gangs Squad spent more than three years preparing applications to declare various OMCs criminal organisations under the 2012 Act, none had been presented to the Court and no organisations had been declared under the legislation. The NSW Police reported that the declaration process was arduous, overly resource intensive, and complex; and it had thus decided not to further pursue its use from 2015. They found updated consorting laws, firearms laws, and other laws which target the wearing of OMC 'colours' and insignia to be much more effective. The Ombudsman concluded that police are unlikely to ever be able use the declaration and control order scheme effectively, and in light of being able to achieve similar outcomes using other measures, recommended that the Act should be repealed (McMillan in McDonald & Gayler, 2016, p. 3 & 32).

Similarly, the Queensland Government's 2016 review of their 'anti-bikie' laws found that while the deliberately broad terms gave the government considerable discretion in how to use and who to prosecute under them, the end result was that proving someone was actually a 'vicious lawless associate' beyond a reasonable doubt was incredibly challenging (Department of Justice and Attorney-General, 2016b, p. 226). It also noted that too many police resources were being focussed solely on OMCs at the expense of other forms of organised crime (Byrne, 2015, p. 2 & 26). Former Supreme Court Justice Alan Wilson's review of Queensland's *Criminal Organisation Act 2009* concluded that both the Act and the 2013 suite of 'anti-bikie' laws were severely flawed and recommended that they should be repealed or amended (A. Wilson, 2015, p. 223).

Analysis of data pertaining to the similar legislation in both Queensland and NSW further

found that in combating and preventing both the criminal activities of OMC members and organised crime more generally the ‘anti-bikie’ laws had had no significant effect (Department of Justice and Attorney-General, 2016b, p. 191; McDonald & Gayler, 2016, p. 32).

The Attorney-General responsible for the introduction of the first generation of Western Australia’s ‘anti-bikie’ legislation later said that while their ‘tough on crime’ laws were ‘fine at a political, rhetorical level’, they were not usable nor effective (McGinty in M. Edwards, 2009a). The Western Australia Ombudsman came to the same conclusion of the state’s 2012 laws in its 2017 review (Ombudsman Western Australia, 2017, p. 6). A 2020 review of the Victorian ‘anti-bikie’ laws found that their approach was ‘fundamentally ill-suited to the contemporary nature of organised crime’, and that it had failed in its policy objectives. It further concluded that the declaration and control order scheme was not a ‘valid policy mechanism’ as there were significant hurdles which prevented its use and suggested a more practical legislative solution was needed (Victoria State Government Department of Justice and Community Safety, 2020, pp. 6 & 30-33).

Organised crime is a cross-border issue so a mutually recognised control order scheme that is largely consistent across the country has merit, and many of the states (including the Northern Territory) have revised their laws at least once to bring them into line. The laws were also refined as various aspects of different states’ legislation were tested in the High Court (as will be discussed further in chapter four). Victoria, South Australia, Western Australia, NSW and the Northern Territory all maintain similar control schemes, however there is no evidence of the declaration and control order model being effective anywhere. Thus, if no jurisdictions are able to use the laws effectively, then the basis for maintaining

compatible and mutually recognised laws is invalid (Victoria State Government Department of Justice and Community Safety, 2020, pp. 30-31).

The South Australian ‘anti-bikie’ laws

The South Australian ‘anti-bikie’ laws initially began in 2003 as fortification removal orders based on the WA model (*Statutes Amendment (Anti-Fortification) Act 2003 (SA)*) and powers for the Police Commissioner to refuse and revoke handgun licences using criminal intelligence based on the NSW model (*Firearms (COAG Agreement) Amendment Act 2003 (SA)*). Although ostensibly innocuous, the anti-fortification laws inserted section 37A into the *Development Act 1993 (SA)* which stated that if any proposed development ‘may’ involve the creation of fortifications it must first be approved by the Police Commissioner. This enshrined what the Attorney-General referred to as a ‘character clause’ which could be used to prevent OMCs from building suburban clubhouses (Atkinson in O'Brien, 2002). Criminal asset confiscation laws were added in 2005 (*Criminal Assets Confiscation Act 2005 (SA)*), and the use of criminal intelligence was extended from gun licences to include the licencing of crowd-controllers, giving the Police Commissioner the discretion to grant or refuse applications and revoke licences (*Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005 (SA)*). In 2008 the South Australian Government created laws based on the federal ‘anti-terror’ model which allowed the Attorney-General to ‘declare’ an organisation to be criminal, after which the Police Commissioner could apply to have a control orders or public safety orders placed against individual members (or ‘associates’) of that organisation using criminal intelligence that was to be judged at civil (rather than criminal) standards, which could (amongst other things) prohibit association with others or prohibit that person from going certain places (*Serious and Organised Crime (Control) Act 2008 (SA)*). The use of criminal intelligence expanded further 2008 with the introduction of

Firearms Prohibition Orders, which prohibited anyone who it was thought would likely cause ‘undue danger to life or property’ or who was deemed not to be ‘a fit and proper person’ from possessing or using a firearm (*Firearms (Firearms Prohibition Orders) Amendment Act 2008* (SA)), and Licensing Barring Orders, which gave the Police Commissioner discretionary powers to bar ‘a person from entering or remaining on licensed premises’ or any licensed premises within a specified area for an indefinite period and any police officer to bar a person on any reasonable ground for up to 72 hours (or longer with the authorisation of a senior officer) (*Liquor Licensing (Power to Bar) Amendment Act 2008* (SA)), and then again in 2009 under new unexplained wealth laws (*Serious and Organised Crime (Unexplained Wealth) Act 2009* (SA)).

Following the High Court failures of both the *Serious and Organised Crime (Control) Act 2008* (SA) (*South Australia v Totani [2010] HCA 39, 2010*) and the *Crimes (Criminal Organisations Control) Act 2009* (NSW) (*Wainohu v New South Wales [2011] HCA 24, 2011*), the Government introduced new offences for participation in a criminal organisation (based on similar amendments made in 2006 to the *Crimes Act 1900* (NSW) (Rau in *Parliamentary Debates*, 2012, p. 79)), new aggravated offence provisions for criminal activity with or on behalf of a criminal organisation, the presumption against bail, and consorting offences, in addition to protections for vulnerable witnesses, a provision for cases to be heard by a single judge without a jury and allowing for the use of the ACC’s coercive hearings power in 2012 (*Statutes Amendment (Serious and Organised Crime) Act 2012* (SA)). Further, the power to declare an organisation was shifted from the Attorney-General to ‘eligible judges’ of the Supreme Court (bringing its legislation in-line with NSW, WA, and the NT) (*Serious and Organised Crime (Control) (Miscellaneous) Amendment Act 2012* (SA)), and the use of criminal intelligence was standardised across a number of acts (*Statutes*

Amendment (Criminal Intelligence) Act 2012 (SA)). Following the success of Queensland's *Criminal Organisation Act 2009* in the High Court, the SA Government changed the power to declare an organisation from that of an 'eligible judge' of the Supreme Court to simply the Supreme Court in 2013 (*Serious and Organised Crime (Control) (Declared Organisations) Amendment Act 2013 (SA)*).

Mirroring Queensland's laws in 2015, the South Australian Government established new offences for a participant in a criminal organisation to knowingly being present in a public with two other participants, entering a proscribed place or attending a proscribed event, recruiting new members, and entering or remaining in licensed premises while wearing the insignia or colours of a declared criminal organisation. After the High Court upheld NSW's consorting provisions (*Tajjour v New South Wales [2014] HCA 35, 2014*) the South Australian Government also introduced stronger consorting laws based on the NSW model (*Statutes Amendment (Serious and Organised Crime) Act 2015 (SA)*).²² It further gave the power to declare an organisation and proscribe places (such as clubrooms) to Parliament rather than the judiciary, meaning that declarations would take place as regulations rather than as rulings (*Criminal Law Consolidation (Criminal Organisations) Regulations 2015 (SA)*; *Liquor Licensing (Declared Criminal Organisations) Regulations 2015 (SA)*), and added regulations automatically prohibiting certain people from working in the tattoo industry (*Tattooing Industry Control Act 2015 (SA)*). In 2016 criminal asset confiscation laws were strengthened (*Criminal Assets Confiscation (Prescribed Drug Offenders) Amendment Act 2016 (SA)*), and in 2018 OMC members and their associates were also ostensibly banned

²² Based on S93X of the *Crimes Act 1900* (NSW) whereby any person who 'habitually consorts' in any form (including electronically) anywhere with anyone who has been convicted of an indictable offence, after having been given a warning can be jailed for up to two years (*Summary Offences Act 1953 (SA)* S13).

from visiting inmates in jail (*Correctional Services (Miscellaneous) Amendment Act 2018* (SA)).

Legislative reviews

The retired judge responsible for reviewing the state's 'anti-bikie' laws in 2009, 2010, and 2011 said that while there were certain groups that:

...have the resources and the lack of scruple that allows them to try and do almost anything... [they] could be wearing suits and ties, apparently leading respectable lives. If their activities involve co-ordinating... illegal things like importation or sale of drugs, they're just as much in the frame as some bloke on a motorcycle with a goatee. (Moss in Wills, 2010b)

While Mr. Moss acknowledged the specific problems with the *Serious and Organised Crime (Control) Act 2008*, that it abrogated the principles of natural justice, did not provide procedural fairness, and relied on the use of criminal intelligence, his main criticism was about the Government's myopic approach to creating laws that only applied to specific groups rather than the community as a whole, and he opined that even if they chose to conceptualise organised crime in a more traditional (outdated) way then only fears over political backlash had stopped them from tackling all ethnic/ethos based crime groups with the same ferocity.²³ He was bewildered as to why OMCs were thought to pose a more serious threat to society than any other crime groups, and suggested it was their high visibility, bad reputation, and that there were no problems with 'political correctness' in singling them out

²³ For further discussion of ethic/ethos based crime groups and the limitations of this assessment see the Queensland Crime Commission and Queensland Police Service's Strategic Assessment of Organised Crime in Queensland (1999, pp. 17-27).

instead of perhaps Asian or sub-Saharan African crime gangs (Inquiry into Serious and Organised Crime, 2015, p. 8). In voicing his concerns about this kind of focussed lawmaking and the direction it heralded in, he highlighted that Asian crime groups could not be targeted in this way without subjecting all people of Asian origin to similar restrictions (Inquiry into Serious and Organised Crime, 2015, p. 14). SAPOL Commissioner Grant Stevens admitted that '[t]o some extent outlaw motorcycle gangs play into our hand through their overt conduct and the way they structure their business,' and SAPOL noted in their annual report that during 2014-15 they had made much greater inroads into the organised crime problem by targeting a Malaysian-based organised crime group responsible for the distribution of methamphetamine than OMCs, which the declaration and control order legislation could not be applied to (Inquiry into Serious and Organised Crime, 2015, p. 20; South Australia Police, 2015, p. 21).

Symbolic laws

In a representational democracy parliament is the only body that can legitimately claim to represent the whole of society, and its role is to define both the moral standards of that society and the acts that breach those standards (Gusfield, 1967, p. 176). Parliament sometimes create laws that transcend what is functional or enforceable as a way of simply demarcating a moral boundary or erecting a moral barrier.²⁴ This kind of symbolic legislation is about giving expression to political values or achieving more fundamental goals, rather than necessarily being about compliance (van Klink, 2016, pp. 21-22). Creating symbolic laws and defining moral boundaries (or social norms) is a kind of ceremonial performance (Gusfield, 1967, p. 177), in which parliament both re-affirms its role as definer and communicates that a certain value, moral, or group in society is taken seriously (van Klink, 2016, p. 31). While the law and morality may (or may not) be connected, the connection

²⁴ For further discussion of moral barriers and the OMC see van Ruitenburg (2020).

exists from a political standpoint, and is emphasized primarily for political purposes. Thus, a symbolic law says as much about those who seek to erect moral boundaries as it does about those who are defined as being outside of them (Hier, 2002a, p. 328). Once passed, other politicians are unlikely to challenge symbolic laws because to do so would undermine the legislative process, the law (more generally) and state power (van Klink, 2016, p. 31 & 33).

Although there is undoubtedly a theatrical aspect to it, the law is rarely either completely symbolic or completely instrumental. Symbolic and instrumental laws have different effects, and both are necessary to for the state to function. However, while symbolic legislation may have both symbolic and instrumental purposes, in cases where it primarily serves political purposes and fails to address any administrative constraints, it creates significant problems for the agencies responsible for its implementation and the courts to subsequently resolve. It is also particularly concerning in cases where laws are needlessly oppressive or lead to injustice. The parliament does not want its laws ignored, and agencies may make an effort to enforce them, but that then creates a dilemma for judges who neither want to usurp parliament's intention nor enforce statutes where the costs greatly outweigh any benefits (J. Dwyer, 1990, pp. 233-234 & 250). Examples of such dilemmas came in relation to SA's barring orders and its banning of colours in 2013 and 2016. In 2013 hoteliers and restaurateurs reported that the laws were unworkable, as wait staff and managers did not always know which customers had barring orders against them, and they were both physically intimidated by and not trained how to 'bar' OMC members (Debelle, 2013; Hegarty, 2013). In 2016 a Magistrate ruled that the barring orders imposed on an OMC member were 'absurdly wide in scope' and 'unreasonably oppressive and unfair', to which a Supreme Court Justice countered on appeal that the Magistrate had 'overstepped the boundaries of her powers in ruling the orders were oppressive' (Dowdell, 2016). Similar

issues arose in NSW in 2018 when an OMC member had his gun license revoked on the premise that his membership meant he was not a 'fit and proper person' and that it was in the public interest, however a judge subsequently deemed him to be honest and trustworthy and found that he did not pose a risk to public safety (unattributed, 2018).

Criminalisation and cross-jurisdictional 'borrowing'

The term criminalisation essentially refers to the making of criminal law. It is the legal and political processes by which certain behaviours come to be defined as criminal, law enforcement agencies are granted coercive powers and resources to detect and prevent transgressions (such as the intensity of surveillance and policing) and offenders are subsequently punished (including beyond simply harsher penalties) (McNamara, 2015, pp. 39-42; McNamara et al., 2018, pp. 92-93). Governments frequently employ criminalisation as a public policy tool in addressing newly identified sources which they perceive as posing harm and risk, and it is politically appealing because it is a quick and visible solution which publicly positions governments as 'tough on crime' (McNamara, 2015, p. 34). These steps in themselves are not necessarily cause for concern as they merely reflect adaptation of the criminal justice system (McNamara et al., 2021, pp. 388-389.) However, over-criminalisation, which can be seen as a reliance on criminal law solutions to what are in essence social and economic problems, is particularly concerning when powers are increased in a deliberately imprecise manner and without regard for traditional legal principles and safeguards, or there is an increased likelihood of exposing individuals to the penal system who would not otherwise be (McNamara, 2017, pp. 3-4; McNamara et al., 2018, p. 92). In contrast it should be noted that in areas such as domestic violence, sexual violence, corporate and white-collar crime, under-criminalisation is equally problematic (McNamara et al., 2018, p. 94). While the term criminalisation encompasses both criminalising and decriminalising;

penalties are sometimes reduced and various acts are sometimes decriminalised, but the reduction of police powers or adding to citizens' civil rights is relatively uncommon by comparison.

Understanding labelling and deviance amplification (as discussed in the previous chapter) is an important theoretical base for moral panic analysis, and also for examining how the South Australian 'anti-bikie' laws may have negatively influenced the direction of the subculture. When someone is cast as deviant, and they are committed to their chosen identity, they start conceiving themselves in the simplified terms of the signifier, and through a process of secondary deviance, those traits can become amplified (Lemert, 1972, p. 59; Matza, 1969, p. 157). OMCs are easy targets for criminalisation because there are few constraints offered by other institutional actors, and various claimsmakers' success in demonising them seems to have developed into rhetorical model favoured by politicians seeking to justify the introduction of new criminal laws and the expansion of government powers (McNamara & Quilter, 2016, pp. 7 & 34-35). Victims are also frequently evoked as a trope or motif in order to justify further criminalisation, and while some of the measures that are introduced may legitimately increase community safety, the 'victim' is typically little more than a rhetorical device used to gain a political advantage (McNamara et al., 2018, pp. 109-110). While members of OMCs embrace their deviant image and proudly display the subcultural symbols of difference, they draw ire and blame which has become concrete through criminalisation, to a point where their criminality has arguably moved beyond factual guilt (as the under the 'anti-bikie' laws they are declared criminal as groups by Parliament rather than found to be such as individuals by the court as will be further discussed in chapter four).

It is broadly considered to be a useful starting point when evaluating if new laws or powers

are appropriate to determine whether the harm or risk is of a significant enough magnitude to warrant the changes, and if other less disciplinary focussed approaches might be more suitable. As a society we also expect that any new laws or powers will respect traditional legal principles and fundamental civil rights except under the most extreme circumstances (McNamara, 2017, p. 5). The continued use of practices such as demonisation to drive the creation and implementation of new public policy highlights the urgent need for a more widely accepted standard set of principles and processes to help guide the creation of new criminal laws and determine their ongoing suitability (McNamara, 2015, p. 38).

The public's perception that OMCs are growing in size, power, and sophistication, while the police are largely incapable of dealing with them, has led to the wide scale adoption of specialised extreme 'anti-terrorism' style laws in most Australian jurisdictions (Ayling, 2011b, p. 251). While local events can trigger over-criminalisation, the cross-jurisdictional 'borrowing' of innovative new legislation is a concern (McNamara et al., 2018, pp. 109-110). For instance, then Attorney-General Rau justified South Australia's new 'anti-bikie' laws in 2015 by saying it could not be a coincidence that every state government had identified OMCs as a problem, and therefore the 'fact of it being a problem' could not be debated (N. Hunt, 2015b). The various Australian states and territories have a tendency to borrow heavily from each other, and while replicating neighbouring state's laws is quite logical in cases where they could potentially produce qualitatively improved outcomes, simply copying law reform ideas without careful assessment of their implementation and impact, i.e., how a law works in practice as opposed to its mere theoretical potential, has often proven to be a myopic approach to law making (McNamara, 2017, p. 4). The historical and empirical evidence regarding the criminal law's capability to regulate certain harms or risks is also often given inadequate consideration prior to the introduction of new laws. Organised crime needs to be

addressed at state, national and international levels, and key to this effort are effective laws, good police work, quality intelligence and sufficient resources. If an effective solution is to be found different approaches must be considered.

Conclusion

This chapter examined what is known about both the scale of the drug problem and OMC involvement in it. Adding to chapter one's discussion of OMC related crime which found that OMC members could only be linked to 4.7% of drug trafficking networks (Hughes et al., 2020) and that the vast majority of serious offences had been committed by a relatively small number of club members (Goldsworthy, 2015; Lauchs & Staines, 2019; A. Morgan et al., 2020), this chapter examined the various ACC/ACIC and Parliamentary Joint Committee reports on the subject. While it has often been claimed that OMC members have dominate or monopolise the production and distribution of methamphetamines, it is the reported diversification of the market (Australian Crime Commission, 2015a, p. 5) which is of particular concern given the targeted nature of the 'anti-bikie' laws. Numerous Australian state and territory governments and police forces have heralded these laws as the answer to a problem for which there is little if any evidence to suggest actually exists (Goldsworthy & McGillivray, 2015). The chapter then looked at the ways different Australian states have approached their 'anti-bikie' laws, highlighting their similarities and weaknesses. A clear problem with the laws in New South Wales, Western Australia, Victoria, the Northern Territory and South Australia (and previously in Queensland) is that one of their key mechanisms, the declaration and control order scheme, has proven overly complicated, resource intensive and unworkable. The laws are nominally organised crime laws, but their specific OMC focus with a need for names, logos, and clearly defined membership makes them unsuitable for use against the vast majority of groups responsible for organised crime

type activities. Further, the potential for broadly worded laws to be used in ways incongruent with their stated aims was shown in Queensland (and will be discussed further regarding NSW' consorting laws in chapter seven).

This led to a discussion about how symbolic laws can create administrative problems for courts, some of the issues associated with over-criminalisation, and the history various Australian states and territories have of borrowing innovative new legislation from each other, regardless of its effectiveness. This kind of cross-jurisdictional borrowing is particularly concerning in cases such as the 'anti-bikie' laws where politics appear to have been prioritised over need and utility, and unchecked claimsmaking has driven criminal laws that fundamentally alter the nature of liberal democracy in Australia. However, as several of the subsequent reviews revealed that the declaration and control order schemes have not been able to be used, the actual shift between liberty and security is essentially theoretical at this stage. This underscores the need for continued debate about the continued necessity of such laws and the trade-off between liberty and security that they represent, in order to prevent such changes from becoming further entrenched. The following chapter will lay out a narrative account of the introduction and evolution of the South Australian laws, further exploring the various claims, and provide a discourse analysis so that it can be established how the events and laws align with the moral panic model.

Chapter Four: Narrative account of the South Australian ‘anti-bikie’ laws and discourse analysis

The Rann Government was, in some ways, an innovative and leading state government, and the introduction of its ‘anti-bikie’ laws marked a conceptual shift in the way Australian governments approached criminal legislation. Some eighteen years after the first ‘anti-bikie’ laws were first introduced, they have evolved and expanded quite markedly. This chapter narrates the introduction and evolution of the South Australian ‘anti-bikie’ laws and analyses the discourse as a way of deconstructing events. Once OMCs were identified and constructed as ‘folk devils’ in the lead up to the 2002 state election, concern over their activities began to gain momentum, and the idea that they pose the single greatest threat to the South Australian community took hold. This research suggests that the issue quickly developed into a moral panic, aligning closely with the model expressed and developed by scholars such as Cohen, Goode and Ben-Yehuda, and Hall et al., and the government passed extraordinary laws to ‘solve’ the problem. The new laws were found to be unconstitutional in the High Court, and the episode of panic was seemingly over. However, as discussed in the previous chapter, numerous other states had adopted similar laws in the meantime, and through a process of cross-jurisdictional borrowing, the panic essentially appears to have come full circle when the South Australian legislation was amended to ‘mirror’ that in other Australian jurisdictions. This chapter further examines the issues inherent in the use of criminal intelligence in the judicial system, the successful High Court challenge, and SAPOL’s perspective of OMCs and the ‘anti-bikie’ laws.

Most scholars agree that the key to determining whether or not a particular phenomenon meets the criteria of a moral panic is to establish that distortion and exaggeration have led to disproportionate reaction (Cavanagh, 2007, p. 10; S. Cohen, 2002, p. xxxiv; Goode & Ben-

Yehuda, 2009, p. 41; J. Young, 2009, p. 13). However, the lack of available data regarding OMC members' criminality makes it difficult to measure the level of exaggeration and distortion in reporting, and it may not therefore be possible to objectively prove disproportionality (as identified in chapter two). In such cases Cohen (2002, p. xxxv) observed that proportionality can and should be judged based on the language and rhetoric alone (to show exaggeration and inflation). Thus, this chapter will utilise discourse analysis in an effort to deconstruct events, gauge public concern, and both inductively and critically examine the language surrounding the laws, so that we can establish if there is a sufficient level of inflation to justify the continued use of the moral panic label and if the issue warrants further analysis.

The primary sources of this data were the news media, government reports, press releases and 34 records of parliamentary Hansard. This involved the comprehensive examination of the local Adelaide newspapers (reading through and codifying the 4,235 articles from 1998-2020 which referenced either OMCs or the 'anti-bikie' laws in the Advertiser and Sunday Mail as will be discussed further in the discourse analysis section) and a thorough search of reports associated with the South Australian legislation in other newspapers such as the Australian, the Sydney Morning Herald, the Herald Sun, and the Guardian, submissions to the Parliament, and both publicly available government and police reports and those that could be obtained through the *Freedom of Information Act 1991* (SA). Assorted Government press releases, High Court decisions, and the numerous Bills and Acts related to the various pieces of 'anti-bikie' legislation were also all reviewed in detail.

The term 'discourse analysis' is used across a number of disciplines and in reference to many different kinds of studies. It emerged from social constructionism during the late 1970s and

has since developed into somewhat of an ‘umbrella methodology’ which incorporates a broad range of discursive methods (Korobov, 2020, p. 326). It is largely accepted in the moral panic literature that best way to determine whether various social phenomena meet the moral panic criteria is to analyse the discourse, however there does not appear to be a single prevailing understanding of what discourses are, or what the best way to analyse them is (Jørgensen & Phillips, 2002, p. 1). Essentially, discourse is the language used in social settings, and it is widely conceptualised as playing a significant role in the construction of social reality. Discourse analysis therefore aims to investigate the relationship between discourse and the various other elements of social life, such as power relations, ideology, institutions, and identities (Fairclough, 2012, p. 78).

Foucault suggests that ‘truth’ is largely constructed through discourse and that what is judged as being either true or false is determined by different knowledge regimes. Truth is essentially defined by the way it is portrayed in the discourse and is greatly dependent on the forces that shape its production and dissemination. Thus, knowledge is not simply a reflection of reality, it is deeply entwined with discourse, which in turn is deeply entwined with power systems behind it. If the absolute truth is unknowable, then we should focus on the processes that shape the discourse and how it gives the impression of truth and reality (Foucault, 1980). As a branch of social constructionism, discourse analysis can therefore be conceptualised as investigating how meaning is given to the social world. The social world is constantly evolving so a discourse analysis should provide a snapshot of the discursive struggle between different perceptions of reality and explain how a particular perception achieved dominance. For scholars who advocate critical discourse analysis, the textual discourse is only a starting point and needs to be supported by further socio-political and historical research (Stritzel, 2012, p. 552). Critical discourse analysis thus centres around the investigation of how various

pre-existing elements, meanings and structures come together to shape the discourse, which in turn changes social world (Jørgensen & Phillips, 2002, pp. 6-7). Rather than focussing on how, or the extent to which, discourse mirrors reality, a discursive psychology approach to discourse analysis further examines how the discourse has evolved through various interactions and how the language and culture influence the individual and lead to action.

Terrorism nexus

The notion of what a reasonable and acceptable response to uncertainty and security is changed for many Western Governments after the events of September 11, 2001. The idea that terrorism, as an exceptional threat, warrants exceptional legislation, became widely accepted under a new preemptive paradigm (as discussed further in chapter seven) (J McCulloch & Pickering, 2010, p. 13). In response to the 2005 terrorist attacks in London, Prime Minister Howard introduced a range of broad new anti-terrorism laws which drew heavily from foreign models, particularly those from the UK in relation to definitions and new legal measures (Bronitt, 2008, p. 74). These laws formed the basis of a new form of legal sanction whereby those belonging to, or even associating with those belonging to certain declared groups were guilty of a criminal offence. Despite two former Chief Justices of the High Court and a former Chief Justice of the Family Court arguing against them, suggesting that they were draconian, required further public debate, and could not be justified (Pelly et al., 2005); and the Security Legislation Review Committee recommending that the association clauses of the legislation be repealed as: ‘the interference with human rights is disproportionate to anything that could be achieved by way of protection of the community if the section were enforced’ (Security Legislation Review Committee, 2006, pp. 4-5), the controversial new laws went unchanged.

On the 29th of May 2007 the Opposition argued that in comparison with other states South Australia was relatively free of crime and particularly violent crime, and that Premier Rann was trying to exploit community fears for his own political ends (Lawson in *Parliamentary Debates*, 2007, p. 146). However, four days later four OMC members were shot outside an Adelaide nightclub, and three days after that the then Leader of the Opposition changed tack accusing the Premier of failing to deliver on his law-and-order election promises. The Premier responded by saying that he was examining if anti-terrorist legislation could be adapted and modified, because ‘if these people want to behave like terrorists, they will be treated like terrorists’ (Hamilton-Smith & Rann in *Parliamentary Debates*, 2007, pp. 299-300). The then Deputy Premier and Treasurer described OMC members as ‘pure evil’, calling them every bit as frightening as terrorists, and ‘who by their own actions, surely forfeit their rights’ (Foley, 2012). However, the DPP publicly called the ‘anti-terrorism’ approach to criminal laws ‘misguided’, arguing that they elevated and glamourised ‘common thugs’. The federal definition of what a terrorist act is (which the South Australian laws were modelled on), speaks of politically, religiously, and ideologically motivated crimes, and he stressed that the crimes OMC members commit do not meet these criteria (Pallaras in N. Hunt, 2007a).

A week later a member of an OMC shot three people in the Melbourne CBD during morning peak hour; and the government’s proposed new even tougher ‘anti-bikie’ laws gained considerable momentum. Premier Rann began publicly referring to members of OMCs as ‘terrorists within our community’, and suggested that the new counter-terrorism laws could provide a nationally consistent approach to legislating OMCs. (Owen, 2007; Riches, 2007) By continually referring to ‘bikies’ as ‘terrorists’ in the media and linking them with various organised crime offences such as drug trafficking, murder, extortion, intimidation and the smuggling of firearms, Premier Rann paved the way for the introduction of the federal

government's anti-terrorism model of pre-crime laws and the accompanying public expenditure (unattributed, 2007). Five months later, the Premier announced 'the most advanced, toughest and comprehensive legislation in the history of Australia', and 'the toughest legislation anywhere in the world', which would be used to 'disrupt and dismantle' OMCs (*Parliamentary Debates*, 2007, pp. 1707-1708). He described OMCs as 'an evil within our nation' and said he intend to lead the fight against them (unattributed, 2007).

The Premier capitalised on the federal government's rhetoric and used the same language of extraordinary threat, urgency, and war, in order to build support (Ananian-Welsh & Williams, 2014, p. 376; Carrick, 2008; M. Edwards, 2009b). The *Serious and Organised Crime (Control) Act 2008* (SOCCA) was essentially copied from Division 102 of the federal *Criminal Code Act 1995* (Cth) on terrorist organisations creating a mechanism for banning specific organisations and then criminalising associations with these organisations and their members. Unfortunately, the South Australian legislation was much looser in its wording and also contained significantly fewer safeguards. Under the federal anti-terrorism laws on which these laws were originally based, a terrorist has the opportunity to have any government decision reviewed, yet a member of a South Australian OMC who may not have committed any crime does not. While there has been nearly unanimous political agreement that terrorism is an exceptional offence requiring exceptional legislation, the South Australian 'anti-bikie' laws showed these exceptional laws beginning to creep beyond those original exceptional circumstances (Loughnan, 2009, p. 458).

The Serious and Organised Crime (Control) Act 2008

The official government position was that OMCs were focussed on because their impact across all levels of crime made them the most serious threat the community, and that new

laws were needed in response to an increasing incidence of criminal behaviour, a disproportionate number of serious offences, and several acts of public violence (Parliament of South Australia Legislative Review Committee, 2011, p. 6; *Parliamentary Debates*, 2007, p. 1805). The unprecedented powers given to the Attorney-General and police under the *SOCCA* was said to be a measured and appropriate response that was necessary in order to protect the public (Government of South Australia, 2008b, p. 6; Holloway, 2007b, p. 1; *Parliamentary Debates*, 2007, p. 1806). It was also implemented in line with the Government's Strategic Plan in order to increase confidence for future investment in the state, show any potential affluent foreign students that they would be safe studying at the state's universities, reduce the illicit drug market, and reduce the amount of victim reported crime (Government of South Australia, 2007, pp. 13, 15 & 20; Holloway, 2007a, p. 3). SAPOL identified extortion, fraud, and the illegal drug market as being directly linked to OMCs, although they acknowledged that their true scale was unknown and considered largely unknowable, as extortion is rarely reported, fraud often undetected, and illegal drugs highly sought after (unattributed, 2003). Despite not knowing the true scale of the problems, and the laws being largely incapable of achieving their stated aims, the 'war on bikies' was proving to be very successful politically; and even though the state suffering severe drought and economic stagnation the Government held a sizable advantage in the polls.

Playing on their 'outlaw' moniker a government spokesman explained that although they are often described as 'outlaw motorcycle gangs' they are not actually 'outlawed', a theme which Premier Rann subsequently reiterated numerous times explaining that under the *SOCCA* the Attorney-General would thus have 'the right' to declare OMCs 'outlawed organisations' (Henderson, 2007; 2007). The *SOCCA*'s approach was particularly noteworthy because any decision on whether or not a club was to be declared could be based on any matter that the

Attorney-General considered to be relevant, and he or she was not required to provide any reasons for their decision. Further, if a decision was based on criminal intelligence no information was to be disclosed, and the validity or legality could not 'be challenged or questioned in any proceedings' (*Serious and Organised Crime (Control) Act, 2008 S10, 13 & 41*) However, critics warned that in giving the Attorney-General the almost unlimited power to declare any organisation that they perceived to be a risk to public safety and order, and by making those decisions effectively beyond reproach, the law had the potential to be used far beyond its original scope and was readily susceptible to abuse (Schloenhardt, 2008a, p. 11).

From the rhetoric used one might assume that declaring an organisation to be criminal would make it illegal to be a member, but rather the law created a system for proscribing certain groups and then criminalising any association with its members. Once the Attorney-General had declared an organisation, its members were subject to mandated court issued control orders which made any meeting or communication with other members criminal, and punishable by a custodial sentence of up to five years. Any senior police officer was also given the power to make public safety orders which could prohibit specified people from entering certain premises, events, or areas for up to 72 hours if their presence was thought to pose a serious risk to public safety (*Serious and Organised Crime (Control) Act (2008) S23*). The Act further created new offences for making threats or reprisals against public officials, or people involved in judicial proceedings or criminal investigations. While the similarities to federal anti-terrorism laws were clear, the influence of some of the more extreme organised crime legislation in other jurisdictions was also apparent. However, in borrowing the authority and legislative language from anti-terrorism laws, the South Australian legislation differed from its foreign equivalents in that it did not provide a strict definition of what a criminal organisation was, it vested power with a single individual, and it was not necessary

to prove that an association occurred for a criminal purpose or that it would have led to the commission of a crime (Government of South Australia, 2008b, p. 30; Schloenhardt, 2008a, pp. 8-9).

Despite its radical departure from traditional criminal law (in giving the Attorney-General the power to proscribe criminality rather than having it determined by a court), there was little debate when the Act was read in parliament, and it was supported by both major parties. Then leader of the opposition, Martin Hamilton-Smith, argued that the laws did not go far enough, saying that ‘bikie gangs rule the roost’ and that they ‘run’ organised crime, drug racketeering, and prostitution in the state. He suggested that clubs avoided prosecution because they threatened to kill anyone who testified against them and that in giving evidence, they risk a ‘bikie gang’ turning up at their children’s school and ‘slaughtering them’. His position was that OMC members exist outside the law and thus deserve no protection from it (*Parliamentary Debates*, 2008, p. 1977). However, countering his claim that OMCs ‘ran’ organised crime, the ACC later revealed that ‘more than 70%’ of the ‘Mr Bigs’ of the Australian black market are ‘domiciled or linked offshore’, predominantly in South-East Asia (Moor, 2014b; Viellaris, 2013). Countering his claim that OMCs ‘ran’ drug racketeering, (as discussed in chapter one) in 2020 Hughes et al. (2020, pp. 35-36) examined all of the publicly available data on high-level drug trafficking and other serious and organised crime between 2011 and 2017, and found that only 4.7% of drug trafficking networks could be linked OMC members. Countering his claim that OMCs ‘ran’ prostitution, SAPOL Assistant Commissioner Linda Fellows later told the parliamentary committee examining planned legislation to decriminalise sex work that of the 180 brothels police operating in SA, probably only about 5-10% could be linked to OMCs (*Select Committee on the Statutes Amendment (Decriminalisation Of Sex Work) Bill*, 2016, p. 61).

An innovative approach to crime laws

A major conceptual shift in how organised crime legislation was approached became evident in the South Australian ‘anti-bikie’ laws. The traditional approach to organised crime has been to investigate crimes and confiscate criminal assets. However, the ‘anti-bikie’ laws expanded the jurisdiction of civil law for preemption, in a way that the government described as ‘multi-dimensional’ (Government of South Australia, 2008b, p. 48). While other legislative approaches such as those of the *RICO Act 1970* (US), *Crimes (Amendment) Act 1997* and *Crimes Amendment Act 2002* (NZ), and Canadian C-95 laws, were considered they were largely discounted as they had little preemptive capability (Government of South Australia, 2008b, pp. 10-14). These laws, and particularly the prosecution aids of the Canadian laws, were however seen as being an accompaniment to more powerful legislation targeting ‘high-risk’ associations. The resulting South Australian legislation was based primarily on a combination of New South Wales, Queensland and Canadian precedents, integrating both civil and criminal law principles²⁵ (Government of South Australia, 2008b, p. 22; Holloway, 2007b, p. 3). Many commentators condemned the dangerous legal precedents this set, undermining the essential checks and balances that have underpinned the legal system since the Magna Carta in 1215 (Ananian-Welsh & Williams, 2014, pp. 376, 382 & 405-406; Ayling, 2011b; Gray, 2009, p. 35; G Martin, 2011, pp. 121-122; Nicola McGarrity, 2012, p. 170; Shand, 2013c, p. 167; Veno & Gannon, 2009, pp. 217-218, 238-239 & 254; Veno & van den Eynde, 2008, p. 2; P. Wilson, 2011).

²⁵ Control orders and public safety orders both use a civil burden of proof, while any breaches of those orders are dealt with a criminal burden of proof. ‘Any question of fact to be decided by a court in proceedings under this Act is to be decided on the balance of probabilities’ (*Serious and Organised Crime (Control) Act 2008* (SA), Section 5(1)). A similar conceptual shift can be seen under unexplained wealth legislation, as unexplained wealth orders do not require reasonable grounds to suspect that offence has been committed, simply that the property subject to the order had not been acquired lawfully (*Serious and Organised Crime (Unexplained Wealth) Act 2009* (SA), Section 9(2)).

Traditionally crime control has focussed on the commission of crime as the problem, whereas the new approach focusses on the ability of ‘criminals’ to associate in order to build and maintain networks as the problem, and thus the actual criminal act as a symptom (Powell, 2009, p. 20). SAPOL believe that the strength and power of OMCs comes from their cohesion and unity, and that association is the root cause of their violence and criminal activities (Government of South Australia, 2008b, p. 7). The theory being that a club cannot exist if members cannot meet or communicate with each other in any way (Hayes, 2010, p. 85). It was acknowledged that the approach extends beyond targeting just core members of the groups including friends and associates as well, but any concerns were seemingly glossed over with rhetoric saying that the legislation was designed to cut off the ‘tentacles’ crime groups and reduce the span of their influence and control (Government of South Australia, 2008b, p. 46). However, a key concern regarding this approach is that there is no criminological evidence to suggest that when specific people are prevented from communicating with one another, a significant reduction in organised crime will follow (Rick Sarre, 2013, p. 70).

Criminal law has traditionally been based around the concept of prosecuting and punishing individuals for committing isolated crimes, but the structures and activities of organised crime groups have often proved difficult to prosecute successfully in this way. Similarly, the structures and activities of OMCs have also proved difficult to prosecute successfully, so by declaring these organisations to be criminal rather than by proving it in court the government has radically reversed onus to the normal concept of criminal liability (Schloenhardt, 2008b, p. 260). This runs counter to traditional legal safeguards, and by removing intent, it essentially amounts to criminalising individuals for ‘who they are’ or ‘who their friends are’

rather than for ‘what they do’ (Monterosso, 2018, p. 688). The South Australian legislation also favoured the prosecution by shifting the normal burden of proof toward the defendant, i.e., in making a control order, a court only needed to be satisfied on the balance of probabilities that an individual associates or is involved in crime (Parliamentary Joint Committee on the Australian Crime Commission, 2009, p. 82). So, while a member’s direct connection to an illegal act may be a significant factor in a court decision to impose a control order, the law was written so that it was not necessary. The potential for the laws to infringe upon basic freedoms and rights in cases where activities that may have no relation to the commission of serious or organised crime are subsequently made criminal, raised serious concerns.

The control order itself is an extraordinary legal measure which disregards fundamental presumptions and procedures, it infringes upon the traditional principles of a fair trial²⁶ and the presumption of innocence²⁷, adversarial justice²⁸, transparency²⁹, and proportionality³⁰. It introduces onerous constraints without providing sufficient room for challenge, knowing and testing the evidence or refuting its necessity. In taking a step further than just criminalising

²⁶ Article 14 of the International Covenant on Civil and Political Rights (ICCPR) lists several attributes of a trial, they include: equality before a competent, independent and impartial court; a public trial; the presumption of innocence; for the defendant to know the charge against them; adequate time and facilities to prepare including access to counsel; trial without undue delay; for the defendant to be tried in their presence with legal assistance of their own choosing; the right to examine, or have witnesses examined; access to an interpreter if needed; not to be compelled to testify against oneself or to confess guilt; right to appeal; no double jeopardy.

²⁷ Article 11 of the Universal Declaration of Human Rights (UDHR) states that ‘everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence’. This places the burden of proof on the prosecution to prove guilt beyond a reasonable doubt.

²⁸ The adversarial model is the legal system used in most common law countries and requires two advocates to compete against each other in determining the facts and applicable law before a judge (Creighton, 1999).

²⁹ The open court principle is a fundamental element of the law, and it entails that those reasons behind a judgement are made public. By being subject to the scrutiny of the parties, media, bar, scholars, and public, the open court principle ensures fair trial by preventing judicial authority from being abused (McLachlin, 2003).

³⁰ While it is widely recognised that at times limits may need to be placed on certain freedoms and rights, the measure commonly used to determine whether such interference is justified is proportionality. Consideration of whether a specific law is proportionate involves analysing if it has a legitimate objective, if it is suitable and necessary to achieve that objective, and if – on balance – it is in the public interest to pursue that objective given the harm to the individual right (Australian Law Reform Commission, 2015, pp. 44-45).

participation in an organised crime group, it also violated a number of human rights and went against numerous obligations³¹, as well as conflicting with key concepts expressed through the United Nations Convention against Transnational Organized Crime of which Australia is a signatory, staggering many legal experts (Debelle, 2008). By authorizing the state to enforce restrictions on citizens suspected of having committed crimes without revealing any of the information used to draw those conclusions, the control order essentially institutionalizes uncertainty and weakens public confidence in the administration of justice (Rodrick, 2014; Zedner, 2009a, pp. 48-49).

Another concern was the ambiguity in the wording of the legislation, such as the ill-defined point at which something could be considered a risk to public order or safety³², and the similarly indistinct legal concepts of association and membership³³ (Saul, 2008, p. 3). An unusually broad definition of ‘member’ was utilised in the laws, and a suspect’s connection to a declared organisation or its members could in many cases be quite dubious (Ayling, 2011b, p. 259). The laws were said to be written in such broad, all-encompassing terms because it was thought likely that they would drive OMCs to change, both in terms of their structure and the way any criminal enterprises were undertaken, in order to circumvent them (Government of South Australia, 2008b, pp. 47-48). However, prosecutors have subsequently found that any specific offences relating to participation in a criminal organisation are extraordinarily difficult to prove, and ‘participation’ has shown to be ineffectual as its use raises legal

³¹ Such as article 1(4) of the Charter of the United Nations which mandates ‘promoting and encouraging respect for human rights and for fundamental freedoms for all’, article 11 of the Universal Declaration of Human Rights (as previously mentioned), and several articles of the International Covenant on Civil and Political Rights.

³² *Serious and Organised Crime (Control) Act 2008* article 10(1) ‘If, on the making of an application by the Commissioner under this Part in relation to an organisation, the Attorney-General is satisfied that- (a) members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; and (b) **the organisation represents a risk to public safety and order in this State**, the Attorney-General may make a declaration under this section in respect of the organisation’.

³³ *Serious and Organised Crime (Control) Act 2008* article 4(1) ‘The objects of this Act are- (a) to disrupt and restrict the activities of- (i) organisations involved in serious crime; and (ii) **the members and associates of such organisations**’.

concerns over abuse of process and ‘autrefois convict’ (meaning already charged with the same crime based on the same facts) (Kimber, 2015, p. 2).

It was recognised from the outset that the laws were unlikely to achieve their stated aims because they both overreach, and re-direct limited police resources away from other areas³⁴ (Mancini in *Reference: Legislative arrangements to outlaw serious and organised crime groups*, 2008, p. 29). Prior to their introduction SAPOL also expressed doubts over whether this new approach could achieve the desired outcomes and suggested that the most effective way of disrupting any illegal activities would come through simply focussing on those activities (Redmond in *Parliamentary Debates*, 2008, p. 2059). Thirteen years later, questions still remain as to how these kinds of laws will dismantle OMCs, and there are still no examples of them working the way they have been explained publicly anywhere (Schloenhardt in McLeish, 2009; Victoria State Government Department of Justice and Community Safety, 2020, pp. 24-25 & 30-31). Adding to the debate is a history of similar kinds of laws failing to have their intended effects, such as the unintended consequences of the Western Australian version of asset-forfeiture imbedded in that state’s legislation (Veno & Gannon, 2009, pp. 217-218). For instance, the laws were not intended to be used in a way that would reduce citizens’ freedom protest or engage in industrial action, but it was acknowledged that they have this potential. The former Attorney-General himself acknowledged at the time that many of his colleagues interstate considered the laws draconian, and that he personally regarded them as a social experiment which needed to be monitored (Atkinson in N Henderson, 2008).

³⁴ As the Queensland Organised Crime Commission of Inquiry report noted in reference to the VLAD suite of laws, a ‘blinkered’ legislative approach to organised crime which focussed on OMCs and had specific extra government funding attached to it led other types of crime not being fully investigated and ultimately other forms of criminal networks not being known about (Byrne, 2015, pp. 7, 24-26).

Criminal Intelligence

The use of criminal intelligence has flourished throughout many Australian jurisdictions despite undermining key legal principles. The South Australian legislation was essentially copied from the New South Wales firearms licensing laws that were created in response to a shooting at Monash University in 2002 (*Firearms (COAG Agreement) Amendment Act, 2003; Firearms Amendment (Public Safety) Bill, 2002*; Ministerial Council on the Administration of Justice, 2002, p. 4). Regardless of the fact that the man who committed the shooting in Victoria had no known gang affiliations and suffered from a paranoid delusional disorder, the government used the threat posed by organised crime and ‘motor cycle gangs’ to justify the changes (Foley in *Parliamentary Debates*, 2003, p. 241). The amendments gave the Police Commissioner the power to deny or revoke a firearms licence based on criminal intelligence, and if it is the basis of any decision, no justification or explanation is required. If appealed the Court must maintain the confidentiality of information and hear the evidence in private (i.e., without the parties involved or their representatives) (*Firearms Act, 1977 S10, 12, 20 & 26*). These amendments were then used as a template for the *Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005*³⁵, with concerns over the involvement of organised crime, and more specifically OMCs, again cited as the reason (Atkinson in *Parliamentary Debates*, 2004, pp. 1294-1295; *Statutes Amendment (Liquor, Gambling and Security Industries) Act, 2005*).

The use of criminal intelligence in court has now become increasingly common in many different areas of law. Under South Australian legislation criminal intelligence is kept secret from those who it is being used against as it:

³⁵ Amending the Security and Investigation Agents Act 1995, Liquor Licensing Act 1997, and Gaming Machines Act 1992.

...is evidence that suggests that a person is or has been involved in a crime but which, if disclosed, could prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger a person's life or physical safety. (Attorney-General John Rau in *Parliamentary Debates*, 2010, p. 1793)

Police develop criminal intelligence through special task forces, units, or squads, in order to effectively combat certain types of crime. The South Australian 'Crime Gangs Task Force' is tasked with knowing what OMCs and their members are doing, and what illegal activities they are involved in (Holloway, 2007c, pp. 6-7). These kinds of task forces have traditionally relied on human intelligence, informers who are either members of the public who associate with club members or club members themselves, but it has also become increasingly common for them to rely heavily on electronic surveillance. The information police gather from these sources is not necessarily accurate and often either serves informants own purposes or can be interpreted in a number of different ways. While the information gives police important clues as to who is doing what (dealing drugs, extorting businesses, committing robberies, etc.) and can be used to great effect, it is what is known as hearsay and under normal conditions cannot be considered evidence or used in court (Kirby & Renner, 1988, p. 61).

In the attempt to preempt crime, the use of criminal intelligence in court proceedings potentially allows stereotypes and prejudice to take precedence over objective facts. Whereas transparent information that conforms to the traditional rules of the court and has withstood the adversarial process can be called evidence, criminal intelligence can amount to little more than police speculation. Criminal intelligence could be made up of notes jotted by a member

of the police containing their personal views or beliefs, or it could be information supplied by an unidentified informant who might have any number of vested interests or incentives influencing their comments. Essentially the biggest problem with utilising criminal intelligence in this way is that police test it to a much less rigorous standard than courts do with evidence. So, while it can be vital in preventing criminal activity on the street, using it as secret evidence in court is ‘fundamentally inconsistent with the concepts of the rule of law, a fair trial and open justice, transparency, accountability and integrity’ (Law Society of South Australia, 2011, p. 61).

Secrecy can be vital to policing operations, but once these cases are before the court under the adversarial system of justice each party is able to examine and test the evidence before them. Without this process to challenge, test, and debate the credibility or reliability of ‘intelligence’, the court cannot even begin to assess if it should be considered evidence (Law Society of South Australia, 2011, p. 76). In the past secrecy meant that certain information had to be omitted from judicial proceedings, however this legislation preserves the secrecy of that information and makes it useable in court. The Solicitor General suggested that the use of police intelligence in court ‘introduces an element of unfairness where our traditional notions would not permit it’ (Hinton in Neighbour, 2010). The information that makes up criminal intelligence could be sound or it could be completely unreliable, the problem is that it is untested, and the potential long-term effects of its usage on the legal system are very concerning.

Human source information is an essential part of criminal intelligence, but its development is often ethically questionable. When money or a reduction in charges or sentences are exchanged for information, it provides an incentive for informants to exaggerate or fabricate

information entirely. This unreliable or misleading information can in turn lead to unjust convictions. The way police develop criminal intelligence is only regulated by internal policies and a lack of legislative guidelines mean that its collection is largely free from external scrutiny. Further, any unethical conduct is often protected by secrecy provisions designed to prevent whistle-blowers. One example which has been highlighted as a potential problem in several inquiries from Queensland (Fitzgerald, 1989), New South Wales (Wood, 1997) and Western Australia (Kennedy, 2004), is ‘noble cause’ corruption. Often rationalised as the ‘ends justifying the means’, an individual may ‘bend the rules’ in an attempt to compensate for a perceived defect in the system (Merrington et al., 2014, p. 20). The problem was demonstrated in 2018 when it was revealed that a prominent Victorian criminal barrister had been a registered police informant for about fourteen years (Dowsley & Carlyon, 2020; Methven, 2019). Although not legislatively prohibited, the High Court called the lawyer’s actions ‘fundamental and appalling breaches’ of her obligations to clients and duties to the court. Likewise, it said the conduct of Victoria Police was ‘reprehensible’ in knowingly encouraging her actions (*AB (a pseudonym) v CD (a pseudonym); EF (a pseudonym) v CD (a pseudonym) [2018] HCA 58, 2018*).

The South Australian laws in particular have had very little oversight, yet the government has constantly assured the public that these powers will not be misused by police. Today SAPOL are held in very high professional regard, and despite the immense power and discretion that the criminal intelligence provisions give them, they have been recorded as being very diligent in using those powers legitimately and only when absolutely necessary (Gago in *Parliamentary Debates*, 2012, p. 808). However, the potential for parallels to be drawn between the collection and use of criminal intelligence today and SAPOL’s misrepresentation of their Special Branch’s criminal intelligence in 1978 are troubling. Special Branch had the

vague role of monitoring any activities which could lead to violence, terrorism, or subversion, and its officers carried out improper and unwarranted surveillance on Vietnam War protestors, homosexuals, and numerous people holding public offices, involved in politics, and trade unions. They are said to have maintained dossiers on more than 10,000 people who had not committed any offences, and many of those files were known to contain largely inaccurate information (Cockburn, 1979, pp. ix, 6-7, 13-14 & 18). The potential for overreach in any government department that is not properly supervised is alarming, and the police are no exception. Bureaucracies have a tendency to justify their own existence and will often find work for themselves, which in this case could conceivably lead to the exaggeration of certain threats (McLachlan in *Parliamentary Debates*, 2015).

The use of criminal intelligence in court is a highly contentious subject, and the government's uncompromising position in refusing to allow any outside reviews to take place is cause for concern. If criminal intelligence is reliable enough to be used to declare certain groups as criminal organisations, then a judicial review would surely vindicate government decisions and show the community that these groups are the extraordinary threat they have been claimed to be. In a democracy the judiciary is supposed to be independent, but under these laws the decision is entrusted to the Attorney-General who is politically vested in the outcome. Any attempt at evaluating the credibility of material that is undoubtedly of varying quality is an onerous task. If criminal intelligence is going to be used as evidence, then stricter control over its collection and structure would help ensure the integrity of the criminal justice system. When the opposition proposed limiting the use of criminal intelligence to serious and organised crime, Attorney-General Rau called them highly irresponsible and accused them of vandalism, saying any limits would help criminals regain a foot hold in the entertainment and security industries (N. Hunt, 2011). Former Prime Minister Chifley said of

the similar parts of the *Communist Party Dissolution Act 1950 (Cth)* that it was not only damaging to free speech and the justice system, but that:

It opens the door for the liar, the perjurer and the pimp to make charges and damn men's reputations and to do so in secret without having either to substantiate or prove any charges they might make. (*Parliamentary Debates*, 1950, p. 2268)

The High Court's perspective on the use of criminal intelligence

The use of criminal intelligence in the *Liquor Licencing Act 1997* (which was introduced as part of the *Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005* or 'crowd controller legislation') was challenged in the Supreme Court, and although rejected, Judge Gray found that its use subverted the judicial process. He went on to describe the use of criminal intelligence as an affront to justice, saying that its lack of legitimacy and impartiality brings the court into disrepute. It was his learned opinion that in forcing the judiciary to act as an arm of the executive it denies procedural fairness and is thus detrimental to both the integrity and independence of the court (*K-Generation Pty Limited v Liquor Licensing Court [2009] HCA 4*, 2009). When the case was appealed to the High Court the South Australian Solicitor-General acknowledged that criminal intelligence could be made up of 'all kinds of rumour and innuendo' and 'potentially hearsay upon hearsay'. While the High Court unanimously upheld the section finding that so long as courts could independently assess the evidence it did not impinge on their judicial function, Justice Kirby noted that the problem with criminal intelligence is that it is largely 'gossip, hearsay, prejudiced and wrong' (*K-Generation Pty Limited & Anor v Liquor Licensing Court & Anor [2008] HCATrans 365*, 2008; Greg Martin, 2014, p. 503; Neighbour, 2010). The obligation to maintain the confidentiality of criminal intelligence thus became permanently entrenched, and

subsequently spread further throughout many Australian jurisdictions. The then NSW DPP later questioned if organisations were to be ‘declared’ on no more than hearsay, a police officer's hunch, or on the basis of an anonymous telephone call (Cowdery in Neighbour, 2010).

The High Court has stressed the need for judicial independence and maintained the right of the court to review the secret classification, but it has not tackled two other key issues stemming from the use of secret evidence: fairness to the accused and the wider perception of justice when important elements in a prosecution go unexamined and untested. The court has made no suggestion that a minimum standard of disclosure might be required for a fair hearing, regardless of the multiple challenges to these provisions, and that while judicial independence and fairness are necessary, openness and the adversarial testing of evidence are not. Therefore, the responsibility for ensuring fairness in any court proceeding lies exclusively with the judge, and those people who are subject to untested secret police intelligence have no legal right to know the case against them (Ananian-Welsh, 2014). There is an obvious advantage for any authority to have the ability to use secret untestable (or ex parte) evidence in court, and by legislating how the courts should view evidence this demonstrates a significant shift in power which prioritises executive interests over judicial authority.

The High Court’s perspective on the *SOCCA*

Attorney-General Atkinson made the first declaration under the *SOCCA* on the 14th of May 2009, making the Finks Motorcycle Club a criminal organisation, and less than two weeks later a magistrate granted the first control order against one of its members. A second control order soon followed. The Finks MC challenged the *SOCCA* and the full bench of the

Supreme Court of South Australia ruled on the 25th of September 2009 that parts of the ‘anti-bikie’ laws and the two control orders were invalid under the Australian Constitution (*TOTANI & ANOR v THE STATE OF SOUTH AUSTRALIA [2009] SASC 301*, 2009). The State Government appealed the decision to the High Court, where on the 11th of November 2010 a six to one majority dismissed the Government’s case rendering the anti-association laws invalid (*South Australia v Totani [2010] HCA 39*, 2010). The legislation was found to offend the doctrine of the separation of powers, as it forced judges to find guilt without evidence and ‘based on assumptions’. Thus, it was the provision that mandated magistrates to automatically approve the Attorney-General’s control orders that proved to be the legislation’s downfall. Although the decision found the state’s control order scheme to be unlawful, it did not affect the whole suite of legislation and the Government’s ability to declare groups to be criminal organisations remained intact (Dowdell, 2009).

The High Court rulings against both the South Australian (*South Australia v Totani [2010] HCA 39*, 2010) and New South Wales (*Wainohu v New South Wales [2011] HCA 24*, 2011) Governments’ ‘anti-bikie’ laws were significant, but they had little long-term effects on the direction of preemptive criminal law. While specific pieces of legislation had been invalidated for infringing upon the independence of the court, the use of pre-crime style laws and secret criminal intelligence were seemingly endorsed because the Court had determined that they did not encroach on the implied constitutional freedoms of political communication and association (*Assistant Commissioner Michael James Condon v Pompano Pty Ltd [2003] HCA 7*, 2013; *K-Generation Pty Limited v Liquor Licensing Court [2009] HCA 4*, 2009). The High Court showed the limits of its ability to protect Australians’ rights through the separation of powers, and that the states’ powers to create this kind of legislation is only limited by the way they interact with the court system (Nicola McGarrity, 2012, p. 167). The

decisions therefore revealed the emergence of a new twenty-first century doctrine of ‘curial fairness’ which replaced the previous requirements of procedural fairness (Greg Martin, 2013, p. 119; 2014, p. 510). However, it is only the High Court’s role to answer questions of federal significance, such as whether a specific law is constitutionally valid, not to limit the legislature’s law-making power or protect individual freedoms and rights (High Court of Australia, 2020). In Australia this role is left to representative and responsible government, and constitutionality in itself is a very poor test of a law’s effectiveness or appropriateness (Greg Martin, 2014, p. 510; 2017, pp. 102, 108 & 111; B. Walker, 2011, p. 8).

SAPOL’s perspective

In the early 2000s SAPOL Commissioner Mal Hyde stated that while OMCs were significant players in the amphetamine market, there were a range of threats, and he did not think they were the biggest or the most important. He opined that in a constantly changing environment it would be a mistake to simply focus on any one single threat (Crouch, 2004; N. Hunt, 2002). Detective Chief Superintendent Denis Edmonds made similar comments in 2007 referring to OMCs as simply the criminal ‘flavour of the month’ (N. Hunt, 2007c). In relation to the introduction of more targeted laws, SAPOL was of the position that the legislation needed to combat the crime and violence associated with OMCs already existed but that it was not being used due to a ‘variety of operational or evidentiary impediments’ (Sandy, 2005), and that given the obstacles and limitations in investigating and prosecuting criminal organisations, simply creating new criminal offences or increasing penalties would not be an effective approach (Rick Sarre, 2013; South Australia Police, 2007, p. 12).

Commissioner Hyde subsequently reiterated his previous comments, saying that the public wrongly perceived that OMC members were committing more crime than they actually did,

and that he did not believe targeting OMCs was the right approach for any new organised crime laws (Kemp, 2011; 2010). In a 2011 interview he elaborated saying:

The challenge around the bikies is really twofold. The first is that they commit serious crime and much of it is organized type of crime, so you have to deal with that. There are other organized crime groups as well, but the bikies have a public face, which most organized criminals don't have and which is about their persona: how they use violence, how they dress, how they behave, and how they like to be above the law. There is a great deal of public concern that may not necessarily match the serious crime that they are committing. And the fact that there is serious concern about their behaviour is an issue in itself that police have to deal with. In terms of bikies, we actually don't have a major problem here in the sense that it exceeds the problem in other states and territories. When you count the number of bikies, South Australia only has about 6% of the national figure and we have 8% of the population of Australia, so we are actually underrepresented in bikies. (Baker & Hyde, 2011, p. 15)

Assistant Commissioner Grant Stevens also rejected claims that police could not control OMCs after the High Court failure, saying that existing laws were still quite effective and that anyone who thought police were not able to deal with clubs was misinformed (Robertson, 2012). Mr. Hyde's successor as Commissioner, Gary Burns, said that while many violent crimes could be linked to organised crime, OMCs, drugs or domestic disputes, that Adelaide was the safest Australian city per capita and that the community's perception of, and fears about, crime were grossly inflated (G. Burns, 2013). In 2015 he explained that use of the 'anti-bikie' laws had been 'regrettably limited' as certain parts were 'largely unworkable' (N.

Hunt, 2015b). SAPOL's official position on the laws was that while the prosecution of offences for violence and affray had been more successful, and the presumption against bail, public safety orders, barring orders (from licenced venues), and firearms prohibition orders had been beneficial;

Efforts to draft and submit the declaration and control order applications have been onerous, time and resource intensive. The evidentiary burdens, complexity and volume of the required documentation does not address criminal behaviour by organised crime groups in a timely manner or maximise the benefit of the level of resources utilised. (*Inquiry into Serious and Organised Crime: Clarification of SAPOL's evidence*, 2015, p. 6)

Further:

The application of non-traditional legislation including the Declaration of Organisations, Control Orders, Consorting Prohibition and Criminal Association has been less effective... [than] traditional policing legislation to prevent, disrupt and investigate serious organised crime... due to the legislative complexity and police resources required. (*Inquiry into Serious and Organised Crime: Clarification of SAPOL's evidence*, 2015, p. 18)

More new laws

Legal experts had long suggested simply repealing the laws and for police to use existing laws based around conspiracy, asset confiscation, money laundering, undisclosed wealth, and taxation to counter organised crime groups. Based on suggestions that criminal asset

confiscation laws are potentially a simpler and much more effective approach, as they have both a significant disincentive effect and can interrupt and paralyse criminal activities by removing their day-to-day operating capital, the government proposed the *Serious and Organised Crime (Unexplained Wealth) Act 2009*. The Act was designed so that it does not require any evidence of a crime for the confiscation of wealth, merely that it cannot be explained, and decisions can be based solely on criminal intelligence. However, the Crown Solicitor abandoned the first application under the law in September 2019 due to its complexity and the level of resources it required. Despite Senior police saying they were ‘unlikely’ to use of the legislation again, a seven year long investigation was dropped the following year reiterating that it was ‘practicably unworkable’ (N. Hunt, 2019a, 2020).

Following the High Court defeat Premier Rann’s approval rating dived and a Cabinet reshuffle soon saw him replaced as Premier (Fewster & Todd, 2010; Kemp, 2010; *Parliamentary Debates*, 2010, pp. 2025-2027; Shand, 2013c, p. 247). Then Attorney-General John Rau (as claimmaker) declared that ruthless and sophisticated criminal gangs were beyond the reach of the legal system and that fundamental legal rights needed to be sacrificed in order to eradicate them (Wills, 2010a). He said that their capacity was much greater than the governments, that police therefore needed greater powers, and that there was no choice but to sacrifice key legal principles in order to ‘win the war’ (Wills, 2010c). Mr Rau went on to claim that the violence associated with OMCs was only ‘the tip of the iceberg’ and said that the Government was determined to wipe them out (Littlely, 2012; Rice & Novak, 2012; Wills, 2011). Revised laws which were based on criminal actions without the control order scheme were announced in August 2011.³⁶ While non-association notices seemingly lost their

³⁶ This included provisions for new offences for participation in a criminal organisation, aggravated offence provisions for criminal activity with or on behalf of a criminal organisation, the presumption against bail, and consorting, in addition to protections for vulnerable witnesses, a provision for cases to be heard by a single judge without a jury and allowing for the use of the ACC’s coercive hearings power (*Statutes Amendment*

impetus, police continued to issue public safety orders to great effect (Stevens in *Inquiry into Serious and Organised Crime: SAPOL's evidence*, 2015, p. 21). SA's leading legal organisations declared the suite of laws 'cleaner' in a legal sense, but 'more objectionable in principle' because they lacked the necessary safeguards to protect against abuse (Law Society of South Australia & South Australian Bar Association, 2011; 2011).

The Government proposed various amendments to restore the control order scheme in 2012. Attorney-General Rau claimed that while the activities and very existence of OMCs compromise peoples' civil liberties and freedoms, the proposed amendments did not (Littlely, 2012; 2012a). He further said new laws were aimed at 'attacking what they do, rather than what they are', despite the legislation as a whole doing the opposite (*Parliamentary Debates*, 2012, p. 77). When the Government's raft of extraordinary new legislation initially stalled in Parliament in 2012, in an almost unprecedented political move, the South Australian Police Association openly criticised the opposition saying that any amendments to the proposed legislation would endanger the public's safety. Attorney-General Rau claimed that the police had asked for the legislation and warned that the opposition would have 'blood on their hands' if they didn't support the Bills (Hyde, 2012; Office of the Premier of South Australia, 2012). However, legal experts said government claims that the police could not effectively do their jobs without the laws were completely false, and that there was no way the proposed increase in powers could be justified (Robertson, 2012).

The Parliament then re-enacted the previously repealed offence of consorting, allowing for the use of criminal intelligence and making non-association notices last indefinitely (*Statutes Amendment (Serious and Organised Crime) Act*, 2012 S48 & 78). The *SOCCA* was amended

(*Serious and Organised Crime) Act*, 2012).

giving the power to declare organisations as criminal to ‘eligible’ judges of the Supreme Court, and criminal intelligence provisions were standardised across all South Australian legislation (*Serious and Organised Crime (Control) Act*, 2008; *Statutes Amendment (Criminal Intelligence) Act*, 2012). The government further passed a range of amendments making it an offence to participate in a criminal organisation and making it a circumstance of aggravation to commit an offence for the benefit of, at the direction of, or in association with a criminal organisation, or identify as a member of a criminal organisation in the course of committing a crime (*Criminal Law Consolidation Act*, 1935, pp. 14-15 & 78-79; *Parliamentary Debates*, 2012, p. 80).³⁷

In 2013 the Queensland Government’s version of the ‘anti-bikie’ laws survived a High Court challenge, so the South Australian Government copied their model of using criminal intelligence in the Supreme Court to declare criminal organisations, replacing the short-lived ‘eligible judge’ system (*Assistant Commissioner Michael James Condon v Pompano Pty Ltd [2003] HCA 7*, 2013; *Parliamentary Debates*, 2013, p. 6421; *Serious and Organised Crime (Control) (Declared Organisations) Amendment Act*, 2013, p. 3). However, despite the Government’s move to ‘fine tune’ the legal validity of the declaration and control provisions, members of the Finks MC largely ‘patched-over’ to the Mongols MC nationally, including more than half of the South Australian members; thereby circumnavigating the lengthy declaration process and once again frustrating the Government’s legislative aims (N. Hunt, 2013b; McKenna & Schliebs, 2013; 2015a; Wills, 2014). By that point both SAPOL and the Crown Solicitor's Office’s had seemingly lost the will to use the declaration and control provisions, and in a review of the laws they were subsequently concluded as being

³⁷ As of 2015, 84 people had been charged with this offence, however only 10 of those were OMC members, and many of those charges were subsequently dropped (*Inquiry into Serious and Organised Crime: Clarification of SAPOL's evidence*, 2015, p. 12).

unsuccessful³⁸ (Moss, 2015, pp. 1-2).

Mirroring interstate laws – The fifth attempt at workable laws

In 2015 the South Australian laws were changed yet again, bringing them further into line with those in NSW and Queensland. Instead of revising the *SOCCA*, existing criminal laws were amended to ‘mirror’ offences in Queensland and consorting provisions were modified to match those in New South Wales (Rau in *Parliamentary Debates*, 2015, p. 1476; *Statutes Amendment (Serious and Organised Crime) Act*, 2015). ‘Mirroring’ Queensland, it became an offence for a participant in a criminal organisation to be knowingly in a public place with two or more other participants, to enter a prescribed place or attend a prescribed event, or to recruit anyone into a declared criminal organisation (*Criminal Code Act*, 1899 S60; *Criminal Law Consolidation Act*, 1935 S83G). It further became illegal for any person to enter or remain inside licensed premises wearing any item of clothing, jewellery or accessory displaying any reference to a declared criminal organisation (*Liquor Act*, 1992 S173E; *Liquor Licensing Act*, 1997 S117B). The South Australian Parliament then published a list of declared criminal organisations and prescribed places, instead of having a court decide if they could be classified as criminal based on a review of the available evidence, effectively using administrative law³⁹ to circumvent the judiciary (*Criminal Law Consolidation (Criminal Organisations) Regulations*, 2015; Rau in *Parliamentary Debates*, 2015, p. 1481; *Statutes Amendment (Serious and Organised Crime) Act*, 2015). Legislative Council member Andrew

³⁸ The retired judge responsible for reviewing the *Serious and Organised Crime (Control) Act 2008* wrote in his submission to the Parliamentary Inquiry into Serious and Organised Crime Legislation, ‘The provisions of the “Control” Act in relation to Declared Organisations and Control Orders have not proven to be a success... A large amount of resources were poured into the first case which was completely demolished by the High Court... Ultimately the CSO [Crown Solicitor’s Office] disbanded its Serious and Organised Crime Unit and the impetus to use the Declaration and Control provisions of the Act was largely lost.’ (Moss, 2015, pp. 1-2)

³⁹ Administrative law is a branch of public law that essentially governs the regulatory and enforcement activities of government agencies.

McLachlan who was part of the Crime and Public Integrity Policy Committee Inquiry into Serious and Organised Crime Legislation argued against the laws saying that, ‘Parliament is being asked to act like a court, but no evidence has been formally presented, there is no testing of the evidence and there is no opportunity for the organisations named to respond’ (Opray, 2015).⁴⁰

Although the South Australian laws do not have the same extreme mandatory sentences that the Queensland ‘VLAD’ model did, they also went further by making the ‘member of a declared criminal organisation’ label permanent. While the tougher NSW approach to consorting broadened the South Australian laws to include any convicted offender, it also narrowed them by requiring more evidence of habitual offending and further discounted a number of legitimate forms of association (*Statutes Amendment (Serious and Organised Crime) Act*, 2012, p. 29; *Statutes Amendment (Serious and Organised Crime) Act*, 2015, pp. 12-13). Despite the uncertainty surrounding the constitutionality of the Queensland’s VLAD suite of laws, given the significant costs and recent High Court failures, OMCs were reluctant to challenge the laws again (N. Hunt, 2015a). However, the government simply copied an extensive list of twenty-seven OMCs from the NSW legislation which they proposed to declare criminal, despite there being only seven active in the state at the time, and the ACC only identifying six of the larger clubs nationally as being heavily involved in organised crime (South Australia Police, 2015, p. 20). Further, they included a local social motorcycle club centred around circuit racing that shares the same name with a NSW based OMC (Fewster, 2015; Fewster & Holderhead, 2015). This highlights the dangers inherent in simply copying legislation from other jurisdictions without carefully examining any potential problems, how broad wording gives police immense discretion, and provides an example of

⁴⁰ A leading criminologist further argued that the laws ‘reek[ed] of ineptitude’ (Goldsworthy in Opray, 2015).

the potential for unintended consequences under a system that lacks constitutional protections for both due process and human rights (as will be discussed further in chapter seven). While several commentators (Ananian-Welsh, 2015; McLachlan in Fedorowytch, 2015; Ananian-Welsh in J. Robertson, 2015a; J. Robertson, 2015b) continued to argue that the laws were even more severe than the Queensland laws they stemmed from (which were subsequently repealed after failing to secure any convictions), the laws were ultimately passed albeit with only ten clubs listed (*Criminal Law Consolidation (Criminal Organisations) Regulations*, 2015).

Most OMC members complied with the new regulations, and clubs began voluntarily abandoning their clubhouses immediately following the law's introduction (Holderhead, 2015a). Commissioner Stevens acknowledged their behaviour as 'compliance', but the media reported the same behaviour in terms of being 'driven underground', 'gathering covertly to avoid being charged', and 'dressing down in public to avoid attracting police attention' (N. Hunt, 2015a). Similarly when members went interstate on their various club runs, the news featured stories of them being 'caught flouting' the laws, 'exploiting weaknesses' in states with 'inadequate legislation', and having 'circumnavigated' the tough new laws through various 'tactics' such as the use of encrypted communications, riding in groups of two, and using 'puppets' to front their businesses; which was said 'clearly undermines the intent of the legislation and, in some aspects, renders it almost useless' (Weir, 2017). The media also implied that over the first three months the legislation was responsible for a 12% drop in club membership, however while police had issued a number of warnings for association no charges had been laid (N. Hunt, 2015a, 2017b).

Both Attorney-General Rau and SAPOL argued that the laws had made the community a

safer place, but while forcing OMCs to be less conspicuous might keep violence out of the public eye and make the community feel safer it does not necessarily make the community safer (Government of South Australia, 2008b, p. 46; N. Hunt, 2017b; Tin, 2016). Police Commissioner Stevens acknowledged that the laws might not have had any noticeable impact on OMC involvement in organised crime and that they ‘would essentially drive those overt activities underground’ (Holderhead, 2016). Oddly, that means the police supported laws which they predicted would have little effect on organised crime and make it much more difficult to both identify OMC members and monitor their activities. However, by bypassing the courts and having Parliament declare the clubs to be criminal organisations, the laws created a situation whereby anyone charged under the laws could simply argue that organisation they were linked to was not in fact a criminal organisation, and then the prosecution would have to establish that fact in front of the court (unattributed, 2017). It took the government two years and as many failed cases to eventually fix the defect, and it was said that the resulting amendment ‘insidiously’ made the law ‘even more oppressive’ (Langenberg, 2017). In 2021 Commissioner Stevens stressed the need to have variety of legislative options available and said that the 2015 amendments were ‘now the preferred option for enforcement’ (Stevens, 2021, p. 3).

Tattoo industry regulation and a new OMC focussed ‘war on drugs’

In 2015 new laws resembling those in Queensland that made it illegal for OMC members and their friends, family members and associates to work in the tattoo industry were added to the growing suite of ‘anti-bikie’ legislation (Department of Justice and Attorney-General, 2016b; *Tattooing Industry Control Act*, 2015, p. 1). The Government’s position was that OMCs had substantial links to tattoo parlours, that ‘tough new laws’ were needed to ‘stamp out dodgy characters’ who use the industry as ‘as a front for illegal activity and organised crime’ and to

drive ‘gangs’ out of the state (Holderhead, 2011; N. Hunt, 2014c; 2015b; Wills, 2015). Their introduction meant that an arbitrary licensing decision based on unknowable criminal intelligence could force a person who possesses the appropriate skills and knowledge and has not committed any crime out of the industry (Bar Association of Queensland, 2015b, p. 21). A number of commentators argued that licensing laws such as this breach article 6 of the United Nations International Covenant on Economic, Social and Cultural Rights, of which Australia is a signatory, stating:

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include... full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual. (United Nations, 1966)

The then Leader of the Opposition highlighted the futility of the laws arguing that ‘irrespective of what the enterprise is that they own, any cash businesses are vulnerable to infiltration to people who shouldn't be in them’ (Redmond in Wills, 2015). When Queensland's Taskforce on Organised Crime Legislation reviewed the *Tattoo Parlours Act 2013* (QLD) it was based on, it found that neither alleged membership in a criminal organisation nor affiliation with those people was grounds for exclusion from an industry and that licences should only be refused or cancelled when there is evidence specific to the individual demonstrating that they are not suitable to hold a licence (Department of Justice

and Attorney-General, 2016b, p. 365). After having said that OMCs used tattoo shops in a very primitive fashion as fronts for illegal activities, the South Australian Government then argued that club members' finances were in fact 'extremely sophisticated' and that even more powers were needed for police to investigate effectively (N. Hunt, 2017c).

Despite having said that the Labor Government's poor strategy and former Premier Mike Rann's rhetoric in the 'war on bikies' had made the situation much worse in 2012, and opposing several 'anti-bikie' bills, after taking office in the 2018 South Australian state election the new Liberal Government immediately began outlining plans for an extensive new 'war on drugs' featuring more 'anti-bikie' legislation (*Parliamentary Debates*, 2012, p. 163). The 'war' was headlined by anti-marijuana laws and harsher punishments for members of OMCs found guilty of drug related offences that essentially doubled punishment (Wills, 2018). The government also announced a 'zero tolerance on drugs in prison' program, which involves a 'blanket ban' on members and associates of OMCs visiting prisoners (Dayman, 2018). However, how the laws will achieve their stated aims of impeding club recruitment in prisons and stopping the intimidation or manipulation of witnesses, is not clear (Pederick in *Parliamentary Debates*, 2018, p. 2150).

Critical Discourse Analysis

The first part of this chapter narrated the introduction of the South Australian 'anti-bikie' laws in order identify the issues, highlighted the various events and claims that were made, and noted the conflict between authorities. The second section analyses the discourse in order to deconstruct events, gauge public concern, and show the level of inflation. As well as the various observable social phenomena, events, behaviour and practices, what we see is determined by concepts and representations that underpin it, which are both produced by and

the product of social life. Marsden thus refers to social reality being ‘conceptually mediated’ (R. Marsden, 1999, p. 88). Since concepts and representations are manifested in discourse, discourse also needs to be explained, in part, as an effect of discourse (Fairclough, 2012, pp. 78-79). Critical discourse analysis is way of combining textual analysis with conceptually informed narratives of various phenomena, in an effort to deconstruct the processes and language that reproduce social practices and influence both perception and action. It examines the role language plays in the construction, debate, and transformation of social issues into social problems, and thus the process of social change. Critical discourse analysis can essentially be characterised as investigating the importance of language on reproducing power imbalances, injustice, struggle, and change (Mulderigg et al., 2019, pp. 1-2).

Political decisions are made for a variety of reasons and are not necessarily based on the strongest argument or ‘what works’. Power is one such reason, and it is often difficult to divorce power from the various arguments and decision-making process (Fairclough, 2012, p. 113). Institutions only function if they are accepted as legitimate, and while most institutions are generally accepted without question, they can be challenged. In this regard the public relations industry can be seen as being built on creating, and necessary for the ongoing, perception of institutional legitimacy (Fairclough, 2012, p. 114). Power provides a reason for people to act. When power is used to influence people to want something they would not otherwise want, or to obscure other possible courses of action, power can be seen in the form of ideology (Fairclough, 2012, p. 116). In analysing the ideological effects that discursive practices have on the reproduction of power imbalances, critical discourse analysis attempts to equalise power relations and affect social change (Jørgensen & Phillips, 2002, p. 4). Critical discourse analysis is therefore not politically neutral, approaching the analysis of

power imbalances from the perspective of oppressed social groups (Jørgensen & Phillips, 2002, p. 5).

Foucault's philosophies were written at a challenging level of abstraction, and textually oriented discourse analysis was developed as a way of applying those concepts in practice (Fairclough, 1992, pp. 211-212; Montesano Montessori, 2019, p. 25). Texts are analysed because they act as social barometers, revealing the processes that lead to social change. Textual analysis can counter-balance stricter methods of social analysis which are less capable of measuring such changes. Social control is increasingly exercised, negotiated, and resisted through the media, so textual analysis as a part of critical discourse analysis, is an indispensable tool in the deconstruction of public political discussion and debate in response to crisis (Fairclough, 1992, pp. 211-212; 2012, p. 116; Montesano Montessori, 2019, p. 27). The specific source of the discourse chosen for a critical discourse analysis study depends on the research questions, the most relevant material, and the availability of that material (Jørgensen & Phillips, 2002, p. 16). The second section of this chapter thus examines media reports from the main Adelaide newspaper/s in order to better understand how issues and events were perceived, where the public's concerns lie, and determine the magnitude of inflation.

Content Analysis

Discourse analysis and content analysis are based in different philosophical camps and are often used independently to examine social reality in either qualitative or quantitative terms. However, more qualitative forms of content analysis which are sensitive to both the way and context in which words are used can also fit within a broader discourse analysis methodology. As part of a larger study that involves both counting and more complex

interpretation, the two methods of textual analysis can be used to complement each other (Hardy et al., 2004, pp. 19-20). From a discourse analysis perspective, all textual analysis is interpretative, and the more systematic content analysis approach can further enhance our understanding of the role of discourse plays in constructing social reality. Despite traditionally be used to provide alternative perspectives, in combination, content analysis can be used to highlight key details which underpin an analysis of the discourse (Hardy et al., 2004, p. 20 & 22).

Source of the data

Claimsmakers suggest that primary threat to community stems from OMC members' organised crime activities, however a large number of crime reports discuss violent behaviour, so by analysing media reports this part of research sets out uncover how the public perceive the nature of OMC crime, where their main fears lie, and further examine the issue of inflation in reporting. In former Prime Minister Kevin Rudd's submission to the ongoing Senate inquiry into media diversity in Australia he noted that newspapers produce most of the original and agenda-setting media coverage in Australia, and that neither broadcast nor online media have shown the same level of commitment to reliable journalism (Rudd, 2020, p. 3). The Advertiser and Sunday Mail are published by News Corp Australia, they are Adelaide's only mainstream daily newspaper/s, and they were chosen for the discourse analysis because they are the most readily available and dependable source of text throughout the research period. While focussing primarily on print news in 2021 could be seen as a rather limiting, given widely observed influence of the News Corp through the Advertiser/Sunday Mail on local politics,⁴¹ this appeared to be the most reliable source of data. Although many other

⁴¹ Former Australian Prime Ministers Kevin Rudd and Malcolm Turnbull have both been vocal about News Corp's influence over local politics (T. Dwyer & Muller, 2016; Finkelstein, 2012; Harding-Smith, 2011, p. 1 & 6; Meade, 2020; Rowland, 2016; Rudd, 2020; Turnbull, 2021; Visontay, 2020).

sources were drawn upon in establishing the narrative, the examination and analysis of some of these sources cannot be seen as, as thorough or complete. Considering the media's power to control the discourse and define what is socially thinkable, and as a result of Adelaide's print news being provided by a single source and portraying the 'bikie' problem only in the way that its corporate interests dictate (as will be further discussed in the following chapter), we should perhaps not be surprised that the public have proven so willing to accept the ideologically and organisationally derived views of crime and OMCs role in it, or their unwavering support for the ongoing expansion of the criminal justice apparatus.

Analysing the data

In January 2021 the Factiva database was searched for articles in 'The Advertiser' and 'Sunday Mail' between 1/1/1998 and 31/12/2020 that mentioned 'bikie', 'bikies' or 'outlaw motorcycle'. 4,235 hits were returned (excluding duplicates). Upon examination approximately 16% of articles were excluded from the analysis as they focussed on topics considered irrelevant to the study, such as reviews of the midday movie, television episodes, fictional novels, or fashion, etc. leaving a cohort of 3,538 relevant articles. Approximately 85% of the relevant articles were deemed to be crime related, confirming that OMCs are primarily perceived as a crime problem. In an effort to understand what was being reported, the articles were categorised as either: other (29%), events (25%), court (19%), opinions (15%), or politics and law (12%). As a prerequisite for moral panic analysis, the articles were examined to determine if there was an inflation or overrepresentation of OMC related crime. It was found that OMCs were regularly attached to unverified crime claims, including unsubstantiated references to crime, drugs and violence, and uncritical references to law enforcement investigations and legislation such as control orders. At a surface level this is

evident in terms of multiple reporting (29%)⁴² and the reporting of events in other jurisdictions (19%)⁴³. These results are shown in ‘Table one’.

In an effort to understand more about how OMC related crime is perceived, the articles were then broken down in terms of references to the four most common topics: violence (48%), control measures (30%), politics (29%), and drugs (28%). From this it is evident that violence is perceived to be the principal issue, followed by what is being done about them, and then drugs. Finally, the five most commonly used terms in articles during each year were noted.⁴⁴ From this it is evident that ‘shootings’, ‘guns’, ‘drugs’ (primarily amphetamines and cannabis), ‘murders’, ‘intimidation’, and ‘assaults’ were the key concerns. Approximately 11% of articles referenced either the ‘Crime Gangs Task Force’ or ‘Operation Avatar’, and the following chapter further discusses how the symbiotic relationship between media and police plays a significant role in the way crime is reported, influencing the emphasis, and importance or ‘value’ of various crimes. As a barometer of public concern these articles reveal that violence and specifically shootings are considered a primary issue, mentioned in approximately 14.8% of articles. Drugs appear to be a tertiary issue, with Amphetamine Type Stimulants being the most commonly mentioned narcotic in approximately 9.7% of those articles. These results are shown in ‘Table two’.

⁴² Whether that be simply multiple reports about the same event, those details reported again at a later date when before the court, or where events are discussed again but in a different form such as in an editorial or opinion piece.

⁴³ Whether that be interstate, at a federal level, or overseas.

⁴⁴ Terms were grouped into larger categories, for instance ‘gun’, represents references to ‘gun/s’, ‘rifle/s’, ‘firearm/s’, ‘automatic weapons’, etc. However, some of these categories are slightly obscured by journalistic rhetoric, as, for instance, words such as ‘hit’, ‘bash’, or ‘beat’ can be categorised as ‘assault’, while others such as ‘altercation’, ‘fight’ or ‘disturbance’ cannot. Further, terms such as ‘blackmail’, ‘intimidation’ and ‘extortion’ seem to be used interchangeably at times or all together at others, meaning that a small number of articles had to be categorised as having more than one reference to the broader category of ‘intimidation’ because it is not clear if they are reporting single or multiple offences, and must be taken at face value.

From a Foucauldian perspective, whereby reality is informed by power and knowledge in discourse, the media's account of actions and events is expected to be different to that of the political, legislative, and police perspectives. This is reflected in the way that the media typically report on OMC related violence, the police often highlight violence, extortion (N. Hunt, 2007b, 2009; McGregor, 2012b), and drugs, and the government tends to emphasise OMC involvement in 'organised crime' and their 'dominance' of methamphetamine market. There is also a counter-inflation discourse coming each of these three actors which warns of inefficiency.⁴⁵ While this does not imply that the actors are against action, it shows a level of division and hesitation about the best way to act, which the media present through their narrative as a binary choice, and ultimately in terms of being either good/bad or right/wrong (a theme which will be discussed in more detail in the following chapters).

There were two points in time when OMC related public violence has been a particular problem, first when tensions between the Hells Angels and Rebels escalated in 1999-2000, and second when a personal feud between two members of the Hells Angels and New Boys street gang, which evolved into a chapter of the Comancheros, escalated in 2008-2012. Spikes in the number of OMC related articles are evident in 1999, 2009 and 2012, although it is interesting to note that articles reporting drugs, politics and control measures all spiked during those years, which is most likely simply a reflection of the amount of attention OMCs were attracting. This is represented in *figure 1* showing the main topics referenced or discussed each year. If the government perceived OMCs as an organised crime problem, then the traditional response to this violence would have been to pass specialised legislation similar to the *RICO Act 1970* (US). However, given the paradigm shift after the September

⁴⁵ Senator Andrew McLachlan's speeches in Parliament are particularly strong in this respect (*Parliamentary Debates*, 2015).

11, 2001, terrorist attacks, which was reflected in the Australian anti-terrorism legislation introduced in 2005, the adaption of a similar precrime approach was only a small legislative step (as was discussed in chapter two).

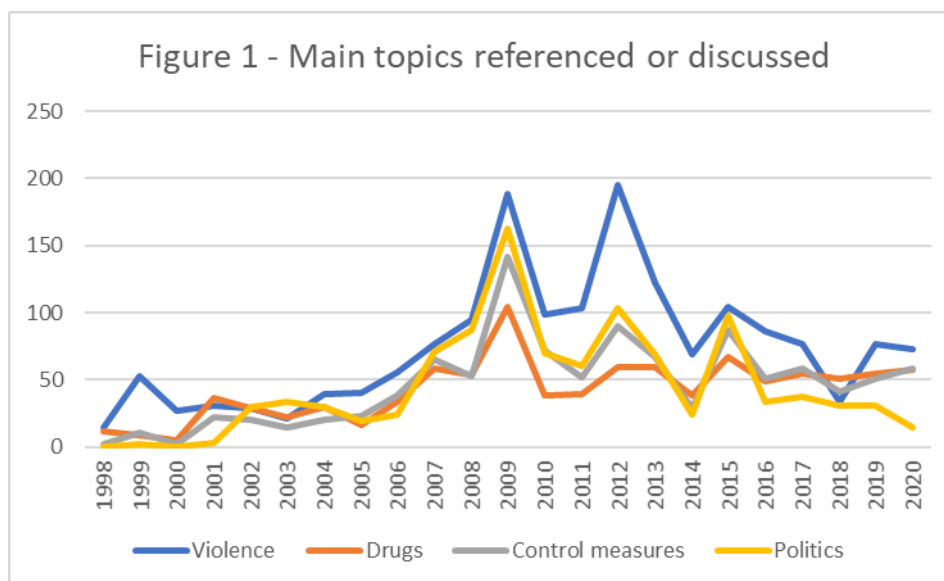
Research from Canada analysing how the media portrayed OMCs found that clubs and their members were often characterised as being dangerous and intimidating, although they were rarely linked to specific crimes. It concluded, that in essence, the police warned the public that OMCs were a significant threat and that they operate by intimidation, which in turn increased their reputation and made the public feel more intimidated by them (Katz, 2011, p. 234). This trend to simply characterise clubs and their members as dangerous or intimidating without mentioning a specific crime was noticeable (in approximately 10.2% of articles), however it may not have been as prevalent in South Australia as it was in the Canadian study. There was also a noticeable but less apparent trend for journalists to either use phrases similar to ‘police do not believe the event is connected with previous (OMC related crime)’ or where a timeline of events was created that lists numerous crimes labelled as OMC related, thereby creating an impression of an OMC related crime without specifically stating it as such (lists of crime were reported in approximately 3.4% of articles). Although no exact number was recorded for the former of these two less prevalent trends, this is something future researchers may want to take note of.

Table 1 - Discourse Analysis

Year	Other		Event		Court		Opinion		Political/law		Total relevant		Excluded		Total		Crime related		Repeats		Foreign		
1998	3	10%	10	34%	14	48%	0	0%	2	7%	29	81%	7	19%	36	20	69%	10	34%	10	34%	10	34%
1999	23	35%	34	52%	5	8%	0	0%	4	6%	66	86%	11	14%	77	58	88%	29	44%	15	23%	15	23%
2000	12	25%	18	38%	13	27%	2	4%	3	6%	48	77%	14	23%	62	35	73%	17	35%	13	27%	13	27%
2001	24	27%	40	45%	11	12%	4	4%	10	11%	89	82%	20	18%	109	72	81%	27	30%	20	22%	20	22%
2002	17	19%	24	27%	15	17%	8	9%	25	28%	89	81%	21	19%	110	81	91%	22	25%	18	20%	18	20%
2003	25	29%	27	31%	9	10%	9	10%	16	19%	86	72%	34	28%	120	58	67%	18	21%	10	12%	10	12%
2004	40	40%	26	26%	11	11%	12	12%	10	10%	99	77%	29	23%	128	82	83%	22	22%	3	3%	3	3%
2005	32	32%	35	35%	12	12%	13	13%	7	7%	99	83%	20	17%	119	70	71%	35	35%	13	13%	13	13%
2006	38	28%	37	27%	43	32%	6	4%	12	9%	136	92%	12	8%	148	125	92%	49	36%	24	18%	24	18%
2007	53	25%	58	27%	33	15%	31	14%	41	19%	216	86%	35	14%	251	187	87%	46	21%	44	20%	44	20%
2008	46	21%	52	23%	32	14%	53	24%	40	18%	223	89%	27	11%	250	186	83%	48	22%	28	13%	28	13%
2009	96	25%	91	23%	61	16%	99	26%	41	11%	388	83%	79	17%	467	322	83%	90	23%	94	24%	94	24%
2010	38	19%	38	19%	64	32%	41	20%	20	10%	201	78%	58	22%	259	169	84%	55	27%	36	18%	36	18%
2011	41	24%	53	30%	33	19%	28	16%	19	11%	174	74%	60	26%	234	155	89%	45	26%	38	22%	38	22%
2012	65	21%	82	27%	50	17%	61	20%	45	15%	303	81%	73	19%	376	278	92%	70	23%	51	17%	51	17%
2013	80	36%	29	13%	41	19%	45	20%	26	12%	221	88%	31	12%	252	189	86%	59	27%	40	18%	40	18%
2014	54	36%	33	22%	30	20%	25	16%	10	7%	152	86%	24	14%	176	117	77%	45	30%	39	26%	39	26%
2015	74	32%	39	17%	43	18%	40	17%	37	16%	233	86%	38	14%	271	203	87%	63	27%	36	15%	36	15%
2016	74	48%	28	18%	31	20%	8	5%	13	8%	154	88%	21	12%	175	136	88%	68	44%	36	23%	36	23%
2017	62	43%	37	26%	21	15%	11	8%	13	9%	144	88%	19	12%	163	124	86%	49	34%	28	19%	28	19%
2018	37	37%	17	17%	23	23%	8	8%	14	14%	99	79%	26	21%	125	87	88%	37	37%	17	17%	17	17%
2019	45	28%	55	35%	33	21%	14	9%	12	8%	159	88%	22	12%	181	142	89%	53	33%	32	20%	32	20%
2020	39	30%	38	29%	41	32%	4	3%	8	6%	130	89%	16	11%	146	118	91%	53	41%	17	13%	17	13%
Total	1018	29%	901	25%	669	19%	522	15%	428	12%	3538	84%	697	16%	4235	3014	85%	1010	29%	662	19%	662	19%

Table 2 - Discourse Analysis

Year	Articles	Violence		Control measures		Politics		Drugs		Most common references
		Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	
1998	29	14	48%	2	7%	0	0%	12	41%	murder, shooting, drugs, liquor license, cannabis
1999	66	53	80%	11	17%	2	3%	9	14%	shooting, murder, bombing, war/feud, guns, Avatar
2000	48	27	56%	2	4%	0	0%	5	10%	shooting, national run, murder, Perth, bombing
2001	89	31	35%	22	25%	3	3%	36	40%	drugs, cannabis, guns, Avatar, amphetamines
2002	89	29	33%	20	22%	30	34%	29	33%	new laws, drugs, Avatar, cannabis, murder
2003	86	21	24%	14	16%	34	40%	22	26%	new laws, clubhouses, raids, Avatar, security
2004	99	39	39%	20	20%	30	30%	30	30%	security, nightclubs, drugs, intimidation, assault
2005	99	40	40%	23	23%	19	19%	16	16%	disappearance, Avatar, shooting, security, nightclubs
2006	136	56	41%	38	28%	24	18%	34	25%	guns, shooting, brawl, Avatar, drugs
2007	216	77	36%	65	30%	71	33%	58	27%	nightclubs, intimidation, shooting, Avatar, new laws
2008	223	95	43%	53	24%	87	39%	54	24%	guns, shooting, new laws, intimidation, 'anti-bikie'
2009	388	188	48%	142	37%	163	42%	104	27%	intimidation, 'anti-bikie', drugs, guns, shooting, murder
2010	201	99	49%	72	36%	70	35%	38	19%	war/feud, guns, High Court, 'anti-bikie', intimidation
2011	174	103	59%	52	30%	60	34%	39	22%	shooting, guns, brawl, Crime Gangs Task Force, murder, drugs
2012	303	195	64%	90	30%	103	34%	59	19%	shooting, violence, murder, brawl, drugs
2013	221	122	55%	67	30%	69	31%	59	27%	guns, shooting, drugs, violence, murder
2014	152	69	45%	29	19%	24	16%	38	25%	drugs, shooting, organised crime, murder, guns
2015	233	104	45%	87	37%	98	42%	67	29%	new laws, intimidation, 'anti-bikie', association, drugs
2016	154	86	56%	51	33%	34	22%	49	32%	intimidation, immigration/deportation, assault, drugs, guns
2017	144	77	53%	58	40%	37	26%	55	38%	shooting, immigration/deportation, amphetamines, drugs, intimidation
2018	99	34	34%	41	41%	31	31%	51	52%	amphetamines, immigration/deportation, drugs, organised crime, murder
2019	159	77	48%	51	32%	31	19%	55	35%	murder, shooting, war/feud, prostitution/sex industry, organised crime
2020	130	73	56%	58	45%	14	11%	57	44%	murder, amphetamines, immigration/deportation, prison, guns
Total	3538	1709	48%	1068	30%	1034	29%	976	28%	



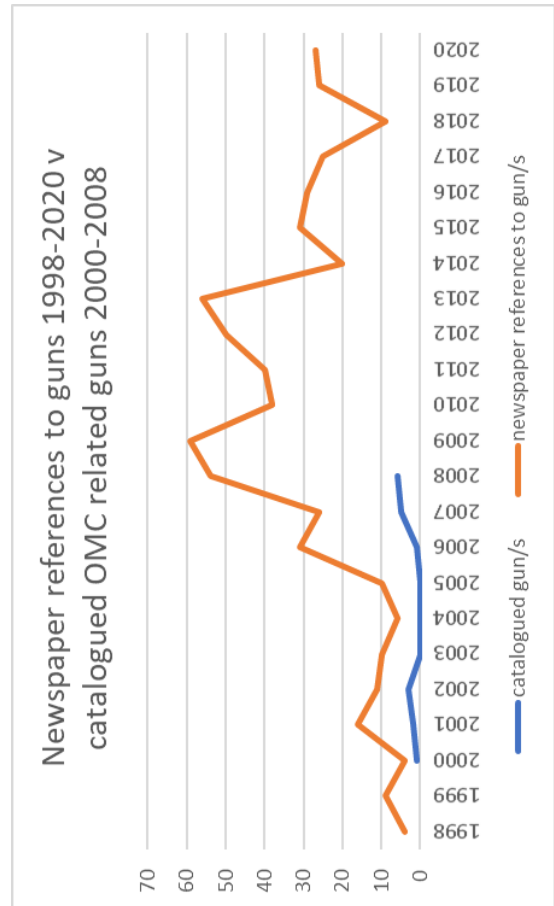
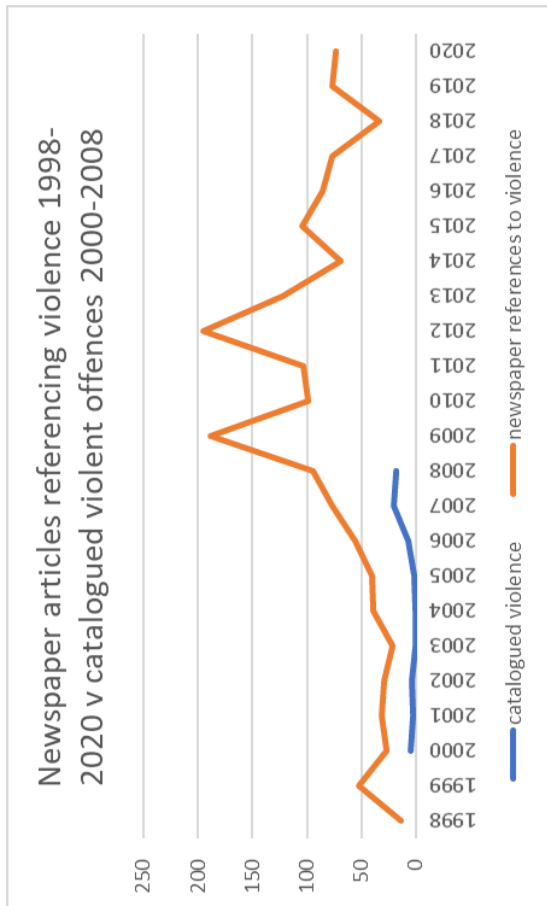
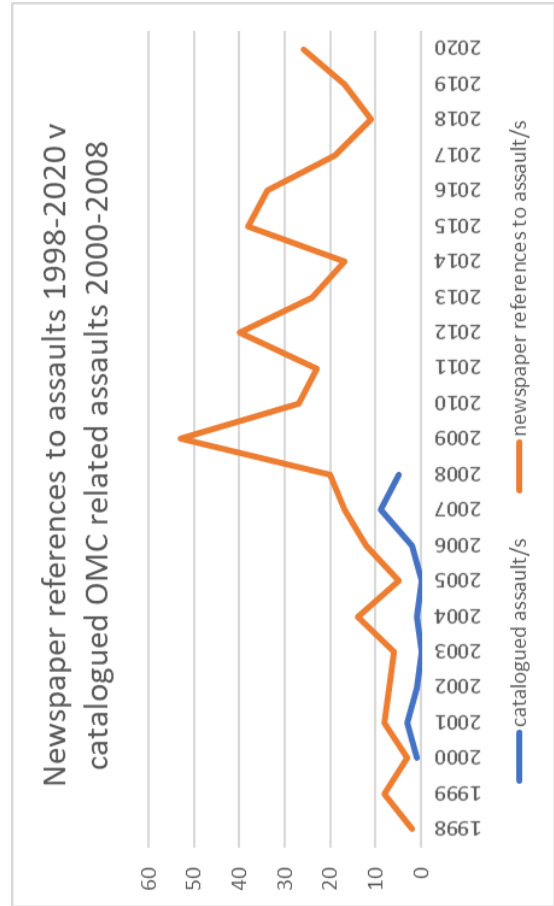
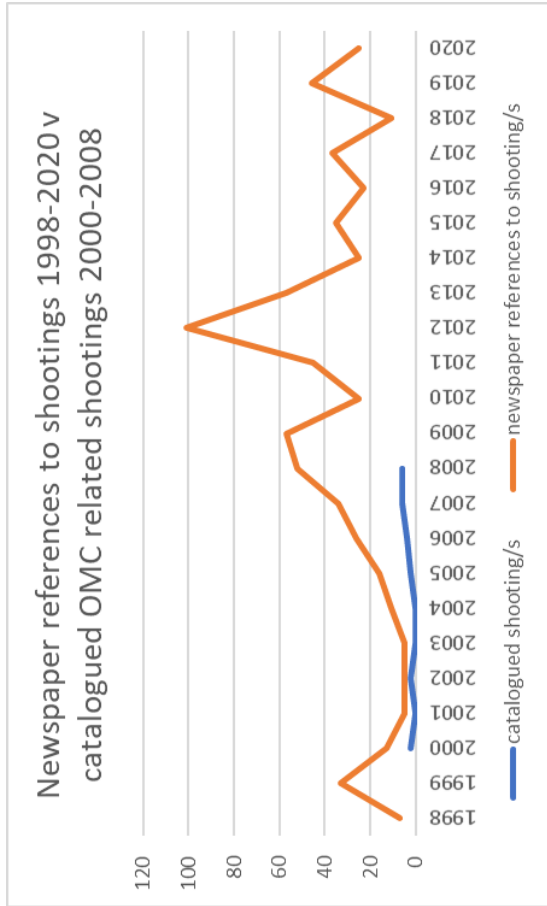
On the 5th of April 2009 the Sunday Mail published a ‘CATALOGUE OF VIOLENCE’ which detailed the violent crimes police could connect the various OMCs to over the previous ten years. From this we can compare SAPOL data with what had been published in the Advertiser and Sunday Mail over that period (N. Hunt, 2009). This article was released about six weeks before, and seemingly as justification for, SAPOL’s first application under the *SOCCA* to declare the Finks Motorcycle Club a criminal organisation, who they regarded as the most violent and therefore the most dangerous group (James, 2007). While we cannot guarantee that data in the article is complete, nor does the article specifically state that the list of violent crimes was provided by the Crime Gangs Task Force, the primary source of the information in the article was Detective-Superintendent Des Bray, then head of the Crime Gangs Task Force, who was discussing the crimes police could link directly to clubs and club members. Further this data is very detailed (including the specific clubs involved) and quite different to crime the newspaper/s had previously reported. Despite the various limitations associated with this data, given the paucity of other sources it at least gives us a point of reference from which we can compare the data generated by the discourse analysis during that time.

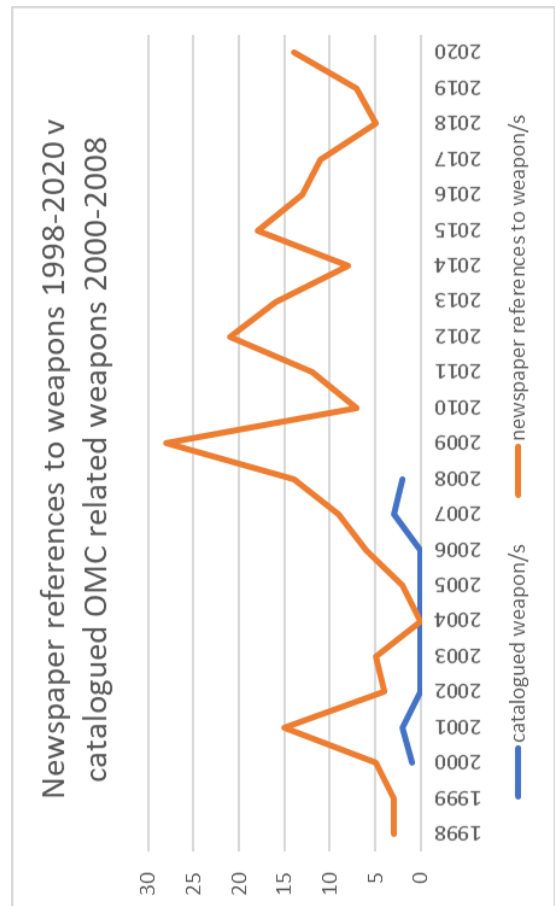
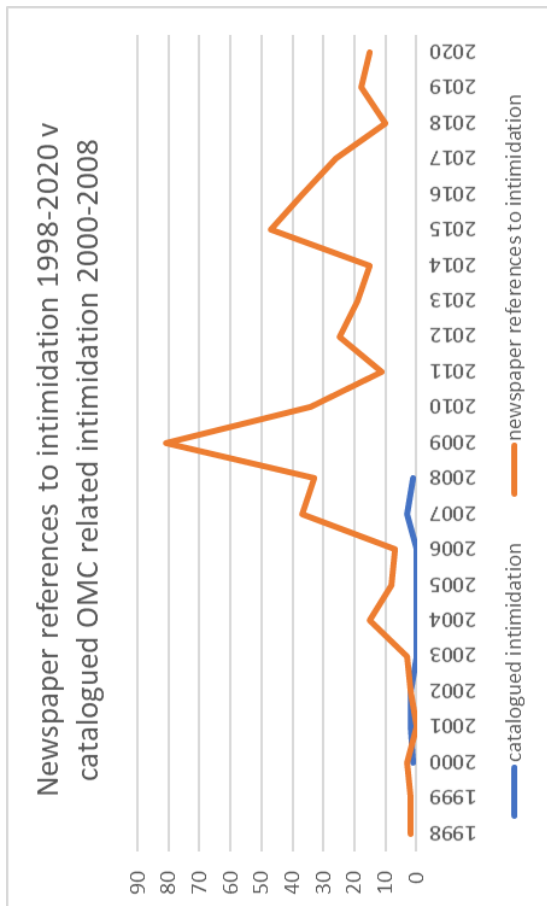
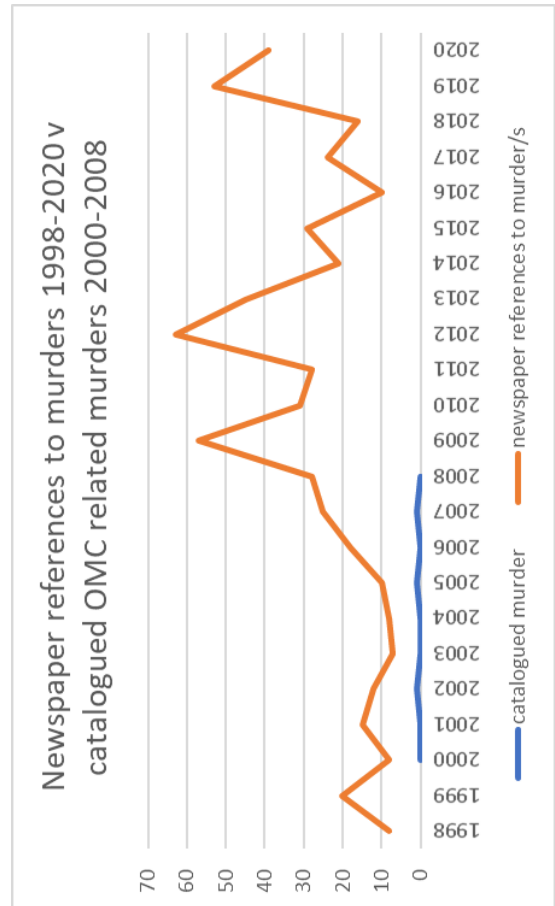
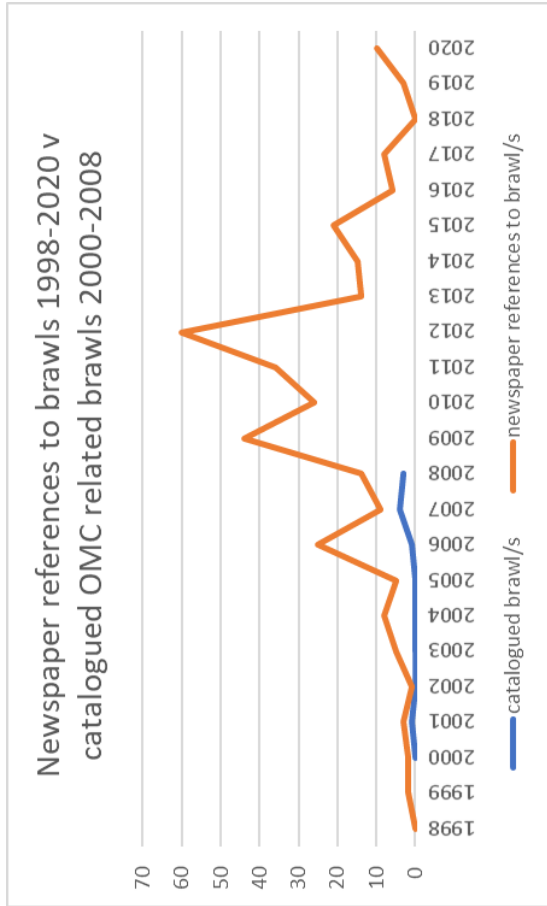
Between 5/4/99 and 5/4/09 we can see that for every violent crime members of OMCs are believed to have committed, there was an average of approximately 15.5 newspaper articles written about the clubs in general. More specifically, for every shooting there were about 7.2 references to shooting in the newspaper, every assault about 5.1 references, every firearm offence about 10.2 references, every incident in a nightclub about 9.8 references, every intimidation offence about 13 references, every brawl about 8.7 references, every use of a weapon or weapons about 8.3 references, and every murder about 42.5 references. While the overall number of articles referencing violence is significantly greater than the number of catalogued violent offences, from the graphs we can see similar, albeit greatly exaggerated trend between the rising numbers between 2000-2002 and 2005-2007, but no correlation between the figures in 2003-2004 or 2008. This provides us with an indication that there is a significant level of inflation, however without a much larger study of the Advertiser and Sunday Mail's reporting of similar acts of violence over these periods and more data on successful court convictions it is difficult to draw concrete conclusions in relation to disproportionality based solely on these figures.

From this article we can also see that during this period the Finks and Hells Angels were responsible for a disproportionately large amount of the crime attributed to OMCs, which is very similar to both Goldsworthy's (2014) and Lauchs and Staines' (2019) findings that just two clubs were disproportionately responsible for a large amount of the crime attributed to OMCs in Queensland. Of the five major OMCs active in the state at the time, the Descendants MC is notably absent in the data. The most common violent offences are related to shootings, assaults, brawls, intimidation, and weapons, and murder does not feature prominently despite its prevalence in media reports.

Table 3 - Catalogued violent crimes 5/4/99 - 5/4/09 by year

Category	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
Shooting	7	2	0	2	0	0	2	4	6	6	1	30
Assault	0	1	3	1	0	1	0	2	9	5	0	22
Gun	1	1	2	3	0	0	0	1	5	6	0	19
Brawl	1	0	1	0	0	0	0	1	4	3	0	10
Intimidation	1	1	2	2	0	0	0	0	3	1	0	10
Weapon	0	1	2	0	0	0	0	0	3	2	0	8
Murder	1	0	0	1	0	0	1	0	1	0	0	4





Overview

A feud between the Hells Angels and Rebels led to a Rebels clubhouse being bombed and a shooting outside another which killed three members in 1999, and SAPOL responded by forming a 'bikie squad'. A car-bomb which killed a former senior detective in Perth in 2001 saw law and order take a central role in the lead up to the 2002 state election, after which newly elected Premier Rann copied Western Australia's new 'anti-fortification' legislation. More focussed 'anti-bikie' legislation followed, and Professor Veno from Monash University teamed with Gypsy Jokers' President Steve Williams in an effort to 'neutralise' what he believed was a moral panic. Mr Williams disappeared and gunfire at a music awards ceremony made local headlines in 2005, and a brawl at a Gold Coast kickboxing tournament the following year saw 'bikies' back in national headlines in the lead up to the 2006 state election. An ongoing feud between the Hells Angels and Finks led to further violence, and after four members of the Rebels were shot outside a city nightclub and a member of the Hells Angels shot his girlfriend and two other people during morning peak hour in Melbourne in 2007, Premier Rann introduced extraordinary legislative measures. In 2009 a brawl at Sydney airport made national headlines while the Supreme Court ruled against the SOCCA locally, and an appeal to the High Court saw parts of the SOCCA invalidated in 2010. A feud between the Hells Angels and what became the Comancheros led to series of 'tit-for-tat' shootings in 2011 and 2012, some of which were very public, culminating in the death of one of the protagonist's sons. More new laws followed in 2013. A shooting in Waco in the US made international headlines in 2015, and Attorney-General Rau subsequently introduced more extraordinary legislation updating the SOCCA's declaration and control order scheme. The Federal Government also began using the Migration Act to deport 'bikies' on 'character grounds' in 2015, and a dedicated National Anti-Gangs Squad Strike Team was established in Adelaide in 2016.

The main South Australian newspaper source has published more than two hundred articles per year over the last twenty years in relation to OMCs and more than 85% of those have been crime related, which indicates that OMCs are overwhelmingly perceived as a crime problem. However, while the politicians who have driven the introduction of the various pieces of 'anti-bikie' legislation have focussed primary on OMCs as an organised crime problem, the discourse analysis suggests that the public perceive the main issue to be violence. As chapter one discussed there are two kinds of violence, and while both are very concerning, they have different causes and meanings. All of the available evidence indicates that members of OMC do not exert the kind of influence over criminal markets that politicians have claimed, and laws capable of dealing with OMC related violence existed long before the more specific 'anti-bike' laws were introduced. If the declaration and control order scheme and tattoo industry regulations were designed simply to 'disrupt and dismantle' OMCs, without any real consideration of their necessity, proportionality, or effectiveness in their claimed role as organised crime laws, then they can be understood as driven by purely political goals and likely represent a legislative overstep; however, given the public's concern over the subculture's links to violence, and particularly gun related violence, Firearms Prevention Orders and as Public Safety Orders may be judged as a more reasonable and proportionate (despite their use of criminal intelligence), as they have been used to quite effectively to prevent violence and the later has both greater specificity and a 72 hour time limit. Thus, although inflated claims led to what appear to be in large part symbolic laws, specific pieces of legislation may be more just than others, further underlining the importance of in-depth analysis.

Discussion

The key objective of Critical Discourse Analysis is to analyse how social practices are represented in the discourse, and what sort of ideas, values, and identities are focussed on (Bouvier, 2015). These practices are typically represented through ‘scripts’ which further explain events, context, and sequencing (Van Leeuwen & Wodak, 1999). Events, objects, and situations are given meaning by the way in which they are represented in the discourse, for example, when a violent act is labelled as either defensive or aggressive it is given meaning, and various individuals, institutional agents, and groups often compete to form the dominant or prevailing view. When officials engage in the politics of representation in order to legitimate or delegitimise events or groups it is sometimes referred to as propaganda (as will be discussed further in the following chapter). By structuring knowledge and building claims that align with what the public already largely consider to be true, successful politicians utilise metaphors, models, scripts and schemas to create narratives with powerful resonance (Chang & Mehan, 2006, pp. 1-2). President G. W. Bush’s ‘War on Terror script’ established coherent account of events at the time and institutionalised new conventions for politicians when thinking about, speaking about and acting on preemptive policies. In discursive terms it consolidated an enemy, justified extreme measures, discouraged socio-political analysis and negated traditional legal procedures. Ultimately some twenty years on, it can be seen as a template with the potential to legitimise wars without the need for specific empirical evidence to justify state actions (Chang & Mehan, 2006, p. 17 & 19).

Using similar rules of inclusion and exclusion the over-arching narrative of the script has subsequently been recontextualised. Building upon Bernstein’s (1990) and Chouliaraki and Fairclough’s (1999) definition of recontextualization, Erjavec and Volcic (2007, p. 123) discuss how the elements of the ‘War on Terror script’ have been appropriated, extended and

relocated, into new contexts. The script relies on dichotomies and binary oppositions to shape and constantly reshape ‘objective’ reality, replete with positive presentation of self and negative representation of other (Bhatia, 2017, p. 568). A continuation of the over-arching narrative furthers a dominant definition of good and evil, fosters a sense of belonging, embodies the other, constructs violence and rationalises various responses to it (Erjavec & Volcic, 2007, pp. 124-125 & 127). In this respect, the recontextualization of the ‘war on terror’ discourse has been moved from the Bush administration’s post-9/11 practice to the Rann Government’s ‘war on bikies’ practice. Building on the separate issue of OMC related expressive violence, and by using the terrorist label and the same extraordinary threat, urgency, and war rhetoric, Premier Rann moved the discourse across contexts in 2003, paving the way for the adoption of the extraordinary federal terrorism laws in 2008 which successive governments have built upon. As Chief Justice of South Africa’s Constitutional Court warned:

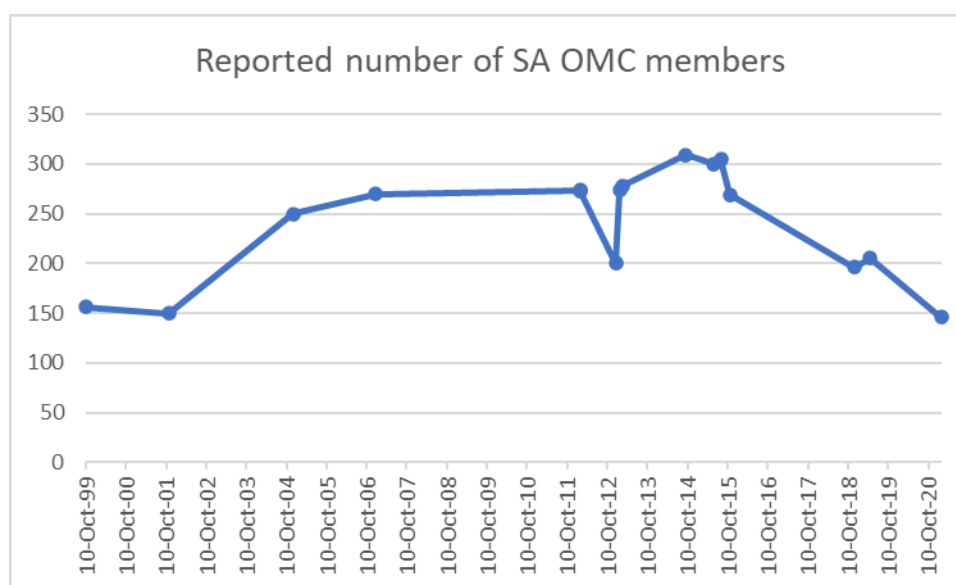
‘We learn from experience that the first incursions into the protection of human rights are often the most dangerous, for once they begin a process of erosion which is difficult to stop has begun...’ (Chaskalson, 2000, p. 8)

Reported number of South Australian OMC members

It was suspected that the number of local members of OMCs and the number of members of law enforcement focussed specifically on them may play a role in how many newspaper articles were written about them. However, while there were some similarities between the three figures, when they were compared there were also some differences making it difficult to draw a direct connection between them. While most of the figures were provided by

SAPOL, the two apparent dips in in 2012 and 2021 are figures from the ACIC, which suggests that SAPOL may use a more inclusive definition of ‘member’ than what is accepted nationally.

(156 (unattributed, 1999), 150 (unattributed, 2001a), 250 (N. Hunt, 2004), 270 (Littlely et al., 2012), 274 (unattributed, 2012b, 2012c), 273 (N. Hunt, 2013a), 200 (Littlely et al., 2012), 274 (N. Hunt, 2013a), 278 (N. Hunt, 2014a), 309 (N. Hunt, 2014a), 305 (N. Hunt, 2015a), 300 (Dillon, 2015), 269 (N. Hunt, 2015a), 196 (N. Hunt, 2019b), 205 (N. Hunt, 2019b), 146 (Dowling & Morgan, 2021))



Resources

The SAPOL ‘bikie squad’ started as operation Avatar in 2001 with 26 personnel, and it was made permanent as the ‘Avatar Motor Cycle Gang section’ in 2002 when the Government funded 20 new positions. It was subsequently re-named the Crime Gangs Task Force and boosted to 54 officers in 2007 (Holloway, 2007b, pp. 6-7; Moscaritolo & Williams, 2007; Shand, 2013c, p. 204), although was later said to consist of 43-44 police officers who could

be assisted by additional criminal analysts, forensic accountants and legal officers (Nick Henderson, 2008; *Inquiry into Serious and Organised Crime: Clarification of SAPOL's evidence*, 2015; Rann, 2011). At that time, it was estimated that there were around 200 OMC members in South Australia, although various sources suggested figures as high as 265 (Carrick, 2008; Ferret 1%er & Harry 1%er, 2013, p. 71; N. Hunt, 2015b). Both Professor Veno and the chair of the South Australian Crime Prevention Council argued separately that even if there was an extremely high crime rate amongst those men of around 10-15% then police would only have to target 20-40 individuals (Veno in Booth, 2003; Patterson in Carrick, 2008). These figures suggesting that there were around 200 OMC members in SA, of which 40 were suspected of having any kind of involvement in organised crime, were almost identical to those given by the ACIC a decade later showing little had changed (N. Hunt, 2016b). Given that SAPOL had between 43 and 54 officers whose primary focus was on somewhere between 20 and 40 OMC members, who readily identified themselves and on whom they presumably had an extensive amount of criminal intelligence, it was not fully explained why such significant and targeted resources were required on an ongoing basis (Shand, 2013c, pp. 178-179).

A dedicated National Anti-Gangs Squad (NAGS) Strike Team was additionally established in South Australia in 2016. The Federal Minister for Justice said it was necessary because:

We know for a fact that OMCGs are underworld market drivers in crimes such as drug manufacturing and trafficking, extortion, prostitution and firearms trafficking... (Keenan & Malinauskas, 2016)

The Strike Team works within SAPOL and initially was said to include fifteen officers from

SAPOL, the Australian Federal Police and the Australian Tax Office (N. Hunt, 2014b), although was later announced as comprising of two senior SAPOL detectives, five AFP officers, and an analyst from the ATO (N. Hunt, 2016a). While the anti-gang squad did investigate other gangs, 95% of its work was said to be focussed on OMCs (Moor, 2014a).

Conclusion

This chapter started by examining how preemptive logic and rhetoric linked OMCs to terrorism and resulting in the *Serious and Organised Crime (Control) Act 2008* (SA). Its innovative approach to legislating crime and use of criminal intelligence was then explored. The High Court challenges and SAPOL's perspective were reviewed before the subsequent evolution of the 'anti-bikie' laws was discussed. The second part of the chapter explained the results of a discourse analysis which was aimed at deconstructing the events, gauging public concern, and highlighting the level of inflation surrounding the issue. While the analysis revealed that inflation was present and overreporting likely distorted the public's perception of OMC related crime, without a baseline for the reporting of similar crimes it could not conclude that this level of inflation was only present in crimes linked to OMC members. However, as a way of measuring public concern the analysis did show that despite claimsmakers' claims regarding OMC links to organised crime and drugs, the public perceived violence and shootings to be a more significant problem.

Through an examination of the various South Australian 'anti-bikie' laws, their introduction, stated goals, usage, outcomes, and the discourse that has surrounded them; we can observe that the major aspects and key criterion associated with a moral panic, volatility, hostility, public concern, consensus, and disproportionality (Goode & Ben-Yehuda, 2009, pp. 37-43), are present. After a relatively minor bar brawl and an interstate car-bombing in 2001 which

drew media and police attention, then Opposition Leader Mike Rann denounced ‘bikie gangs’ as a folk devil and mobilise public concern in support of tough on crime election campaign the following year (as discussed in chapters one and two). Several events allowed concern to become hostility, and political consensus saw the *SOCCA* legislation supported by both major parties. Through the narrative and discourse analysis inflation was apparent, and in examining both the High Court’s decisions and SAPOL’s position we can further see conflict between the various authorities. Spikes in reporting and concern revealed through the discourse analysis, combined with OMCs history of evolving through episodes moral panic discussed in chapter one, this chapter shows further volatility. Thus, establishing that ‘anti-bikie’ laws are disproportionate to the level of threat posed by OMCs is the key to determining if this response represents a moral panic.

Although a number of former Premier Rann’s claims, such as that OMC clubrooms were ‘fortresses in the suburbs and city which are simply manufacturing plants and laboratories for drugs’ or those regarding terrorism, can be disproven quite easily, he was able to avoid giving any kind of objective measure of the problem because his political opponents and various media outlets did, often citing interstate or national law enforcement sources (or even more ambiguously just ‘police sources’). Attorney-General Rau, as Mr. Rann’s claimsmaking successor, was similarly vague in defining the scale of the problem declaring that visible OMC related violence was just ‘the tip of a bigger criminal iceberg’ (Rau in Rice & Novak, 2012). From those statements we can see both exaggeration and distortion, for which there was little scrutiny,⁴⁶ and as a whole the ‘bikie’ threat can be judged as grossly inflated compared to other crime groups that were rarely mentioned (such as the 30 other crime

⁴⁶ Claims such that they dominate the methamphetamine market (South Australia Police, 2015, p. 19) or that they ‘run’ organised crime, drug racketeering, and prostitution in the state (Hamilton-Smith in *Parliamentary Debates*, 2008, p. 1977), which the best available evidence as discussed in previous chapters contradicts.

groups SAPOL was said to monitor (Littlely, 2012)). OMCs have now been studied and are largely understood, but it is the unknown crime groups operating successfully and that are immune from prosecution under many of the OMC focussed ‘organised crime’ laws which are today the biggest concern. Numerous claims have been made regarding OMC members’ involvement in instrumental crime and violence without sufficient evidence, and the frequency of media reports which have been more typically tied to expressive crime and violence has exaggerated the public’s perception of the prevalence and importance of those crimes. As both the media and OMCs are inclined to amplify claims of violence, and the combined amplification has effectively masked the nature and level of threat that they represent. Thus, the main issue associated with the OMC subculture is the extreme and overt violence its members are involved in, and the amount of attention that behaviour attracts, because it has led to a situation where politicians are failing to recognise or acknowledge other potentially much more serious problems.

While it was one of the core tenets of Cohen’s (2002) original moral panic study that when a phenomenon or problem is over-reported the public’s perception of it can become exaggerated and distorted, Gibbon et al.’s (2005) study further showed that when a problem is reported frequently it can exaggerate or distort the public’s perception of its prevalence or importance. However, one of the key problems with the moral panic model is that there is no formula, or even guidelines, to objectively determine what constitutes over-reporting. Goode and Ben Yehuda (2009, pp. 76-77) suggest that if the figures ‘cited to measure the scope of the problem are grossly exaggerated’, the threat is non-existent, distortion and misrepresentation are more readily believed and face less scrutiny than normal, a phenomenon receives vastly more attention despite being less damaging than another, and that significantly more attention is given to subject at a particular time despite no increase in

its seriousness, then the criterion for disproportionality has been satisfied. Cohen (2002, p. xxxv) argued in the later editions of his work that:

The core empirical claims within each narrative can usually be reached by the most rudimentary social science methodology... [and although] Questions of symbolism, emotion and representation cannot be translated into comparable sets of statistics... there are surely many panics where the judgement of proportionality can and should be made – even when the object of evaluation is vocabulary and rhetorical style alone.

Therefore, despite being unable to prove disproportion, based on the exaggerated claims and inflated levels of reporting, this research suggests that as of the publicly available data in May 2021 the South Australian ‘anti-bikie’ laws are likely the result of a moral panic. However, the application of the moral panic label is often questioned so there are further aspects which need to be addressed in the following chapters before this can be concluded.

Chapter Five: Institutional actors, propaganda, and fear

The previous chapter narrated the introduction and evolution of South Australia's 'anti-bikie' laws and analysed the written discourse. It highlighted the various claims made in the construction of the problem and found that all of the key criteria associated with a moral panic appeared to be present. This chapter discusses the way in which relevant issues are approached by the various institutional actors based not only on the size or potential threat, but also on how they align with their own individual and organisational needs. The mass media features prominently in any discussion of moral panics, and Cohen (2002, pp. xxviii-xxix) highlights their importance in all three stages of the construction of a panic: setting the agenda, transmitting the images, and making the claim. Garland (2008, p. 15) argues that while claimsmakers and folk devils are essential, it is the media who typically drive the panic and benefit the most from it (in terms of the commercial interests of the mainstream mass media and how the number of consumers influences subsequent advertising investment), so this chapter will look at their role in more detail and examine both their influences and their influence. It will explore the newsmaking process, where stories come from, and what factors can shape those stories. The mass media have the power through the news to influence those who consume it, so it is in the best interests of politicians and the police to engage with them in order to further their own institutional goals. As the two primary sources and driving forces behind the media's presentation of OMCs, it would appear that their public relations interests have been prioritised over other policy considerations, such as efficacy. Thus, this chapter will further examine their goals, which sometimes conflict even internally, along with the role of the judiciary. A feedback loop exists between the institutional actors and public opinion, and in regard to the South Australian 'anti-bikie' laws, it seems to have produced symbolic legislation which does little to address the underlying issues.

The media

In the digital age most people's knowledge of the world outside of their own individual experience comes from the way it has been portrayed by the mass media. Through the mainstream media's presentation of 'the news' the public learn both what is happening and how to interpret it (Bennett, 1983, p. 125; R. Burns & Crawford, 1999, p. 158; S. Hall et al., 1987, pp. 56-57). News stories can influence, instruct, persuade, or entertain audiences, and how people perceive and feel about various issues dictates what they will do about them (Albanese et al., 2019; Ericson et al., 1991, p. 239; S. Hall, 1973, p. 3; King et al., 2017). Ideally the news would be a clear narrative objectively describing important or interesting events in factual and verifiable detail. However, raw factual information cannot be simply communicated from the source to an audience, as it must first be encoded into a message by an intermediary and then subsequently decoded by the recipient. As a message is codified it becomes subject to the numerous complicated formal conventions, criteria, formatting concerns, and technologies (S. Hall, 1973, p. 2). Thus, the mass media's presentation of information is neither full nor complete, as they choose what to communicate and how to do it based on their own rationale.

Newsmakers summarise the events, identify the issues, elaborate on the details, and then present a simplified version in a conventional story format that is familiar to audiences. Unfortunately, the facts can easily become obscured during this process, and the way the audience ultimately understands an event is heavily influenced by the language and symbolism used in the production of the story (D. L. Altheide, 2013, p. 420; Ericson & Haggerty, 1997, p. 4). While the decisions newsmakers make when they produce stories are important, how the audience understands it is much more significant, as it is then part of the meaningful discourse. Discourse is principally the way in which knowledge is constructed at

a societal level. The media essentially call issues into being and through the process of communicating them to consumers, make them real (Ericson & Haggerty, 1997, p. 83). A version of reality and social order is presented, which then becomes inextricably tied to reality and the actual events being reported. In this way as part of the newsmaking process, 'reality' is malleable (Ericson et al., 1991, p. 20 & 239). The mass media's power stems from their ability to define situations and their key elements, and because of their influence over such definitions they can be seen as an instrumental agency of control, order, stability, and change (D. L. Altheide, 2013, pp. 224-225).

Newsmakers' primary task is to tell stories, and it is the storyteller who decides what will be discussed and how it fits within the greater context (Bird, 2005, p. 222; Gans, 1979, p. 5). A lot of news stories are based on their authors' values and how they perceive reality. Their views both influence stories, and stem from the overarching narrative (Gans, 1979, pp. 39-40 & 80). While the news is created by individual journalists, it is also heavily influenced by sources, consumers, advertisers, various people and organizations who can apply pressure to censor throughout the process, and other considerations relating to the fact that mainstream media organizations are commercial enterprises (Gans, 1979, p. 73). The news reports unusual or unexpected events and phenomena, however newsmakers are selective in what they deem to be newsworthy. There are an almost limitless number of issues, events, people, and approaches for newsmakers to focus on, but there is a finite number of resources, and space for reporting. Thus, stories are chosen based on a combination of their interest to consumers and availability, and not because of an increase in occurrence or severity of a new phenomenon (Gans, 1979, p. 19 & 83).

Given that what is reported in the news is dictated by the concerns of both audiences and mainstream media organisations, and that the various outlets all compete for the same audience, it is unsurprising that the news often differs from reality (Barak, 1995a, p. 10). The mass media produces an uncontroversial, consistent, and homogenised version of reality, rather than accurately portraying an increasingly diverse society. This is partly because anything that seems normal requires little further explanation, while anything that challenges those views is cause for concern (Barak, 1995a, p. 13). Newsmakers' obsession with stories involving crime, law, and justice have over time become one of the principal ways in which acceptable behaviour is defined, who various groups and individuals are, and what is real. Crime and crime control are characterised and portrayed by the mainstream media in a way that aligns with society's dominant social, political, and psychological values. Stories therefore often focus less on the how and why, and more on where they fit in relation to the established social order (Ericson et al., 1991, p. 4). Any larger issues that might weaken that reality or undermine that sense of order are generally ignored. The consequence of basing the news around ideas of deviance and control is that the selection, focus, and approach to stories becomes inseparably entwined with how people perceive crime. A wider examination of crime stories will likely explain more about society's values than the reality of crime and criminal justice in that society (Barak, 1995b, p. 3).

Newsmakers have the very difficult job of trying to weave together complex events and various viewpoints into a simple story so that it can easily be understood by the average consumer (Gans, 1979, p. 161; McShane & Williams, 1995, p. ix). They do this by framing them in a way that fits with what the public have already accepted to be the truth (Austin et al., 2010, pp. 947-948; S. Hall et al., 1987, pp. 56-57 & 65-66; Jewkes, 2011, p. 69). Our final understanding of any event is a combination of what we see in the news together with the

feelings generated by how we view it in relation to other events and feelings we have on similar issues (Cunneen et al., 1989, p. 137). In order to compress news stories into clear and dramatic bite sized chunks, the discourse is expressed in oversimplified and contrasting terms that use commonly held ideas, beliefs and stereotypes as a way of efficiently explaining how events fit in the greater context (Barak, 1995a, p. 35). However, the act of attributing particular characteristics to others based on only limited information can be misleading and often serves to simply reinforce common prejudices (Cunneen et al., 1989, pp. 163-164). While creating a news 'story' is implicit in the journalists' role, and the use of stereotypes and symbols can save time and space while also piquing consumer interest, the result is often moral judgement (Gans, 1979, p. 162). People are prone to making moral judgements on all kinds of social issues, but crime and crime control often seem to generate a particularly strong response (Claster, 1992, p. ix). This is because it is very easy to imagine the criminal as stereotypically evil and distinct from the average citizen; similarly, the victim as an innocent citizen suffering undeservedly (Claster, 1992, p. 11).

The media's choice of stories, how they frame the various activities, and the language they use to do it, especially in relation to crime and criminal justice, can be incredibly influential on how the public perceive society (D. L. Altheide, 2006a, pp. 984-985). Public perception is rarely based on a logical analysis of all the facts, and instead is typically defined by the limited public discourse (Barak, 1995b, p. 4). Understanding the temptation for newsmakers to overgeneralize, especially in relation to moral judgements, is critical to any examination of crime and criminals as the language and rhetoric used when describing or categorizing a problem has serious implications for what steps will need to be taken in order to resolve it (Ericson et al., 1991, p. 239). When social problems are defined, framed, and understood in a certain way, judgements are made which limit the scope of the response (Claster, 1992, p. x;

Ericson et al., 1991, p. 288). While stories of an editorial nature are free to utilize inflammatory language, expectations of objectivity limit journalists' ability to use the same overtly moralistic rhetoric in many other situations, so the author's view is often more subtly suggested through the metaphors and language they use in an effort to join unrelated phenomena (Claster, 1992, p. 17; Ericson et al., 1991, p. 269). Social and cultural meanings and differences become inseparably joined in the way they are represented, and in this way the mainstream media is a meaning-making institution (J. Young, 2005, p. 103).

The linguistic and symbolic nature of the news means that there is a certain amount of interplay between various stories, and meanings often transfer from one frame to another in way that reflects the dominant social order (S. Hall, 1973, p. 11). While the dominant social order is not absolute nor unquestioned, it is apparent that various parts of society are depicted in specific ways and with certain prevailing or suggested meanings. Any new concerns or unclear events that are unexpected or oppose the normal and established social construct need to be contextualised and given meaning before the audience can interpret them; and they are typically aligned with numerous other pre-existing social problems. However, the communicative exchange is not quite as simple and one sided as this might suggest, and the dominant social order and the implied meanings are only suggested because the audience can interpret the language and symbols in different ways when various narratives and constructs overlap. The preferred social order encapsulates numerous meanings, including; established rules, principles, practices and beliefs, the common understanding of societal structures and how society functions, hierarchical power structures, and what can be considered legitimate or acceptable punitive measures. But there is significant room for misunderstandings based on the different backgrounds, economic situations, political beliefs, and ideology of audiences, and the meanings may not be entirely consistent across the various sources, each

with varying credibility (S. Hall, 1973, pp. 13-14).

The mass media's representations are largely responsible for the way that order is perceived, and the law is the principal social and cultural mechanism of determining acceptable behaviors and conceptualizing reality (Ericson et al., 1991, p. 17 & 341). News stories typically present the law as if it was derived from nature, rather than as a social and moral construct. The predominant crime narrative depicts justice resulting from the strength of 'the system', and authority in a monolithic sense as succeeding (Ericson et al., 1991, pp. 9-11). The narrative affirms the wider belief that the system works and that justice exists, thus encouraging a sense of security (Ericson et al., 1991, p. 110). Collectively the institutions of law and the media proliferate discussions of authority and justice. The mass media is essentially political institution, and it always reports significant changes to the law because they reflect the dominant values and show a society's structure (Ericson et al., 1991, p. 142). Stories often emphasize individual morals as a way of endorsing the established social order where antagonistic people are the problem rather than the greater social structures. This further obscures the root causes of problems in what is a structurally unequal society. A more personal focus in both the news narrative and criminal law allows any questions over cultural values, the state, and the legitimacy of the authorities themselves to be avoided (Ericson et al., 1991, pp. 8-9). While truth is the basis of systems of thought, justice is the basis of social institutions; thus, for the institutions of law and media justice is fundamentally more important than truth. Justice is communicated through conversations that focus on the control measures taken to achieve results. Therefore, for the institutions of both law and media the measures taken to achieve an outcome are often more important than the outcome itself (Ericson et al., 1991, p. 343).

News sources and claims-makers

Social meanings, and thus social problems, are formed by the way the news links language with issues. Language is the primary way we communicate but the discourse encompasses far more, such as the way in which it is expressed and who expresses it. The news thus represents a monolithic hegemony, establishing the official narrative of both events and social order by citing what the authoritative sources have said. The journalist bestows authority by unquestionably crediting the facts of the matter to the sources, or approved storytellers, they choose to cite and what their version of reality is (Ericson et al., 1989, pp. 3-4). Newsmakers decide who the authoritative sources of information are, and those sources dictate what is disclosed, where the emphasis is placed, and when the information is released (Ericson et al., 1989, p. 6; 1991, p. 5 & 182). In the interest of creating news in the quickest, easiest, and cheapest way journalists typically encourage sources to come to them, and as a result the news favours sources that actively seek to provide information (Gans, 1979, p. 117 & 128). A range of sources are often used in the creation of news stories, however their input is not necessarily apparent. The power of sources to shape the news can be very important to them, as it helps to endorse their authority and shape the image of their organizations. Being able to draw attention to certain events and conceal others can bring about change or prevent it, and as such organisations are often the driving force and less obvious authors behind stories (Ericson et al., 1991, pp. 181-182).

Positioned as the sole authority, governments and law enforcement are able to use this to their advantage by providing only the information that promotes their organizational interests (Ericson et al., 1991, p. 41; Gans, 1979, p. 121). The mass media is an essential tool that governments use to get their message to voters, and both the media as an institution and newsmaking as a process are enmeshed with the structures and processes of politics. In the

modern era of journalism with reduced resources, it is much less common for journalists to investigate and write the news independently, rather in the interest of expediency they tend to rely on official press releases, articles from press agencies, information supplied by government officials and police, and information supplied by witnesses or family members. Thus, one of the biggest influences on how crime is reported stems from where the information has come from, and it can be seen that the distortion in many crime news stories is also partly the result of the near exclusivity of the crime information that the media rely on coming directly from the police (Barak, 1995a, p. 12). Journalists often have a symbiotic relationship with their sources, which creates mutual obligations that both assists and impedes their goals (Gans, 1979, p. 133). Journalists and police share such a relationship, as police have a monopoly on the information about crime that journalists need, and the journalists have a huge amount of influence over how the public view the police (Moore, 2014, pp. 21-22).

Unlike their fictional counterparts, the police independently uncover very few crimes, and it is even more uncommon for journalists to do so personally. The police are a vital source of information for journalists, and they are proactive in supplying that information as they readily acknowledge that the media can be controlled and incorporated as part of the policing machine (Ericson et al., 1989, p. 93). The Police play a dominant role in any discussion about crime, and so far as the public are concerned, they are the principal definers of both criminal problems and their control. Police authority and the facts as they present them are generally accepted without question. Journalists frequently re-write their comments as the news, occasionally without attribution, and any accounts often without confirmation. Essentially, journalists rely on information about crime, and as their primary source of information police are able to control the public discourse about it (Ericson et al., 1989, p. 123). In this way

police can be seen primarily as knowledge workers, although it must be noted that their knowledge is primarily produced for the organisation's own administrative functions the vast majority of it stays within the organisation (Ericson & Haggerty, 1997, p. 21). While they do share a small amount of their knowledge with politicians or the media, throughout those disclosures that knowledge represents power (Ericson et al., 1989, pp. 154-156; Ericson & Haggerty, 1997, p. 22). Naturally police accounts of crime and their own actions generally paint them in a favourable way and lend support to their organisational interests (McCorkle & Miethe, 2002, p. 94). It is important to note that primary motivation of police is to protect their community, and that any claims-making on their part, as part of the political process, is generally based on what they believe to be true. However, when focussing on particular individuals or groups, whether they be drug traffickers, OMCs, or serial killers, the real threat they present can easily become exaggerated and distorted, and most crucially, the important and limited resources get diverted from where they can be used most effectively (McCorkle & Miethe, 2002, p. 73).

A very rational and bureaucratised mass media also construct and shape the way people understand and perceive social institutions, such as politics, government, and the justice system (D. Altheide & Snow, 1979, p. 247). As a result, the context and composition of social institutions, and how they use their powers is now deeply entwined with media considerations (D. L. Altheide, 2013, p. 226). An individual or organisation's ability to successfully manage and manipulate press coverage is often referred to as spin doctoring, or more specifically in regard to politicians and governments as the 'art of statecraft.' Social problems are subjective, and whether or not something is considered as such is the result and how the issue has been framed by claims-makers (Best, 1989, p. xviii). By focussing on specific aspects of social issues, claims-makers are able to shape the way people understand them and construct them

as problems. But more than simply identifying issues as problems, they label them as a specific kind of problem (Best, 1989, pp. xix-xx). The public's understanding of the claimed necessity of extraordinary measures has often been encouraged by various government officials serving as news sources, and in this context they play an important role in the definition of problems and in determining political agendas (D. L. Altheide, 2006b, p. 417). As the primary news sources police and government officials play a large role in how crime is more widely perceived, and as such they can be seen as claimsmakers. However, rather than simply being independent observers of the process, it should be remembered that both the media and its consumers are also instrumental in the construction of the symbolic environment.

The 'mediatization' of politics

The news covers a wide range of issues and it is consumed by almost everybody in some way; thus, the mainstream media can be seen as creating a shared knowledge. In this way, the mass media serve as hub linking all the different parts of the government and community. For politicians the mass media represents both an indicator of public opinion and a way of monitoring their political surroundings. They can thereby adapt their strategies, whether that be to re-frame an issue or policy, shift attention towards or away from an issue or policy, or attack an opponent. The mass media gives politicians a way of directing public attention, but only if they cooperate. Thus, at times the mass media is able to exert significant influence over the political process and policymaking (Koch-Baumgarten & Voltmer, 2010, pp. 3-4). This situation, whereby political institutions depend on the mass media and are deeply interwoven with media concerns, is often referred to as the 'mediatization' of politics (Asp, 2014, p. 355). Because politicians' policy making powers are subject to public approval, and the mass media is able influence the main themes of public debate and public opinion, they

are not usually willing to oppose the media either as individuals or collectively (Koch-Baumgarten & Voltmer, 2010, p. 217). However, despite their symbiosis and the mass media's ability to impose their own operational logic on policies, it cannot simply dictate policy. The media instead influences the discourse, public perception, and the response to various issues through their story selection, framing and use of particular language and symbols in their reporting (D. L. Altheide, 2006b, p. 419). Although the mainstream media is influential in the formulation of public policy, it is often difficult to determine the extent to which the media are influencing policymakers and policymakers are influencing the media (Koch-Baumgarten & Voltmer, 2010, p. 5).

The ability of politicians to connect with their constituents stems from their capacity to explain complex issues in simple terms and offer simple solutions, while suggesting that their rivals are complicating issues in ways that obscure those simple truths (Claster, 1992, p. 13). When politicians identify particular crimes or criminals as of elevated importance they become much more newsworthy, and once issues have been declared publicly as simply good or bad, it becomes more reasonable to construct public policy based on the same premise (Chermak, 1995, p. 125; Claster, 1992, p. 12). Further, leaders who actively provide the mass media with information can increase public approval for various control measures. Similarly, the mass media rely on police for information involving crime, and politicians grant police resources based on perceived need, so a feed-back loop of sorts exists between politicians, police, the mass media, and public opinion which can often lead to the over-reporting of certain crimes in a way that does not accurately reflect reality (Reuter, 1987, p. 177).

Propaganda

The mass media play an important role in modern politics, but how we understand this role is

largely dependent on how we conceptualise the democratic process. A typical dictionary definition of democracy says something along the lines of a system a government with power vested in its people which they exercise either directly or by freely elected agents (definition of 'democracy' in Merriam-Webster, n.d.-b). It is characterised by openness of information, meaningful participation, freedom, and equality. However, there is a conflicting argument that the prevailing conception of democracy by those in power is defined by heavily restricted flows of information, the prevention of meaningful participation of the people in the management of their own affairs, restricting their freedoms and rights, and maintaining inequality. It is suggested that this concept, in theory and operation, stem from the very first English democratic revolutions of the seventeenth century (Chomsky, 2002, pp. 9-10). When considering the political process from a philosophical point of view it is quite surprising that so many people are governed by so few with views greatly different from their own, and it is counter to the universal law of nature that a small select minority should control the actions of the masses, that the economy should provide luxuries for the few at the expense of basic essentials for everyone, and that planning for future generations be largely ignored. While power is derived from the peoples' implicit submission, support for those in charge is only sustained through opinion. Thus, government is only derived from public opinion (Hume, 1742). The more popular a democratically elected government is, the more necessary it becomes for those in power to shape the opinions of the people. Essentially in a democracy the people have the right to consent through their occasional choice of leadership but are largely little more than spectators to the political process rather than participants in it (Chomsky, 1999, p. 44).

Since its inception the public relations industry has been devoted to manipulating the way people perceive things, and propaganda provides those in charge with the tool they need to

shape public opinion and direct it in way they find more desirable (Chomsky, 1999, p. 45 & 53). When government propaganda is sustained by the upper-middle class and when no significant alternative view is offered, it can have an extremely powerful effect on the people. This technique has been used, and is continually used successfully, by many governments (Chomsky, 2002, p. 13). When the true power of propaganda to ‘manufacture consent’ was first realised in the in the early part of the twentieth century it was considered nothing short of a ‘revolution in the art of democracy.’ By utilising new propaganda techniques, governments found that they could convince people to agree to various things that they had previously strongly objected to. A good example is a simple dialogical gambit such as ‘support our troops’, which has the power to divert any argument over policy, and then distracts, marginalises, and ultimately harmonises the people behind a cause (Chomsky, 2002, p. 26 & 28). The idea that the majority of people cannot understand what they need and what is in their best interests, but that the minority in charge can and do, is an opinion that has often been shared by those in power for centuries and was a notable characteristic of Leninism amongst other political theories (Chomsky, 2002, p. 15). Propaganda was used particularly effectively by the Nazi regime and Chomsky (2002, pp. 20-21) notes that ‘propaganda is to a democracy what the bludgeon is to a totalitarian state’. Ultimately it is only the leaders who dictate public policy, and regardless of whether it is a democratically elected government or a dictatorship, when led in particular ways people tend to follow (Hermann Göring in G. Gilbert, 1948, p. 227).

Governments are not truly independent; their aims and interests close align with those of that society’s elite. In the ‘interests of the state’ is generally a euphemism, an illusion at best and a deception at worst, expressing just one of many strongly contrasting interests (Chomsky, 1999, p. 20). People’s expectations of society are tempered by a climate of fear, and they

largely accept what those in power describe as great achievements for freedom and democracy without questioning alternative courses and outcomes. Ill-conceived and deeply flawed policies flourish for the simple reason that they are in the interests of those who hold the balance of power. Such policies are often based on sweeping generalisations and their outcomes ultimately differ greatly from the original expressed policy aims; and a much more thorough examination of the driving forces behind them is required to truly understand them (Chomsky, 1999, pp. 24-26). Public policy often differs greatly from public opinion, just as government rhetoric often differs greatly from the facts (Chomsky, 1999, pp. 55-56). Thus, it is often more informative to investigate the facts excluded from, rather than those relied upon by propaganda campaigns (Chomsky, 1999, p. 135). When the attitudes of the public are compared with public policy it becomes apparent that the bottom seventy percent, who make up the vast majority of the population residing at the lower end of the income and wealth scale, have no impact on policy. As a person's income and wealth increase above this threshold, so too does their influence on policy. In many cases it is the minority at the very top who effectively dictate public policy. In this way it can be seen that many democracies actually function more like plutocracies and parliamentary systems function as instruments of class rule (Chomsky, 2016, p. 68). While much of the research is based in the United States, Australia is not quite as different as many Australians might perceive. Democracy is the most ethical way of governing people, however the people who control manufacture, trade, communication, media, and transportation effectively govern the country. A true democracy would shift that power away from big business to the people, however it is widely recognised that that is not necessarily desirable (Dewey, 1993, p. 442; Rousseau, 1762, p. 45).

The state has a foundational role to play in protecting its citizens, and citizens have long accepted that governments as their guardians will take steps to maintain control of the state,

and combat perceived problems (D. L. Altheide, 2006a, pp. 987-988). This is widely agreed upon and in itself not contentious. However, it can be difficult for the state to control social problems because there are limits on its coercive powers. The emergence of ever-expanding, intrusive, and more powerful government in response to various social crises has come at great cost to the rest of society. In providing security, safety, and protection to its citizens, the state must also take into consideration its people's basic rights and freedoms, and provide them with a criminal justice system in an effort to ensure compliance (Ashworth & Zedner, 2014, p. 251). While the state has a monopoly on the use of coercive force, it should only be used as a last resort, and anyone whose basic freedoms and rights are reduced should have access to suitable procedural protections (Ashworth & Zedner, 2014, p. 261). Vague but pressing public demand calling for action has seen the development and implementation of policies and regulations that too often violate moral, ethical, and legal procedures. The reduction of civil rights and freedoms in particular place a significant strain on the general population, which require exceptional circumstances to tolerate. Resistance to that strain, threatens not only those policies and regulations but the government itself. Thus, the state must propagandise to prevent the population from analysing the issues they are faced with too closely and forming their own critical conclusions. The stimulation of fears and panic about a dangerous alien enemy has traditionally proven to be the most effective way of silencing any such arguments (Chomsky, 1991, p. 109).

An enemy must appear serious enough to provoke significant public hostility and aggression against in order to fulfil this role, which then allows the government to enact policies abrogating civil liberties in ways which would otherwise cause community uproar. In deflecting attention away from the shift in power the enemy must be identifiably different from what is considered normal. The enemy needs to be strong enough and scary enough to

engender the fears and hostilities of the people, but also weak enough to be fought and defeated without any significant penalty, further providing a successful example for any similar future actions. The 'war' must focus narrowly on just the single clearly defined enemy but carefully exclude the principal agitators so as to prolong the conflict. Basic rights, morals, and freedoms play only a symbolic role in the political culture as a mechanism to demonstrate our superiority over the alleged offences the enemy commits (Chomsky, 1991, p. 130). An extensive well-planned propaganda campaign is an essential precondition to the success of the operation, however even the most effective propaganda campaign will begin to wane over time as important social and economic problems eventually come back to the fore (Chomsky, 1991, pp. 114 & 134-135). In order to side-step the possible public reaction, the government must disguise the costs and strains by promoting its successes, particularly statistically and financially. These various social crises prompt permanent changes in the public's acceptance of the size and power of its government. Essentially these crises bit-by-bit diminish the public's ideological opposition to the increasing size and power of government (Higgs, 2012, p. 73).

The 'war against crime' metaphor was first used well over a hundred and fifty years ago, but the biggest problem with such terms is that they typically lead to further rhetorical escalation (Claster, 1992, p. 219 & 223). Similar rhetoric has helped influence our perception of terrorism and framed what we as a society consider a proportionate legislative response to be. When politicians, law enforcement and the media use military analogies they essentially authorise the government to wage a continuous unconventional war (Jude McCulloch, 2007, p. 25). Their use surpasses mere symbolism and further encourages the use of military powers in aid of the police function, transforming traditional boundaries (Bronitt & McSherry, 2010, p. 946 & 1040). This kind of rhetoric can have a detrimental impact on society as it reinforces

the belief that in a state of emergency the suspension of basic civil liberties and freedoms is unavoidable and can be legitimised. In doing so fundamental legal principles, like the presumption of innocence and the right to remain silent, are degraded or disregarded. It has real consequences and further reduces the increasingly diminishing line between police work and warfare. Terms like the 'war on drugs', 'war on terror' and 'war on bikies' have made the differences between fighting crime and fighting a foreign enemy, and the consequences, largely indistinguishable (Steinert, 2003, p. 266). Policing terrorism and transnational crime are incredibly difficult tasks, however creating broad new laws and extending powers that can potentially undermine the entire legal system when the use of ordinary criminal law and standard offences against person and property would be a much more effective approach is not the answer. Before new laws are passed that have the potential to do more harm to the legal system than good, existing crimes and powers should be examined and any amendments deemed necessary developed in a way that incorporates the best evidence available of what actually works (Bronitt & McSherry, 2010, p. 1041).

As we examine organised crime policy, the rhetoric evolves into the transnational crime threat, and in 2018 the Department of Home Affairs estimated that seventy percent of serious and organised crime groups operating in Australia are either based or have connections outside of the country (Department of Home Affairs, 2018, p. 2). With most Australian organised crime legislation aimed solely at local OMCs, the rise of transnational crime groups is a very serious concern. However, the most concerning aspect of what has become the organised and by extension the transnational crime threat narrative, is that it has prepared a foundation for a significant shift and expansion of the state's coercive powers. By labelling organised crime as transnational crime, crossing the line between two or more nation states, it further conceptually blurs the functions of the military and police. Western liberal

democracies have traditionally had police address internal law and order functions and the military any external threats, but as concerns over transnational crime have risen so too have the states powers to fight it, and the division between the military and the police has narrowed (Jude McCulloch, 2007, pp. 19-20). This is troubling because the primary role of the police is to maintain law and order over a civilian population and they are trained to do that using the minimum amount of force, while the primary role of the military is to fight a trained alien enemy and they are trained to use lethal force. Transnational crime and the state of exception have allowed the gap between political rhetoric and law to be bridged, providing a pretence for enhancing security and thus creating the appearance of a strong and secure state (Agamben, 2005, p. 1; Jude McCulloch, 2007, p. 29). The continuous use of rhetoric around the state of exception has created an ongoing and widespread contemporary governmental paradigm which prioritises security over civil rights and due process (Agamben, 2005, p. 14). While the rhetoric provided governments with the pretext to increase their coercive powers, the justification has often been flawed (Jude McCulloch, 2007, p. 21).

Propaganda is inextricably linked to both the social and historical context, and further analysis reveals particular symbols that surround identity and meaning in society (D. L. Altheide, 2006a, p. 988). However, propaganda can only be understood once it's true purpose is recognised, to guide and form the reality on which people will base their thoughts, conversations and actions (Gerth, 1992, p. 347). The biggest threat to our society does not come from the 'other', whether that be terrorism, 'bikies', or something else, it comes from those who seek to broaden and bolster governments' abilities to 'protect' their citizenry from the 'other' (Giroux, 2003, p. xx). Their emergency rationale allows for the temporary suspension of democratic principles, preventing thoughts and planning for society's future,

and instead focusses attention on something which must take precedence (Giroux, 2003, p. 8). Politicians and government agencies provide the media with information that encourages fear and insecurity, and promote various forms of pre-emption as the answer. One of the main effects of the fear discourse is to encourage feelings of chaos and the perception that the problem is spiralling out of control (D. L. Altheide, 2006a, pp. 993-994).

As the discourse of fear has become the dominant logic behind governing, the widespread communication, symbolism, and anticipation of both risk and danger have become an inescapable part of everyday life. Politicians have emphasized potential threats and exploited publicly held beliefs over dangers and risks while simultaneously offering a method of combatting those fears so that they can accomplish various political objectives (D. L. Altheide, 2006b, p. 416). The biggest concern is not egotistical leaders aggressively seeking absolute power, but rather that in particular situations political leaders will continue extending their powers until institutional safeguards are introduced to limit such actions or a frustrated public actively protest. Governments have often avoided any kind of accountability by making unqualified claims to justify their actions, such as that new and increased powers and less scrutiny are necessary in order to combat even more insidious new or increasing threat such as organised crime or terrorism. The current state of affairs clearly shows the inability and reluctance of the 'fourth estate' to monitor, expose and help make governments responsible for their actions (D. L. Altheide, 2006a, pp. 982-983; Greenwald, 2014).

Discourse of fear

News reports are typically structured around entertainment, which over time has led to the development of an extremely rationalised 'problem frame' for communicating fear. The problem frame, and discourse of fear located within it, is often presented in a similar form as

the traditional morality play. The frame is structured with a story-like narrative and congruence which can be both general and specific, and hypothetical and real. The problem frame brings together universal understandings with specific events and people, and by depicting real events and people the narrative has more weight and is typically considered to be more realistic. The closer the consumer is in proximity to an event, the more significance it will likely have. As such local media sources typically emphasize the problem frame, especially in relation to crime, more so than national news networks. Complicated and unclear events are examined and explained in a way that conforms to the audiences perceived moral values, and they are presented in a way that is congruent with similar reports which also communicate the nature and sources of chaos and disorder (D. L. Altheide, 2013, pp. 232-234). While the information communicated by the mainstream media is motivated by a very specific rationale, a side effect of their focus on entertainment has greatly increased communities' fears about crime and other outsider groups.

Despite living in an age of unprecedented health and safety (Roser, 2016; Roser et al., 2013), fear permeates the routine discourse. The fear discourse lends itself to fear politics, and there is a long history of leaders capitalising on publicly held fears to further their own agendas. Fear politics brings together authority, propaganda, the media and popular culture with frightening events and symbols, often in relation to both crime and terrorism. It is not necessarily driven by the identification of a specific or imminent threat, but rather by discourse which portrays society as inherently dangerous and its citizens as either actual or potential victims. This then allows leaders to offer safety and protection through policing or other initiatives. Fear by and of itself is not the problem, it is how it is characterised and presented in daily life that is the problem (D. L. Altheide, 2006b, p. 412 & 423). Politicians have long used the public's fear of crime for 'tough on crime' campaigns, and as a result of

their success, crime and crime control have become highly politicised and law enforcement grow dramatically in terms of both size and power (McCorkle & Miethe, 2002, p. 53). The common denominator in crime and fear driven reporting is the emphasised role of the other, which encourages an 'us' versus 'them' mentality and the public's tacit acceptance of and allegiance to the citizenry and any government measures. Once the structure of the discourse has been established, it can become a template that readily allows thoughts and feelings to be transferred from one of the identified outsider or 'other' groups to another and maintain social boundaries (Schwalbe et al., 2000, p. 435). A number of different groups such as the mentally ill, the homeless, paedophiles, and OMCs or 'bikies' have been given the role of the 'other' at various times.

The fear only becomes real when there are either actual or potential victims, and as such the victim becomes symbolic as well as an individual who has suffered some kind of great misfortune or disaster. Such as when former Premier Rann called OMC members 'terrorists within our community' (Owen, 2007; Riches, 2007) and accused them of 'manufacturing drugs for sale to children' (*Parliamentary Debates*, 1996, pp. 1785-1787), or when former Opposition Leader Hamilton-Smith suggested that anyone who dared testify against them risked having their children slaughtered in the school yard (*Parliamentary Debates*, 2008, p. 1776). Thus, moral entrepreneurs stress victimisation when they publicise their causes in an effort to have them confirmed as core social issues. Such causes are often presented as fighting for justice as the entrepreneurs try to redefine moral boundaries, and if successful everyone in the symbolic environment essentially becomes a potential victim. Fear politics as part of the normal discourse has changed the symbolic environment, as a population steeped in fear and accustomed to victimisation becomes less critical of any new claimed threats (D. L. Altheide, 2006b, p. 434). Carefully crafted propaganda makes complex events much easier

to understand and if the misinformation is endorsed and promoted by the mainstream media, then very few politicians or other leaders will publicly dispute or criticise what has been widely accepted as true. Fear politics has succeeded because as the control practices become more prevalent and normal, they become easier to accept, and when fear has been linked to crime and terrorism, the police, military, and other state security forces are the symbolic defenders.

Police

While the police perspective has been discussed previously in chapters one and four and was found to be at least partially contested, this section will further discuss various aspects of why police typically perceive OMCs in an entirely negative way, so that we can better appreciate why some their views might serve to encourage a moral panic. The approach to policing OMCs has changed over the last two decades as the number of more sophisticated crimes that their members have been convicted of has risen, as opposed to the simple affrays and assaults that the subculture has traditionally been known for. However, despite the creation of specialised ‘bikie squads’ and joint taskforces, a significant amount of OMC policing is still carried out by uniformed patrol officers, who as the frontline, are typically the first responders to any incidents, and as such are responsible for both the majority of community engagement and part of intelligence gathering (Lauchs et al., 2015, p. 65). It is important to remember that these officers are also members of the community and often get their understanding of outsiders and deviants from the media, in the same way as everyone else.⁴⁷ Although these views are complemented by internal briefing materials, the opinions of other officers, and from personal interactions, any preconceived ideas and biases can still help to

⁴⁷ Sir Robert Peel’s seventh Principle of Policing dictates that ‘the police are the public and that the public are the police, the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.’ (Home Office (UK), 2012)

reinforce myths and distort their perception of the subculture, which also ultimately shapes their reports and influences 'criminal intelligence' (Haslett, 2007, pp. 123 & 127-128). Additionally, any personal interactions between police and members of OMCs typically happen under antagonistic circumstances, which can make it difficult for police to ever see club members as they exist in other environments. While at times OMC members have actively provoked police officers, they will not normally go out of their way to do so (due to the consequences), but neither will they defer to nor respect them in the same way an average citizen typically would (Haslett, 2007, p. 123).

All police officers have different views as individuals, but there is a natural tendency for them during the course of their work to stereotype people, which is partly as a simple way of identifying potential threats (Chan, 2004, p. 343; Ericson, 1991, pp. 66-67). These simple stereotypes further exist as way of giving meaning to a complicated process of legitimising police decisions and behaviour in response to certain groups and actions. The work itself promotes a sense of camaraderie and can sometimes lead to certain sense of both detachment from the community and the other components of the judicial process, which can mutually reinforce those stereotypes (Cunneen et al., 1989, p. 113). The literature recognises that processes stereotyping and of 'othering' are essentially the same, however conceptualising it in terms of the 'other' allows us to go deeper by grounding those misrepresentations in discussions of structure and relations of power (Hinton, 2020, pp. 159-161). In terms of structure, the simplest way of marking difference (and making meaning) is by expressing it in terms of a binary opposition, such as black and white, or night and day (S. Hall, 2009, p. 31). Thus, to 'other' a group is to construct a binary division between people, and by emphasising a perceived weakness, it implies that hierarchy exists and also defines what it means to be

‘normal’. As Goode and Ben-Yehuda (2009, p. 38) observe in discussing the construction of folk devils:

...a division is made between ‘us’ – good, decent, respectable folk – and ‘them’ or the ‘Other’ – the deviants, bad guys, undesirables, outsiders, criminals, the underworld, disreputable folk.

The mass media also often employ similar rhetorical devices in order to reduce complex issues into simple two choice arguments (Hinton, 2020, p. 186).

From an institutional perspective police see people as either guilty or not guilty of a crime, and this straightforward categorisation can lead them, even as individuals, to see the world in terms of ‘good guys’ and ‘bad guys’. The overt and unmistakable rebelliousness of OMC members combined with many members’ history of criminal convictions clearly makes them ‘bad guys’. The standards police enforce are sovereign, so sometimes the actions or even existence of certain groups can be perceived as illegitimate or without credence (Cunneen et al., 1989, p. 114). The very nature of OMC subculture is often seen as a direct challenge to police authority, and in many ways the more recent legislative focus has only served to compound the conflict. Numerous police officers have noted their detest of OMCs’ ‘reprehensible’ values, and police typically see the subculture’s existence as an affront to the fundamental beliefs and laws they stand for (Morri, 2020; Quaadvlieg, 2020, p. 41). This antipathy can cause police to focus only on the negative aspects of club membership which support and reinforce their perception of clubs as principally criminal organisations (which as we have previously discussed in chapter one is not typically the case) and ignore any other more positive or at least potentially less conclusive views (J. Gilbert, 2013, p. 234).

While the professionalism of SAPOL in particular must be noted, due to their operational focus police officers are infrequently aware of any academic research on a given subject that might cast it in a different light. Without knowledge of current research, considering the unverifiable nature of most criminal intelligence, and the proliferation of material in the popular culture sphere, groupthink can sometimes spiral and encourage a distorted perception of the situation locally (J. Gilbert, 2013, pp. 235-236). Janis (1972, p. 9) defines groupthink as:

A mode of thinking that people engage in when they are deeply involved in a cohesive ingroup, when the members' strivings for unanimity override their motivation to realistically appraise alternative courses of action.

He explains that groupthink happens in highly cohesive environments where colleagues share a strong sense of solidarity such that they automatically adapt their thinking in order to preserve group harmony (Janis, 1989, p. 60).

The more amiability and esprit de corps there is among the members of a policy-making ingroup, the greater the danger that independent critical thinking will be replaced by groupthink, which is likely to result in irrational and dehumanizing actions directed against outgroups. (Janis, 1972, p. 198)

Police groupthink is mostly limited to the police sphere, but it can spread much more widely. It is important to understand that the police have no intention of providing any misinformation about the nature of OMCs, however given many of the public statements they

have made, a certain level of cognitive dissonance does seem to exist (J. Gilbert, 2013, p. 234). The broader community generally respect police authority without question, so when the media voice police opinion either directly or through politicians, many people accept the distorted image provided by subcultural beliefs at face value (J. Gilbert, 2013, p. 237).

The judiciary

In chapters three and four the role of the court could be seen at times as being conflicted and this section further discusses why that might be. The purpose of the court is theoretically non-political, it operates with a particular methodology and logic, and it is governed by key democratic principles, such as the rule of law and the separation of powers. The various traditions and principles imbedded in the legal system were designed to create a neutral zone so that outcomes would be politically impartial, and the public's faith in the judiciary rests largely upon the belief that it operates independently of political influence (Foster, 2006, p. 45). However, this is somewhat conjectural as courts do not function in either ideological or political vacuums and they are fundamentally political institutions (Blaubergeraand & Martinsen, 2020, p. 384; Burley & Mattli, 1993, p. 69; Hirschl, 2008, p. 135).

A judge has the incredibly complex role of applying the written words of parliament to real-world situations. In determining the outcome, a judge must hear the legal argument and carefully apply the established rules of law, which involves thoroughly studying the relevant statutes and case law and then identify how they apply to the specific case at hand. The doctrine of binding precedent, or *stare decisis*, means that when cases with similar facts and issues are considered, the judge must follow the legal precedents set by previous decisions. Over time, courts have also developed numerous rules to help interpret the meaning of statutes, although they often conflict, and the judge must reconcile the differences between

them in order to find meaning. The literal rule is the most important, dictating that the court will defer to Parliament's stated will and the literal or straightforward meaning of their words (Brett, 1953, pp. 99-100). This typically means that judges allow the government considerable discretion in the way they use their powers (Foster, 2006, pp. 40-41). To ensure that judges' decisions are not arbitrary they explain their reasoning and in theory this process is extremely objective. However, judges have considerable freedom in the way in which they interpret the various statutes and case law they draw upon in reaching their decisions, and the individual judge is often far more influential on the development of the law than a traditional view of declaratory theory suggests (Foster, 2006, p. 41).

While the professionalism of Australian legal profession must be noted, the individual characteristics of a judge can influence a case's outcome and judges will sometimes express different opinions. Although research suggests that differences of opinion are more common in appellate court hearings or in high profile cases where their opinions will be published (Ashenfelter et al., 1995, p. 257 & 281). Weiden (2011, p. 340) highlights that during the 1990s attitudinal voting in the Australian High Court led to numerous high-profile cases being decided on ideological grounds. The judiciary can therefore be seen as politically active in the way it establishes case law, and its decisions can either stimulate or hinder reform. While it is a key tenet of the legal system that the judiciary remain independent, given judges' ability to give meaning to laws, particularly in cases of political significance, the judiciary can also be seen as being influenced by various political forces (Belov, 2020, p. 1; Griffith, 1989, p. 17). The fact that judges are appointed by politicians has long been source of concern, and as one of the parties often interested in the way in which the court interprets various laws, there is an obvious advantage for governments to appoint judges favourably disposed to their position (Foster, 2006, p. 39). A poignant (albeit a-typical) example of this

influence occurred in conjunction with the introduction of Queensland's 'anti-bikie' laws when the Newman Government controversially appointed Tim Carmody as Chief Justice in 2014 after only nine months as Chief Magistrate (Ananian-Welsh et al., 2016).

Judges typically share a similar perspective to those in power of what is in the public interest because they see their role as protecting the traditions, relationships and interests upon which they perceive society to be based (Foster, 2006, pp. 70-71; Griffith, 1989). Governments have a considerable interest in maintaining the status quo and in preserving the authority structures within public institutions which help them to do so; and the principal function of the judiciary is to work in conjunction with the other arms of government to uphold the system. Thus, as both one of the arms of government and sharing a similar outlook, it must be expected that the judiciary will in most cases side with the executive and act in the interests of maintaining social order⁴⁸. This means that what the judiciary perceive to be in the best interest of the state normally aligns with what is in the best interest of the government of the day, and whenever the legislative or executive arms of government do something in an effort maintain order, the judiciary will support them even if it involves the curtailment of individual liberty to some extent (Griffith, 1989, p. 230). Therefore, the judiciary is unlikely to be the source of radical change (and nor is it the courts' role in the vast majority of cases), so it should be remembered that the power to hold governments and their agencies within proper limits is in essence dependent on the political climate and the vigilance of concerned citizens (Ewing & Gearty, 1990, pp. 270-271; Foster, 2006, p. 72; Griffith, 1989, pp. 233-235).

⁴⁸ This is referring to social order in the sociological sense, concerning how a particular system of social institutions and structures are accepted and sustained by the members of that society (Frank, 1944).

The OMC myth

The mass media's presentation of OMCs through countless news stories and popular culture depictions has played a large role in the development and international expansion of the subculture. However, while the mass media has exploited the public's fear of crime and violence in its sensationalised and unidimensional portrayal of clubs and their members' behaviour, it is not entirely fictitious (Hayes, 2010, pp. 5-6 & 78). The periodic mainstream media frenzies and subsequent police crackdowns have increased the notoriety of the subculture and various OMCs, but in response its members have made every attempt to live up to their deviant image (I. Harris, 1985, p. 24; Lyng & Bracey, 1995, p. 271; Veno & Winterhalder, 2009, p. 33). Through a process of action and reaction authorities' efforts to curb club members' behaviour has had a converse result, and a pattern of behaviour and criminal activity has been established within the clubs that would not have otherwise existed. Lyng and Bracey (1995, pp. 253-254) refer to it as a 'paradox of social control'. However, given that few people have any actual experience of OMCs, the mass media's mythologization of the subculture can be seen as having the biggest influence over average person's perception of it. Thus, more than the organisations themselves, it is primarily their image which attracts or repels people. By encouraging and promoting the exaggerated outlaw image, and revelling in their infamy, clubs are now trying to deny being what they have led people to believe they are (Reynolds, 2000, p. 121). Reynolds (2000) refers to their image problem as a 'miscreant's paradox', and as a former president of one Australian '1%' club chapter observed:

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

Conflicting goals of the institutional actors

This chapter has discussed the perspectives and goals of several of the key actors involved in contesting (or not contesting) the ‘truth’ about OMCs and the ‘anti-bikie’ laws. From chapters one and six we can see that the primary goals of OMC members are typically freedom, status and power. From the discussion of crime reporting in chapter two and the mass media in this chapter, we can see the primary goal of the mainstream media is to increase its consumer base and thereby its revenue from advertising investment. However, its position also reflects a number of organisational and other commercial interests (which includes symbiotic relationships with its news sources) (Gans, 1979). From the discussion of moral panic, symbolic laws, claimsmaking, news sources, the mediatization of politics, propaganda, and the discourse of fear, we can see that politicians’ primary goal is to increase their popularity, so as to get elected, in many cases to form a government, and to stay in power for as long as possible (Schlesinger 1975). While the motivations and ideals of individual politicians might differ, and this primary goal does not necessarily apply to all politicians in the same way, the nature of party politics often means individual voices are not normally heard. From the discussion of news sources and police, we can see that the goal of the police is to maintain order, and in an effort to make that easier at an organisational level, to increase their budget and resources (Beare, 2000; Dixon, 2005; Waddington, 1999). Although it must be noted that at an operational level police officers are typically driven by a genuine desire to do what they believe is in the best interests of the community. From the discussion of the High Court cases, and the judiciary, we can see the court’s primary goals are to answer legal questions and maintain order (Foster, 2006; Griffith, 1989). Interest groups often play a role in influencing (either encouraging or discouraging) a panic, and in this case the key groups have largely been professional legal organisations such as the South

Australian Bar Association and the Law Society of South Australia who have contested the laws. Their primary goals are in essence said to be to uphold the rule of law and to preserve the integrity and independence of the legal profession (The Law Society of South Australia, n.d.). While the judiciary shares these goals, they are also largely subservient to Parliament's stated intent in relation to the laws. The primary or ideal goal of research is in essence to uncover 'truth', and this is generally done either by testing a pre-existing theory or hypothesis about a phenomenon or by exploring and theorising about a particular aspect of it. However, academics or researchers may have their own individual goals which could be of a personal nature or organisational, such as academic recognition, funding for further research, or simply to publish. In some instances, these goals may override the primary or ideal goal and colour the research (as might the goals of the sources who provide the data).

Thus, while the goals of the mass media, politicians, police, and the judiciary all vary and may conflict at times, they all also unite in favour of maintaining order and, in the case of this research, they have proven to be largely (although not entirely)⁴⁹ in favour of the 'anti-bikie' laws. The goals of the professional legal organisations and academics may align with the former, or they may conflict, and while they both would typically favour maintaining order, they largely conflict in relation to the specific details of the 'anti-bikie' laws. Although their goals do not unite with those of OMC members, all three have proven to be against the laws.

⁴⁹ As noted in previous chapters views were notably divided at times in politics (as seen in chapter four particularly in regard to former Legislative Council member Andrew McLachlan's views), in SAPOL (as seen in chapter four particularly in regard to former Commissioner Mal Hyde's views), and the judiciary (as seen in discussions of symbolic laws in chapter three and the High Court's perspective in chapter four).

Conclusion

Through an examination of the aims of the mass media and the forces that shape the newsmaking process; the power of news sources and claims makers in influencing the news; the mediatisation of politics; propaganda; the police perspective; and the motivations of the various institutional actors including the judiciary; this chapter has sought to further explain how and why moral panics can happen. Young (2009, p. 13) explained that a moral panic essentially occurs when the mass media becomes focussed on an event or the people involved, and claimsmakers and/or 'experts' support grossly disproportionate claims about them. This leads to the mobilisation of the criminal justice system and other agencies of social control, and over time the stigmatisation intensifies before it abates. Through a process of deviance amplification this typically 'translates fantasy into reality', fulfilling the originally exaggerated stereotypical claims. This has alternately been expressed as when situations are defined as real their consequences are real (Thomas & Thomas, 1928, p. 572). However, moral panics are not simply mass media generated panics based on false information, they are based on a kernel of truth, and they tap into real fears about certain behaviours. Cavanaugh (2007, pp. 14-15) further discusses the problematic nature of trying to interpret and classify public fears. She notes that concerns and anxieties can only be expressed publicly through the media, and that for all intents and purposes the media is the visible manifestation of public opinion. Yet journalism is dynamic, and in order to understand how concerns and anxieties influence social order, we need to examine the factors which shape the way public fears emerge more closely.

In discussing the way in which the various institutional actors approach issues based on their own individual and organisational needs, this chapter has further examined why the interests of the mass media, politicians, and police have united in favour of the 'anti-bikie' laws. It

looked at how the mass media are driven by exposure and advertising, politicians by election/re-election and maintaining the status quo, and the police by both maintaining order and increased resources. The mainstream media has the power to influence its consumers, so it is in the interests of politicians and the police to provide it with information that aligns with their own institutional goals. As the mass media is reliant on its sources within the government it needs to support the executive as much as possible, and thus despite its relative autonomy it can also be seen as being relatively dependent. As the primary sources of information and definers of the OMC problem, politicians and police as claimsmakers seem to have in many instances prioritised their public relations interests over other policy considerations in driving the issue.

Chapter Six – The OMC subculture and the impact of the control measures according to its members

Bikies, Outlaw Motorcycle Club (OMC) or gang (also referred to as Outlaw Motorcycle Criminal Gang) members, 1%ers. Over the last seventy years these men have been labelled as misfits (Quinn & Forsyth, 2009, p. 236), outcasts (Veno & van den Eynde, 2007, p. 492), thugs (Gillis, 2006, p. 26), psychopaths (Quinn & Forsyth, 2011, p. 224), and criminals. Their association has been interpreted as a subculture (I. Harris, 1985, pp. 8-9), a counterculture (Dulaney, 2006, p. 167), a deviant group (Barker, 2005, p. 102), a minority group (van den Eynde & Veno, 2007, p. 96), a tribe (Librett, 2008, p. 265), a system (Dulaney, 2006, p. 8), and more recently as criminal organisations. Yet despite years of analysis and their high visibility on both the roads and in the news, the OMC can still be extremely difficult to interpret. There is a lot of conjecture as to why the groups exist and who their members are, primarily because many authors over a long period have tended to romanticise, demonise, moralise or trivialise them and their actions. Much of this material cites predominantly police and media sources or relies on subjective and self-serving accounts of former OMC members. A large number of autobiographical and fictional accounts have been published over the last few decades,⁵⁰ although this does not necessarily make understanding the subculture any easier as the various authors often depict it differently and in contradictory ways. Some of the interviews and autobiographies in the popular culture sphere do provide deeper insights into the nature of the subculture, but they also must be read critically as they frequently either solely focus on, or exclude entirely, the more violent and offensive details. While these accounts primarily reflect the individual authors and their particular involvement with the subculture, they also differ greatly because of the heterogeneous nature of the clubs and their

⁵⁰ The search term 'motorcycle gang' returned over 2,000 books on Amazon (14 October 2020).

chapters. OMCs may all appear similar to those people unfamiliar with the subculture; however, the different clubs and their smaller sub-groupings known as chapters or charters are often quite different in terms of their internal politics and values.

One of the primary beliefs behind the public's acceptance of the 'anti-bikie' laws is that OMCs are violent criminal organisations that largely control the methamphetamine trade. However, as discussed in chapter one, research shows that most of the crimes OMC members have been convicted of are not planned, hidden, profit driven, or carried out by the group, as would be the case in criminal organisation; instead, they are opportunistic, violent, overt, and carried out by members as individuals (Goldsworthy, 2015; Quinn & Koch, 2003, p. 300). Further, while members of OMCs have a higher-than-average rate of offending than the general population, they make up only a very small proportion of the methamphetamine market (Hughes et al., 2020, pp. 35-36). Thus, in an effort to address the issue of inflated claims about the nature of subculture and its members activities this chapter uses in-field research in conjunction with the various other previously mentioned available sources of data to investigate: what the clubs are about and who their members are, the concept of 'brotherhood', their rules and behaviour, club 'colours', their structure and hierarchy, club sizes and the age of their members, how members are employed, and their involvement in crime. It will then discuss changes in the subculture, 'Nike bikies', and the nature of clubs' extended networks and support clubs. The chapter concludes by hearing from members of Adelaide based chapters of OMCs about their own experiences of how the various laws are being used and what effects they perceive them to have had, as uncovered through the interview process. This chapter thereby seeks to further address the issue of how the clubs and their members have adapted to the laws and associated control measures.

What is a subculture?

From the criminological literature we can see that criminologists originally began analysing subcultures through the more overt customs, language, behaviours, beliefs, and values that demonstrate their separation from their parent culture (Berzano & Genova, 2015, pp. 89-90).

Cressey's study of Chicago's urban nightlife led him to describe a subculture as:

...a distinct social world, with its own ways of acting, talking, and thinking. It has its own vocabulary, its own activities and interests, its own conception of what is significant in life, and-to a certain extent-its own scheme of life. (Cressey, 2008, p. 31)

Matza and Sykes (1961, pp. 715-717) explained that the values held by members of a subcultural group are not necessarily different from those of the parent culture, merely that some aspects are favoured over others, and they express them in different ways. Miller (1958, pp. 9-13) suggested that the various 'deviant' behaviours they expressed were intended to both achieve goals more widely appreciated by mainstream society, and as part of group identification, belonging, and status within the subculture. Wolfgang and Ferracuti (1967, pp. 99-100) wrote how emphasising small subcultural differences helps to further segregate and generate cohesion within a subculture. Thrasher (1963, pp. 194-202) discussed the formation of gangs in this context as a substitute social setting that allows an individual to find whatever it is they need. He examined the various characteristics common to these kinds of social groups and found that they essentially function as 'elementary societies'.

Infield research process

Stemming from chapter two's discussion of power and subjugated knowledge this study employed infield research in an effort to give voice to those most affected by the 'anti-bikie' laws. The participants in this research were self-identified and accepted by the motorcycle community as either current or former patch-wearing members of outlaw (predominantly '1%') motorcycle clubs. The collection of data was primarily directed by availability, and much of what participants said is for all practical purposes unverifiable (Reuter, 1987, p. 171). The nature and limitations of network sampling and small subject pool mean that this research must be considered exploratory, and its conclusions should be read critically (Zhang & Chin, 2004, pp. 2-3). Although significant efforts were made to take a wide-ranging sample, the closed nature of the subculture and the limitations imposed by the ethics board colours the research. While the information supplied by the participants cannot simply be taken at face value, it provides a valuable insight and supplements the other available sources of data. The interviews played a large role in guiding the research and they had a pronounced influence on what was included and excluded throughout. Where possible they have been combined and contrasted with other pre-existing published data and research.

Approximately nineteen⁵¹ current and former OMC members were identified and approached throughout the course of this study, ten of whom were open to discussing the research questions in a meaningful way. Although six members agreed to participate in the formal interview process, only four interviews were ultimately completed and are included in this thesis. Those ten current and former club members self-identified as being members of six different clubs; four of the then five '1%' clubs active in South Australia at the time, and two

⁵¹ This number is approximate because there were at least two individuals who chose not to confirm their membership/status.

other outlaw style clubs. The four individuals who completed the formal interview process represented two different '1%' clubs and one other outlaw club. Of those ten members who were open to discussing the issues, seven were believed to then be current club members, two were believed to be former members who had retired from their clubs within the last year or two, and one chose not to reveal specific details.

	Members	Current/former members	Open to in-depth discussion	Completed interviews
1% clubs	10	6/4	5	3
CMC/MMC/MCC/SMC 'outlaw' style clubs ⁵²	9	9	5	1

The four semi-structured interviews which, when transcribed, consist of 6,516 words, were conducted between November 2016 and January 2018 (and are included in the appendix).

The four completed (and two incomplete) formal interviews were conducted in person and consisted of twelve predetermined open-ended questions, focussing on qualitative data. Each subject was invited to relay their own experiences and ultimately tell their own story. An advantage of this type of qualitative data is that each response is both unique and transparent.

While a reasonable number of OMC members spoke to the researcher more casually, they would not typically identify themselves in a formal way nor allow any kind of more formal research methods (such as audio/video recording or note taking) to take place. All subjects were informed of the intent and identity of the researcher and provided with a copy of the

⁵² See chapter one for an explanation of the difference.

project's letter of introduction, information sheet, research consent form, and a list of the questions at the beginning of the process. After explaining the university ethics documentation and process, these formal constraints appeared to be the main reason why potential interviewees declined to be part of the interview process (as previously discussed in chapter two). Where formal interviews took place, the subjects were, at a later date, shown or provided with a final copy of the transcribed interview and given the opportunity to withdraw it from inclusion in this thesis. The interview process was completely transparent and no deception was used at any time. While there now seem to be a fairly large number of popular accounts of OMCs and their members, there are only a limited number of academic research studies based on primary data. A number of scholarly examinations based on secondary data have been published, however there is a real need for more empirical data collection (Barker, 2018, p. 2). It is hoped that this research can help to both deepen and humanise the academic understanding of the impact of the laws and add to a growing body of data that together provides a more accurate description of the subculture.

They were asked the following twelve questions:

- What do club members do at weekends, what makes their lives different from the average persons?
- Why are members involved with in outlaw motorcycle clubs?
- How would you describe involvement in a club?
- Once members have joined, what makes them stay?
- What would make members drop out?
- How important is the club in members' lives?
- What sort of work do club members do?
- How have the anti-bikie laws affected members? Their families? Their friends?

- How have the anti-bikie laws changed the lifestyle?
- Do you think it's fair that politicians and the media have linked outlaw motorcycle clubs to organised crime and violence?
- How have these new laws changed the club, the way it works, the types of guys involved?
- What do you think these laws have achieved? What do you think they will achieve?

Who are they?

There is a tribal mentality to the subculture which can be seen in the cohesion and solidarity of brotherhood, wearing of colours, allegiance to Harley-Davidson, and territoriality. The subculture is characterised by extreme machismo, members are known for acting with a large amount self-importance, and often for showing a disregard for society's rules and norms (Lyng & Bracey, 1995, p. 241; Stephenson, 2004, p. 93). For some men the clubs are undoubtedly macho power-trips, riding loud and flashy bikes, and wearing club colours; and for others the clubs are more about riding their bikes with like-minded men, and having fun. They take great pride in their 'outlaw' identity and thrive on their outsider status (Giusto, 1997, pp. 128-129). Membership in an OMC involves a lot more commitment and loyalty than other kinds of casual hobby or sporting clubs, and while there are certain similarities, OMCs are more easily conceptualised in terms of a religion or vocation (Winterhalder, 2006, p. iii). The interviewees explained:

[We] Ride motorcycles and hang out with mates. [We] Ride together with a group of brothers. The 'Grey Nomads' and four-wheel drivers do a similar thing in some ways; they get out there and enjoy the country. It's bikes, brotherhood and belonging. [Interview #1]

Club life is (for younger members at least) all about riding, drinking, and chasing girls... We're likeminded. We like bikes, we like the company. It's a tribal instinct, we amalgamate around our common interest. It's a friendship based on similarities. Clubs have a unique little spot in that and exist for a myriad of reasons. But there's a cultural attachment to Motorcycle Clubs that's different to say golfers or hot-rodders... It's different for everybody. Some people really thrive in the club culture, in terms of self-worth and self-esteem. Most outsiders who get to know us say we're nothing like what you'd think. It's all laughter, half pissed people laughing their heads off. We're the most legislatively oppressed people and the police are generally waiting for us halfway down the street when we go anywhere, but we're just having a laugh. We're not getting together in secret to plan the end of the world, we're piss-taking, having a good time, finding release. Laughing at what can be a pretty dismal life. Drink, roar, chase tail. It's on a different level than a footy club but it's also the same thing. It's respite. We congregate, share stories, and have fun. We get on the turps together and have a good time. It's our sanctuary from the rest of the week. [Interview #3]

We go on rides, party at the clubhouse – we have a club house, we drink, have fun, and we work on our bikes... Usually, guys get involved because the club is a group of guys that they get along with really well; they're good friends that enjoy going on rides together. Guys can meet and get involved initially through bikes, or meet other members through sports, that sort of thing. It's about comradery, good fun, and relaxing – we don't let the shit that bothers the rest of society bother us. Bikes and riding with your mates are like therapy, a lot of us look younger than we are because

we relax. Essentially guys get involved because it's fun, really good fun. [Interview #4]

They have their own rules, ethics, and understanding of right and wrong (Zito & Layden, 2002, p. 80). One prominent former member suggested that most people who join OMCs are somewhat deviant or 'a little psychologically skewed' (Winterhalder & De Clercq, 2008, p. xi). The subculture attracts men who feel at odds with mainstream society, they seek excitement and adventure, camaraderie and often notoriety (Haslett, 2007, p. 6). The vast majority of members are over 25, love riding motorcycles, and are very committed to their clubs and club mates (Bob Skol, editor of OzBike magazine in Brash & Weldon, 1984, pp. 51-52). Involvement in a club can mean different things to different people, and within most clubs there are also smaller sub-groups with different interests like partying or racing (Thompson, 2011, p. 299). One interviewee explained:

It's kind of like a secret society, you're curious about what you hear. It's about a group of like-minded people, but even then, there are different groups of guys within the club. There's guys that like to smoke, there's guys that like to drink, and then there's guys like me that'd rather race... [But essentially] The reason you join a club is freedom... [Interview #2]

Brotherhood

Members stress that one of the main reasons why they join and why they then stay in clubs is the comradery, and they find a level of friendship that cannot exist in many other

environments. While they come from a wide variety of backgrounds, their common values and interests unite them. The interviewees suggested that prospective members are typically introduced to the lifestyle through friends involved in motorcycling, and that becoming a member starts with friendship but over time becomes something more akin to family. A significant number of members come from dysfunctional homes, and the clubs become their surrogate families. They use the term 'brother' to address each other because they feel that a familial bond exists between them (Serwer, 1992; Veno & Gannon, 2009, p. 94; Wethern & Colnett, 2004, p. 176). The interviewees explained:

A lot of blokes come from a background without a lot of family support and this is their sense of belonging to something bigger, their family... There's a real commitment to each other, loyalty to brothers, and for a lot of blokes, particularly the newer members and noms, the club comes first, above all else. Blokes come from different backgrounds, boys homes and state care some of them, so the club becomes family. [Interview #1]

Well, I met blokes who ride, became friends with them, and it just became the club... It's about something stronger than just friendship, people you can rely on more than general friends. [Interview #2]

Clubs are like extended family, most clubs started like that and at least some still operate that way. Like in a country town or small geographical area, where a big extended family play together, drink together, and do their hobbies together. A group of likeminded people with the same cultural core. Similar to mates from a footy club or country town or extended family, but we're motorcycle orientated,

they're our common bond... It's mateship, it's often called brotherhood but that's sort of an American term, more like cousins. Much of the terminology is mimicked or bastardised from the Americans but Australia really is a bit different... For some [members] it will be their whole life, like if they're a single guy, with no kids, living at the club house, thriving on being in the club, then the club is their entire friggin' world. Right to the busy working guy with huge family commitments, the club would still mean as much to him, but he can't spare the time. You get out of it what you need. Mate, comrade, drinking buddy, shoulder to cry on, if you need it you can find it. It's hard to say, but for me it's a big part of my life, an extension of family. They are the people I mix with, regardless of any badging. The people you gravitate towards, spend your leisure time and are comfortable with on all levels. You know and trust them. Friends and family... [Membership] It's about enjoying life and the people. [Interview #3]

Family, for a lot of us the club is like family – lots of guys are members for twenty or thirty years, it's a long-term commitment... The comradery, that bond, and it's a very hard bond to break. Most people can count the number of their really good friends on one hand, but in a club you can have a hundred really good friends all around the country, with new ones coming in and that circle always growing. There's that many people who you really care about. In a club there's that level of friendship that can't really be found anywhere else. I hate funerals, but I've probably been to about thirty over the years – and I mean that in a good way - because there's just that many guys, friends, who I really care about enough that I want to be there. [Interview #4]

After joining, many members stay for several decades, and the level of commitment and loyalty contributes to the feeling of family. For a lot of members their club is their first priority in life but having their own family can change that. When members do eventually leave it is often the result of familial pressure, although drug and alcohol abuse, or ill health, can also contribute. A serious falling out with one of the other members can also sometimes break those feelings of family. It often takes new members at least five years to know if enormity of the commitment is what they really want, and for some their priorities change. In a similar way to most things in the subculture, the bigger clubs have strict rules on leaving and coming back, and smaller clubs can be more flexible. The interviewees said:

Loyalty makes it hard to leave... [the club] It's the most important thing, but the life /family balance can change that... [And] Police pressure... puts a lot of pressure on the families. [Interview #1]

[What would make members drop out?] Women. The club is a huge commitment. I said to my wife once in an argument when she said that she clearly wasn't my first priority; first is my bike, second is my club, third is my wife... [The club] It can be everything, but you find your niche over time. You prospect for twelve months, then there's two years probation, and after about five years guys tend to decide whether it's really for them. [Interview #2]

As with any other group, there's a variety of problems in life that can cause you to drift. The biggest thing would be domestic pressure from women, wives. Domestic troubles that lead you to re-think your direction, same thing in any group of men.

Something tumultuous in their 'other' life, like a domestic ultimatum. When men spend a lot of time in the tribal situation, women need attention, so they give ultimatums. The other thing is drug and alcohol abuse. Going from a young 19/20 year-old drink till you drop mentality, not everyone's equipped with a mechanism to restrict themselves past a recreational level. Some members get asked to move on and others see the writing on the wall themselves when they're no longer team players. Alcohol is more of a problem than illicit substances, probably because it's cheaper and more readily available. It's primarily women or drug and alcohol abuse that makes members just missing from the club. Some people after 5/10 years just have or find a different direction in life. But it's rare in smaller clubs because club membership is more like a lifelong interaction. Every club is different and some have a flexible standing on leaving and coming back. [Interview #3]

[What would make members drop out?] Family pressures - wives and girlfriends, sick family members that need to be cared for; illness; financial strain – it's an expensive lifestyle, drinking heavily, and a decent bike isn't cheap - mostly we're not drug dealers, most of us work for a living. Maybe guys leave because they have a falling out with other guys and it sort of breaks that bond for them. But we had one member fighting cancer for ten years and he still stayed a member the whole way through it. [Interview #4]

Rules and behaviour

The subculture is contradictory in a number of ways, for instance it is said to be about individualism, freedom and rebellion, yet even a cursory examination reveals it to be very

collective, strict and conformist. Organising a group of strong-willed men with vastly different ideas can be quite difficult, so the clubs typically have rigid structures and harsh discipline in order to maintain standards of behaviour. The rules and discipline are essentially based on what they perceive being a 'good' member to mean. The subculture's two main principles are loyalty, both to the club and to each other, and respect. These two principles bind the club together and infractions are not tolerated. A large part of it is about representing the values of their club and supporting their brothers without question, so everything they do or say must be in support of them (Atwell & Langton, 2017, p. 94; Kerr, 2009, pp. 6-7; Veno & Winterhalder, 2009, p. 10). The interviewees explained:

Clubs may have originally had military like rules, but things can change and every case has to be judged on case-by-case basis. Hard and fast rules don't always work. [For instance] When it comes to leaving, they're more like flexible guidelines than rules. You'd need a good argument to convince your mates, but you always support your mates. Especially with family or health, like when it come kids or if you can't ride a bike. Every now and then you get a disgruntled member but they are very rare. [Interview #3]

There are rules, and there is discipline – but basically, it's about being a good member, that is, being loyal and looking after your own. But you know we're still normal everyday people. [Interview #4]

Membership instils an organisational identity (through a process known as identity fusion) which often affects members' personalities, reflecting that of the group (Dulaney, 2006, p. 82;

Swann et al., 2012, p. 441; T. Thompson, 2011, p. 23). Essentially, ‘people derive their identity (their sense of self, their self-concept) in great part from the social categories to which they belong’ (Hogg & Abrahams, 1988, p. 17). As members’ broader perspectives on life and their behaviours change, and the club takes greater precedence in their lives, their identity often becomes heavily based on being a member (Texas Bandidos Chapter President Jake Carrizal in Court on Camera, 2017a, 2017b). So, while we can make some generalisations based on most of the subculture’s members in regard to values, moral codes, and behaviours, members cannot be said to have a single binding set because each is still his own person. In addition to individual differences, there is also a significant amount of variance between the clubs in regard to how they conceptualise the subculture, their immediate goals, and what they consider acceptable (particularly in terms criminal activity and how much attention they attract from other clubs and law enforcement). Each group is different and shaped by its members, and many of their ideas are at times conflicting and essentially incompatible (Wolf, 1991b, p. 24). One interviewee said:

If you’re enjoying the experience, and if you bond with likeminded people then you take on their values. It’s tribal, with colours, and sharing the geography. You identify with your club mates, the badging, and the lifestyle. [Interview #3]

Colours

Men who join OMCs make a conscious decision to separate themselves from society, and the wearing of colours formally symbolises that social boundary (Dulaney, 2006, p. 128). Wearing colours is a critical part of the image and they are seen to embody the essence of the subculture (Librett, 2008, p. 264). They symbolise a member’s commitment, it identifies who

they are and what they stand for, and it is their most prized possession (Atwell & Langton, 2017, p. 72; Nichols, 2010, p. 146). It serves to enhance members' sense of power and status, and make them more imposing and intimidating to others (Sims, 2008, p. 109). Thus, when an outsider sees someone wearing colours they do not typically recognise that person as an individual, instead they identify them only as an OMC member (Wolf, 1991b, p. 18). However, by making such an overt public statement, they also draw attention to their activities and make themselves a focal point for both law enforcement and law makers (Posnansky, 1988, p. 56; Wolf, 1991a, p. 217).

Structure/hierarchy

The terminology and basic club structure have been copied from the American subculture, but members are keen to point out that local Australian clubs are still very different from their American counterparts. Even the local chapters of the bigger American clubs are often said to be 'stubbornly localised' (Shand, 2013c, p. 140). In most cases individual members and chapters must answer to their parent clubs at national and international levels, however chapters are largely autonomous due to the nature of the subculture, the attitudes of its members, and varying local conditions. All of a club's chapters share the same core values and abide by certain rules, but different clubs, and even different chapters in the same city, can be run in completely different ways, and each has its own distinct identity (Barger et al., 2001, p. 33; Matter & Omodt, 2014, p. 55). Rather than a simple hierarchy, most clubs have flatter and more democratic structures whereby each chapter is largely responsible for its own actions (a fact which the South Australian Government recognised from the outset (Atkinson, 2009b, p. 14)). Some clubs are controlled from the top-down but the leadership structure is not always quite as straight forward, and most are controlled from the bottom-up, either formally or more informally. While a strict organisational hierarchy is apparent in most clubs,

the whole club generally has equal voice and authority on policy matters (Kerr, 2009, pp. 6-7 & 36; Lauchs et al., 2015, p. 11; Mandelkau, 1971, p. 127; Matter & Omodt, 2014, p. 55 & 82). This freedom, or rather lack of clear hierarchical control at a club-chapter level, also makes any actions carried out by chapters or individual members extremely hard for prosecutors to link directly to the formal leadership structure (hence why legislators took a declaration approach under the South Australian 'anti-bikie' laws). One interviewee said:

It's a military style of friendship and there's a military like structure, everything goes through the committee, in that way it's organised... Everything, individual behaviour – fuck ups – all come back on the club. The club is not [necessarily] all-inclusive of members' behaviour... Well, being on the committee can be like baby-sitting a bunch of kids at times, just trying to keep everyone on the same page.

[Interview #2]

Law enforcement have suggested that clubs pay dividends up the hierarchical chain of command, but different clubs vary both structurally and culturally, so while it is true for some clubs it is at best oversimplified or a generalisation (Matter & Omodt, 2014, p. 55 & 82). Membership comes with a lot of obligations such as weekly meetings, runs, national runs or gatherings, and funerals. Weekly club dues vary, but it is around \$50 in Adelaide (Matt Ward, former president of the Southern Chapter of the Mongols MC in Adelaide, in Eccleston & Jain 2020). Around \$100 would be the weekly average in the US, and during the Twin Peaks trial the president of the Bandidos Texas chapter revealed that money would typically be split three ways, whereby around \$60 would go to the chapter's treasury, \$25 to the national treasury, and \$15 to expenses such as food, petrol, and hotels for any upcoming runs or

events (Carrizal, in Court on Camera, 2017a). Different chapters of the same club can be run in completely different ways, depending on the President's leadership style. It has often been said that a club is only as good as its officers, and while the bigger clubs have office bearers like president, sergeant at arms, and treasurer, those people are not necessarily elevated or on a pedestal in the way outsiders might imagine (Carrizal in Court on Camera, 2017a; P. Edwards, 2017, p. 111). Smaller clubs can be more relaxed and members often simply have an understanding of who is best suited to certain tasks, more along the lines of a spokesperson or problem solver. Although loyalty to the hierarchy encourages 'tribal solidarity', flexibility reinforces the hegemony, assists growth and prevents rebellion (Quinn & Koch, 2003, p. 289). The interviewees explained:

A lot of the clubs originally had a lot of ex-military members, particularly after Vietnam, hence the military ranks. But others didn't, and they don't... There's not always that same hierarchical structure in clubs without military origins. Not even those same terms like 'president', there's someone who's more like a spokesman. Perhaps a more senior member, someone to talk to police, media, or academia. Not necessarily voted in, just someone who doesn't mind doing it, and is okay at it. Generally, or not necessarily the toughest, just someone with an even temperament who's good at disarming tense situations. Neither is there necessarily a Sargent at Arms. Imagine a big family where dad or granddad is the patriarchal head of the family, and mum's the treasurer. If everybody has an understanding about how the club works, then those strict roles aren't necessarily needed. If a teenage kid is running amok then the family will try and warn him but he is his own person. Smaller clubs really are much more like families. Those clubs with massive memberships do need to be run differently though. [Interview #3]

Sometimes it's [the club] the one thing that holds a guy together. Some guys are on a road to nowhere, they've got nothing else, and that discipline holds them together. Not just that, but the good feeling that comes from the comradery. [Interview #4]

In the subculture's formative years in Australia some clubs had large numbers of Vietnam War veterans and the structure of those clubs was heavily influenced by the military hierarchy. However, while the military influence is relevant, it should not be overstated as the majority of Australian clubs were not veteran-centric, and nor do they all share the same kind of hierarchical structure. Much of the literature focusses on the subculture's military links, but Barker (2015, p. 27) similarly questioned the mythologised role military service played in the formation of American '1%' clubs.

Size and age

The size of OMCs can vary quite significantly, some with just a handful of members in a single town or city, others with several thousand members spread over many countries. While clubs can be very large, small chapters are favoured so that a strong 'esprit de corps' can be maintained between members and local chapters typically range in size between 5 and 25 members (A. Morgan et al., 2020, p. 5; Weatherburn, 2011, p. 50). Despite their long-term commitment, OMC members have traditionally been quite transient in nature, so numbers are in a constant state of flux (Barker, 2015, p. 52). Researchers must rely on police intelligence to estimate how many clubs, chapters and members there are locally, nationally and worldwide because of the closed nature of the subculture (Barker & Human, 2009, p. 175). The Australian Criminal Intelligence Commission identified 5,669 individuals as being

affiliated with an OMC in Australia, spread across 39 clubs and 475 chapters in 2020 (A. Morgan et al., 2020, pp. 3-4). Although most sources acknowledge the fluidity, it is important to note that the figures provided by law enforcement generally differ quite substantially from those provided by other sources.⁵³ It is also important to note that the veracity of any official statistics and attempts to compare them between different jurisdictions are often complicated by the use of differing terminology, how various terms are defined, and how data is collected. ACIC data suggests that most clubs in Australia have less than five chapters and most chapters have less than ten members; although these figures can be slightly misleading as the large clubs tend to be fairly large with many of the others being much smaller in comparison. This data also reveals that the average age of members differs greatly between the clubs, ranging between 33 and 56 years. While larger clubs typically have younger members, even within those clubs, different chapters are often noticeably different in age (A. Morgan et al., 2020, p. 6 & 14).

Employment

Contrary to the sensationalised images of extreme violence and organised crime often portrayed in the media, which represents only a very small number of OMC members, most live relatively normal lives and are legitimately employed (Winterhalder, 2006, p. ii). The OMC lifestyle is expensive, weekly dues have to be paid, Harley-Davidsons cost a lot to buy and maintain, there are lots of parties, but the vast majority of members work normal jobs to pay for it. Many also have families, so the idea of committing serious crimes and risking a lengthy jail sentence that would take them away their family, club, and job is very unappealing (Dobyns, 2009, p. 21; Winterhalder, 2006, p. ii). A strong chapter based around

⁵³ For example, in 2009 Veno (2009, p. 42) estimated that there were around 2,500 OMC members in Australia, and four years later the ACC (2013c, p. 2) suggested that there were more than 6,000.

traditional subcultural values is run in a professional manner, every member must have a legitimate source of income, and members who bring the club into disrepute are not tolerated. While the subculture is deeply divided as will be discussed in chapter six, and members often make bad decisions, a well-run chapter weeds out those who regularly cause serious problems. Photos and videos in the media often show OMC members dressed in a stereotypical fashion (except when they are shown outside court), but today they are just as likely to wear button-up collared shirts as dirty t-shirts. Similarly, their motorcycles are well maintained and usually kept fairly clean. All of these things are part of the pride they take in membership (Carrizal in Court on Camera, 2017a).

Wethern (2004, p. 50) described the original Hells Angels of the late 1950s and early 60s as predominantly 'blue-collared or unskilled workers looking for excitement'. Wolf (1991b, p. 33) similarly depicted OMCs in the late 1980s and early 90s as 'a lower-working-class bohemian sub-culture' based around lower-class focal concerns and embodied in a romanticised anti-hero image. Today members come from a variety of backgrounds and work in a wide range of fields, but because of the demands of membership it is also common for them to own their own businesses. Members of South Australian '1%' OMCs allegedly work in the building industry, hire industry, entertainment industry, transport and trucking, as heavy plant equipment operators, car and motorcycle mechanics, riggers, labourers, factory workers, sex shop owners, motorcycle shop owners, hardware shop owners, and various other white-collar office jobs. Some OMC members are not very well educated, but that does not mean that they are not shrewd or ambitious (Caine, 2008, p. 106). While physically demanding jobs are still much more common, one club member is the CEO of a large company, and previously there have been lawyers, accountants, and car dealers. Before the wide ranging 'anti-bikie' legislation came into effect a number of members also worked in

the security industry and in tattoo shops. While many OMC members could still be classified as blue-collar workers and identify with those values, and although not necessarily dichotomous, the cultural values of capitalism and consumerism are equally prevalent today (K. Harris, 2012, p. 2; Haslett, 2007, p. 38; Kerr, 2009, pp. 6-7; Serwer, 1992; Veno, 2007, p. 138; Wethern & Colnett, 2004, p. 176). The interviewees revealed:

There was one guy who was in a club and he went to uni and studied to be a lawyer. Across the board there's a huge range of jobs. From labouring in the building industry, earth moving, trucking and tattooists to small business owners and white-collar workers. [Interview #1]

Traditional motorbike shop owners, mechanics, entertainment industry workers, riggers, hardware shop owners, truck drivers, heavy plant equipment operators, and in hire companies. Traditionally their non-professional jobs but from there anything and everything. Although one club had an accountant at one time and another a lawyer. Factory workers, labourers, and there used to be quite a few in security, like hotel security. In the old days we had second hand dealers, car dealers, and a few who worked in tattoo shops. [Interview #3]

Tattooists; mechanics – motorcycle, but cars too. A lot of guys own their own businesses, like building companies for example, but one guy is even the CEO of a large company. [Interview #4]

Crime

The familial bonds of brotherhood inherent in subculture gives its members a sense of belonging, and the all-for-one-one-for-all ethos empowers them. In certain circumstances that can be positive, but it can also be extremely negative as in some cases it can make members arrogant and lead to them to developing grudges against mainstream society (Ereckson, 2010, p. 41 & 49; Winterhalder & De Clercq, 2008, p. xii). The constant attention membership has traditionally brought with it from the wearing colours, tattoos, riding loud and extravagant motorcycles, and travelling as a pack, has the effect of further reinforcing the subcultural ideology, their outsider status, and strengthening internal club cohesion (K. Harris, 2012, p. 2; Wolf, 1991b, p. 211). While many OMC members appear reasonably friendly, and some can be quite charismatic, their machismo and reputation for violence still make them incredibly intimidating. Members do not usually join OMCs to become criminals but joining a club can lead to drastic changes in their attitudes and members sometimes feed off the fear and respect that membership generates. There are a small number of members who have committed horrendous crimes showing that they are genuinely psychopathic, violent, or drug addicted criminals, and they are focussed on by police, politicians, and the media because they often display those traits very publicly (Dobyns, 2009, p. 31). While individual members' violent or criminal behaviours reflect badly on the club as a whole, and these acts are generally committed against the wishes of the leadership rather than on behalf of it, most clubs make little or no effort to weed those members out. Thus, despite those individuals making up only a small minority of overall members, the nature of subculture often makes them indistinguishable from the larger less volatile group. The interviewees said:

You know some guys have criminal records before they join the club, and people always bring that up, but the club keeps them in line. We don't tolerate ice, it can

really change a bloke's personality, so they get thrown out. [Interview #2]

All the clubs tend to get labelled as if they were one, not only in structure but also in terms of crime. Misbehaviour is not top-down, it's bottom-up. Those members aren't acting for the leaders or for the group, they're acting against. [Interview #3]

The 'Nike bikie' and changes in traditional subcultural values

While the changed appearance of 'a new breed' of OMC members is not uniquely Australian, the Australian 'Nike bikie' phenomenon was perhaps best explained by a former Sydney based OMC chapter president, who called it a paradigm shift in the mid-1990s caused by a club whose members, for reasons only they can explain, started purposely recruiting criminals. Those criminally inclined members recruited more criminals and small part of that club became a criminal organisation (Mihailovic in Webb, 2021). While the subculture has changed and evolved since then, and the traditional image of bikers roaring around drunk and stoned on un-muffled Harley-Davidsons, sleeping around a camp fire, and only ever briefly between bar fights is also simply not a part of the culture of most clubs anymore (Ferret 1%er & Harry 1%er, 2013, p. 126), some clubs have remained true to their origins, and others have become more 'gangster' oriented (Mihailovic in Webb, 2021).

In the South Australian context, when Mike Rann made OMCs a key political issue in the buildup to the 2002 state election and 'declared war' on those groups who he deemed to be such an extraordinary threat that normal laws and policing alone could not address, he exponentially increased the status of the subculture and the reputation of its members (Ferret 1%er & Harry 1%er, 2013, p. 29; Shand, 2013a). Younger more image conscious members

began joining and quickly started outnumbering the older ‘long haired beer swilling bar flies’, and the subculture’s presentation in the media changed to reflect it (Ferret 1%er & Harry 1%er, 2013, p. 15). As the image of bearded, potbellied bikers in their forties and fifties became that of fashionable bodybuilders in their twenties and thirties, the subculture became even more attractive to certain segments of society. Along with the oft cited age-crime curve, which suggests that the rate of offending typically declines with age (Gottfredson & Hirschi, 1986; Hirschi & Gottfredson, 1983; Steffensmeier et al., 1989, p. 836), these newer members often tend to be more entrepreneurial because the image that attracted them in first place was one of criminal wealth and power (L. Campbell & Edwards, 2014, p. 327; Dowling et al., 2021).

Dowling et al. (2021) interviewed numerous former Queensland OMC members and noted the divide in some clubs which stemmed from changes in the nature of their traditional value system. Although it must be noted that conclusions based on samples of OMC members identified by police may be coloured by sampling bias as police are more likely to identify and be involved with criminally inclined members (K von Lampe & Blokland, 2020, p. 536), Dowling et al.’s observations essentially amount to a changing of the guard within the subculture. One interviewee in this study similarly noted:

The old school values of 20 years ago were bikes, brotherhood and parties, but the new guys don’t have the old values of honesty and respect. [Interview #1]

Voce et al.’s (2021, p. 1 & 15) study of ACIC data found that the younger generation of members were more likely to have a criminal history, and one that included violence,

intimidation, weapons, or ongoing criminal enterprise offences, than their predecessors. They also found that these members were more likely to have joined an OMC at a younger age than older members, which they suggested means OMCs are increasingly recruiting more criminally inclined members. However, because police are much more focussed on OMCs now than they were in the past, these differences may be partly due to, or inflated by, the fact that police are more likely to know who members are and detect any crimes they commit.

There have been concerns from both in and outside the subculture as some clubs have recruited from gyms and jails in order to expand (Australian Crime Commission; Cherry, 2006, p. 21; Dowsley, 2018; Shand, 2013c, p. 180; Veno & Gannon, 2009, p. 263). A pragmatic approach to long established rules in combination with an increasingly multi-cultural Australian population has also seen the more traditional complexion and culture of many OMCs change (Australian Crime Commission, n.d.-b; NSW Police Detective Superintendent Arthur Katsogiannis in *Uneasy Riders (transcript)*, 2012). Chapters are normally small tight-knit groups and when they expand too quickly the different outlooks between newer and older members can cause division, and in this case it has proven to be detrimental to the traditional subcultural values in some clubs (Dowling et al., 2021; K. Harris, 2012, pp. 3-4; Kuldova & Quinn, 2018, p. 154; McNab, 2013, p. 198; Shand, 2013b; T. Thompson, 2011, p. 350; Veno & Gannon, 2009, p. 262). The traditional subcultural ideals of brotherhood, freedom, motorcycling, and partying have become little more than rhetoric and have been replaced by a more insidious criminal culture in some clubs, but are still equally real and genuine in many others (Christie, 2016, pp. 2-3, 234 & 239; Devereaux, 2013, pp. 63-64; Dowling et al., 2021; Mihailovic in Webb, 2021). One of the interviewees said:

All of the clubs are very different, we get called 'old school', we're still about what we have always been about. There are some clubs that have become 'Nike bikies' or 'plastic gangsters', but like I said, all clubs are different. [Interview #3]

It was reported in 2009 that at least three major Australian OMCs had dropped their traditional rules regarding riding and fighting, allowing a criminal element to become more prevalent (Barker, 2015, p. 52; Veno, 2009b). When riding motorcycles is no longer the most important part of club members' lives and the motorcycle has become merely a tool giving them access to the advantages that membership provides, it further undermines their traditional values and weakens the subculture. Once a club moves away from those traditional values and makes significant changes to their rules and protocols it begins transforming into something else (Wethern & Colnett, 2004, p. 166). While it is true that the subculture has, quite naturally, evolved over time, if an OMC allows men to join who have little interest in motorcycles and riding, and they have dropped traditional riding rules, then it is in essence no longer a genuine motorcycle club (Barger et al., 2001, p. 47; Christie, 2016, p. 235; Veno & Gannon, 2009). Although, as noted numerous times throughout this thesis, OMCs are heterogeneous and broad generalisations encourage inflated perceptions of members' actual involvement in organised crime type activities. OMC chapters that have evolved into criminal gangs are very much in the minority, but their existence highlights that some of the attention clubs and their members receive from police is warranted (Shand, 2013c, pp. 185-200; Veno, 2009b; Veno & Gannon, 2009, p. 263).

Extended Networks and Support Clubs

Several sources argue that aggressive recruiting and the rapid expansion of some OMCs has allowed members to join who are primarily motivated by self-interest and furthering their own agendas under the banner of the club (Coulthart & McNab, 2011; McNab, 2013; Katsogiannis in *Uneasy Riders (transcript)*, 2012). However, given the huge amount of police resources focussed solely on OMCs, and that only 4.7% of drug trafficking networks can be linked to their members (Hughes et al., 2020, pp. 35-36), this must mean that those members who are using their membership to facilitate crime are doing so as part of a wider network, and without directly committing those crimes themselves. Law enforcement have suggested that support clubs regularly do more of the hands-on work associated with organised crime on behalf of the bigger '1%' clubs. Although the main reason support clubs exist is so that potential members can see if the lifestyle suits them, and the bigger clubs have no direct control over the actions of their support clubs, it is reasonable to suggest that they can influence the behaviour of individual members to some extent (Carrizal in Court on Camera, 2017a; Court on Camera, 2017c).

Barker (2017, p. 22) highlighted this as an area in need of further research, and researchers in Sweden went on to examine the relationship of co-offending between OMCs and their support clubs. Given privileged access to Swedish law enforcement data, Rostami and Mondani (2019, pp. 41-48) suggest that while criminal activity is part of members' lives, the crimes support club members have been convicted of are not indicative of widespread organised crime. Support clubs have similar organisational structures to OMCs, but they are different in terms of the way that structure functions, their interconnectedness, criminal networks, and patterns of criminal offending. While this is only one study and its scope was limited, it indicates that some support club members may be involved in criminal networks

with '1%' club members, but that their respective club memberships typically play a very small role in any organised crime activities. Thus, suggesting that an individual is likely to be involved in crime simply because of their membership in a social motorcycle or riding club without specific evidence amounts to little more than hearsay.

OMC members' perspective of the laws and how they are being used

This section of the thesis was guided by and essentially summarises the OMC members' answers to questions eight through twelve of the interviews (which are included in the appendix). Numerous small details were also learned from more informal discussions the researcher had with members in his attempts to obtain those formal interviews which have been used to clarify various points. The interviewees' responses were instrumental in deciding what was included, and even more so in what was excluded from this chapter. Every effort has been made not to over-generalise, but without specific information relating to each club and chapter there may be some minor inconsistencies between groups.

The main themes covered in this section are how members perceive:

- the laws have affected their brothers, changed clubs, and changed the lifestyle;
- the implementation of the laws; and
- the link between the lifestyle, organised crime, and violence.

Results

How members perceive the laws have affected their brothers, changed clubs, and changed the lifestyle.

Clubs were very active and their presence in the community was quite obvious before the laws were introduced. While clubs still exist and operate in very similar ways, they do so

much more quietly now and without drawing the same level of public attention. By criminalising innocuous activities such as drinking with friends at a bar or travelling together, the laws have forced members to become more organised and secretive about what they do and how they do it. For instance, plans to meet cannot be made by phone or e-mail as they are easy to monitor, and a zero-tolerance policing approach means that even minor mistake in travel plans invites harsh sanctions. The side effect of less visibility, better organisation, and more secretive communication is that it is more difficult for the police to know who their members are, what they are doing, and any crimes they might be involved in. This has meant that police have to be more intrusive in order to monitor members' activities, and the raiding of family homes and invasive monitoring at places of employment has typically had the biggest impact on the more moderate members. If members do leave, it is often because of the toll it is taking on their family. The constant and intense pressure has pushed some of these men who would normally provide a stabilising influence over their more extreme club mates away from clubs, essentially making the subculture more extreme and anti-social. One of the interviewees said:

Police pressure gets rid of the wrong members – the good influences. It puts a lot of pressure on the families. No one wants the cops bursting into their homes in the early hours terrorising their kids. Harassment at the workplace, unfair pressure from police especially on small businesses. [Interview #1]

The subculture was originally founded on the idea of being free from society's rules and regulations, but the scrutiny members now come under has severely limited their ability to enjoy even their most basic freedoms. The subculture is strongly anti-authoritarian, so when

the authorities try to further restrict its members, their immediate response was to aggressively resist. The bonds of brotherhood and the shared fight against oppression have generally served to strengthen group solidarity and reinforce their separation from mainstream society. Men are involved with OMCs because they are a lot of fun, and the shared lifestyle, friendship, experiences, values and identity mean that they really enjoy and value membership. The sense of belonging, comradery, and loyalty it generates in men that have often come from troubled backgrounds means that for most it is extremely difficult for them to disengage regardless of the amount of pressure police apply. The interviewees explained:

The reason you join a club is freedom, and this authoritarian attitude... All the police pressure just makes me dig my heels in harder. [Interview #2]

If you're not doing that much wrong and the police are coming after you all the time, all of that police attention, speculative reporting in the media, house being raided, then it's fight or flight. You push back, it's resistance. [Interview #3]

The laws have not affected all clubs or members equally, and it is a common misconception that just because a club has been declared as a 'criminal organisation' its members automatically have control or barring orders placed on them, which is not the case. For some members nearly every aspect of their lives has had to change, and for other the biggest impact of the laws has probably come from the way the community reacts to them. In order to comply with the legislation members have had to become much shrewder, even about activities would be considered legal by any traditional sense. Members can generally still do

whatever it is they want to do; it has just become more complicated. There are still parties and clubhouses, and members can still move about freely, but they are held in private, their locations are undisclosed, and their movements are not as apparent. Members cannot attend each other's weddings, funerals, birthday parties, or other family events in public. More than two members cannot travel together, they cannot get on the same plane and even being in the same airport can be problematic as they have to stay more than a hundred metres apart⁵⁴.

Visas for foreign travel are often denied and members who were not Australian citizens were deported. Those who worked in some fields such as tattooing or security have had to find new jobs or move interstate.

The laws have taken a lot of fun out of the lifestyle, and crucially some of the traditional motorcycle club activities have had to stop. While OMCs are still in essence motorcycle clubs and their structure has not changed, when a subculture based around motorcycles is unable to ride together or go on runs very often, the motorcycle does start to lose its place. Members still ride and wear colours individually, but not all the time and not together as a club. There are some clubs where sons and nephews follow in the footsteps of their fathers and uncles, but it is becoming a lot less common. As the subculture has been forced 'underground', the 'wrong' kind of people have been attracted to it. The image today tends to attract thugs more than motorcyclists, and that has had an effect on the nature of the traditional subcultural values of honesty and respect as many of the newer members have a different outlook. If this trend continues and more clubs do not actively try to fight it, it is possible that the laws might end up being a self-fulfilling prophecy as clubs become more

⁵⁴ Although no specific distance between members of a declared organisation is mandated by the legislation, the clubs and their lawyers have arrived at this figure as general guideline for themselves.

like the street gangs politicians, police and the media have long claimed them to be. The interviewees said:

They've fucked the lifestyle. We can't have a meeting and then go to a couple of pubs like we used to do. We can't even go on runs together; we have to meet up over the border. A lot of the reported problems come from that friction with the police. [Interview #2]

The laws are sort of becoming a self-fulfilling prophecy, in the future many clubs won't be motorcycle clubs at all anymore. Maybe they'll still have all the MC imagery but more and more they'll become street gangs. It used to be all about the bikes but it just isn't in the newer clubs. [Interview #1]

How members perceive the implementation of the laws.

SAPOL have used their discretion reasonably and kept a lot of their powers in reserve.

Despite the potential for 'associates' to be treated in much the same way as members, the police have used this power judiciously so far. The police probably want to fully utilise the full potential their powers, but it would seem that prosecutors are waiting for the right test case. This is likely due to concerns over another High Court challenge, and to ensure that public relations disasters such as those in Queensland are avoided. This means that people have been charged, then the charges have subsequently been dropped, they have been charged again, and then dropped again. Meanwhile those members are spending thousands of dollars in legal fees. The result is compliance because neither the club as an organisation nor members as individuals can afford to continue. However, the way the police have used the

law is not really the problem, the problem is that the law makes normal innocent behaviour illegal, and arrest can lead to nearly two years on bail and twenty thousand dollars worth of legal fees, regardless of the outcome. One of the interviewees explained:

The South Australian police have been pretty good in terms of using their discretion, they've kept their powers in reserve. Here the legislation is enforced by the Crime Gangs Task Force, not patrolmen, and for the most part they use it reasonably... While nobody's stupid enough to seriously test the legislation by riding together, a few guys riding together wouldn't make a pretty test case. If they wait for a few guys to get involved in a pub brawl, then they'll test the laws.

[Interview #3]

It is often said that the laws have driven clubs 'underground', which sounds nefarious, but it is usually innocent in nature and has nothing to do with moral or ethical crimes. Depending on the rhetoric used, complying with the law can be portrayed in a way that sounds like evasion or somehow complicit in a crime. 'Evading' jail by not committing a crime is not sinister. The legislation made certain things illegal, and by not doing those things it is often suggested that club members are doing something wrong. When Professor Veno first said the legislation would 'drive clubs underground' he was right, but he did not fully explain what he meant and the language can easily be misconstrued. The police re-labelled OMCs as criminal motorcycle gangs, and the media labelled their compliance with the legislation as 'evasion' and going 'underground'. One of the interviewees revealed:

You don't want to expose your club to a hugely expensive legal battle in the High Court. The effect on the membership, for the majority of members who don't do anything majorly wrong, is that you have to be careful, you have to be diligent, and you can't be with your mates. Like you can't go to the footy, can't sit together, can't go there to together. You might not get caught at the time, but most public places have cameras these days, and you'll probably get caught later. [Interview #3]

How members perceive the laws have affected the organised crime and violence associated with the subculture.

The laws have had a statistically negligible effect on crime and violence, and there are still fights in bars and brawls in nightclubs. It is simply that OMC members are not involved, so in that sense they have achieved compliance which the government sees as a victory. They argue that by preventing club members from being together in public, the laws have made the community safer. However, the legislation does not ultimately stop crime or violence, it simply makes it easier to secure convictions and increases the penalties. The actions of some members have brought the whole subculture into disrepute, but if only ten percent of a group are found to have committed crimes, it is unfair to penalise the whole group equally. Club members commit crimes as individuals, and while their clubmates are not going to report them, those crimes are not committed by or for the organisation. One of the interviewees said:

Sure, we get what the legislation is supposed to do, like stop forty or fifty bikers going into a nightclub and overwhelming security. That doesn't stop us from doing it, it just adds another charge to the sheet. [Interview #3]

Most people who have not had personal interactions with clubs or club members, react negatively to their public image and perceive all club members to be criminals. That perception has led to a disproportionately large number of police resources being wasted on addressing the problem of crime in clubs. However, the problem is not whether club members are violent or criminals, the problem is that prohibition means that there is an incredibly lucrative and readily exploitable black market for entrepreneurs. It would seem that the 'war on bikies' was conceived to indiscriminately target an alternative way of life rather than as focussing on the more specific problems of organised crime groups or the methamphetamine trade. Lawmakers need to reconceptualise their approach to organised crime if they want their laws to work.

Discussion

The members explained that despite their activities being less visible, clubs' structures have not changed, and they still operate in much the same way they traditionally did. However, one of the main reasons why men join clubs is because they are a lot of 'fun', and the control measures have taken much of the 'fun' out of the lifestyle. The clubhouse is at the centre of club life and while the official clubhouses have been shut down, there are still parties at their unofficial clubhouses, but they are much less visible. Colours are their symbol of belonging and members see them as being sacred, and while members still wear their colours, they do not wear them all the time and they do not wear them when they are with their brothers in public. As motorcycle clubs, riding motorcycles and going on club runs are ostensibly their *raison d'etre*, and the laws prevent members from riding together in South Australia. Club members admit this has meant the motorcycle has started to lose its place within the

subculture. Club members love to party, but barring orders mean that club members spend a lot less time in bars and nightclubs, and this also means they are not involved in as many fights or brawls.

In order to continue participation in the lifestyle without breaking the laws, members have had to become much more organised and circumspect. The result of being more careful is that the police have had to become more intrusive in order to monitor their activities. This has pressured some members into leaving or moving interstate, which were both key aims of the legislation (Government of South Australia, 2008a, p. 46). However, it also reinforced group solidarity and entrenched their outsider mindset in those who stayed. Their aggressive resistance has essentially made the subculture more extreme and more anti-social, which when combined with the decreased importance of the motorcycle, has attracted new members with a less traditional outlook. With less emphasis on the traditional subcultural values, members acknowledged that without a concerted effort clubs could become more like the criminal organisations politicians and police have long suggested they are. The members further recognised that SAPOL has used its discretion reasonably, but in charging people and then dropping charges multiple times even without actually using the laws, the threat of legal fees and long periods spent on bail, have achieved compliance.

Contrary to the OMC organised crime problem that politicians and government agencies argued required extraordinary new measures to address, the discourse analysis suggested that the public's biggest concern was violence. So, while Dowling and Morgan's (2021, p. 7) figures suggest the laws may have had a paradoxical effect on OMC members' involvement in organised crime and therefore their potential for instrumental violence, by reducing the overt nature of many of their activities the laws and control measures have seemingly reduced

the impact of their expressive violence. From both a political and policing perspective this is most likely interpreted as legislative success, however from an academic standpoint in terms of being organised crime laws this seems to be a failure. The government's stated intention was to disrupt and dismantle clubs and this has been partially successful, as while most clubs and chapters still exist their activities have undoubtedly been disrupted.⁵⁵ Thus, whether or not the laws are effective depends largely on how effectiveness is measured. Although, what is clear is that the social construction of the 'bikie' problem and resulting 'anti-bikie' laws have not only changed the activities of the subculture, but even more noticeably, society's broader acceptance of governmental restrictions on expression and liberty. It would be a flaw in logic to argue any aspect of the law based on one's perception of right or wrong, and the answer to any such question should ultimately be decided by a much larger discussion about society's core values (Whitman, 2004, pp. 1220-1221).

Conclusion

In an effort to further address the issue of exaggeration and inflation in claims about OMCs being criminal organisations and the extent of their members' involvement in crime, this chapter used in-field research in conjunction with the various other sources to investigate: what the clubs are, why they exist and who their members are, the concept of 'brotherhood', their rules and behaviour, club 'colours', their structure and hierarchy, club sizes and the age of their members, how members are employed, and their involvement in crime. It then discussed long-term changes and the gradual evolution of the subculture, the emergence of 'Nike bikies', and the nature of clubs' extended networks and support clubs. The chapter heard from members of Adelaide based chapters of OMCs about their own experiences of

⁵⁵ Although the Adelaide chapters of the Mongols have disbanded, it is thought to be primarily the result of the Federal Government's deportation of one of the club's key leaders (N. Hunt & Mott, 2020).

how the various laws are being used and what effects they perceive the control measures to have had on their way of life. The interviewees said that while the subculture has changed it has retained a largely traditional outlook, and while the laws have not achieved many of their aims, because of them club members are now less likely to be involved in street level expressive acts of violence. Although the subculture will continue to evolve in the coming years, and what it will ultimately become is unknowable, as a whole they say it still does not currently resemble what claimsmakers have declared it to be.

While this chapter revealed several insights into how club members perceive the subculture, the laws, and their impact, the evidence base was regrettably limited and as such cannot support firm conclusions. However, in relation to the formation and evolution of the subculture as discussed in chapter one, we can see that although these men proudly identify as ‘outlaws’ and place great value on freedom, they are now amongst the most regulated groups of people in Australia, such has been the vigour with which the state has redrawn the boundaries of the law around them. The ‘anti-bikie’ laws are a relatively recent regulatory phenomenon that are underpinned by an incremental demonisation of a subculture which is decades old, yet is constantly evolving, and has both positive and negative aspects. This thesis argues that exaggerated claims supported by the mass media have created waves of fear which have both led to and been further inspired by government initiatives, in a way that closely aligns with the moral panic model. The construction and regulation of ‘bikies’ can thus also be seen as an example of over-criminalisation and ‘law and order’ policy making.

Chapter Seven – Evidence-based policy, anti-association laws, civil liberties and the moral panic

This chapter explores the meaning and importance of evidence-based policy and examines some of the issues stemming from anti-association laws and the Australian Constitution. It discusses civil liberties and rights in order to address some of the key concerns that previous chapters have highlighted, such as the importance of preserving the balance between liberty and security, and how in order to counter the constant expansion of government powers, guarantees that human rights and civil liberties will be observed become increasing necessary. The chapter then revisits moral panic theory and discusses how the research fits within the moral panic framework. The original theory was based on concepts of top-down power, universal truths, conscious political manipulation, and was expressed in terms of binaries. However, (as discussed in chapter one) Foucault's understanding of power, whereby power is dispersed and pervasive, suggest that the issue stems from the struggle between various discursive and disciplinary truth claims. Based on Foucault's concepts it can be observed how the goals of the various actors in their conflicts over knowledge and how truth and the role of governmental and disciplinary power in defining the other also defines the norm. Further, by placing moral panic theory under a broader umbrella of over-criminalisation, law and order politics and the preemptive paradigm we can see that while Cohen's original moral panic model is extremely useful as a starting point, the concept has expanded such that it is no longer sufficient in isolation to determine if a phenomenon can be defined as a moral panic. With the aid of more recent scholars' contributions to the field, this chapter concludes that the South Australians Government's 'anti-bikie' laws are likely the result of a moral panic.

Evidence-based policy

This thesis has been critical of several pieces of South Australia's 'anti-bikie' laws, and particularly of the declaration and control order scheme, however numerous examinations of a wide range of social policies show that many government programs are similarly ineffective in achieving their policy objectives (Haskins, 2018, p. 36; Orr, 2018, pp. 51-52). While there is ostensibly little debate that resources should not be wasted on programs and interventions that do not work, how we know what works and what constitutes credible evidence are subjects of much debate (Schorr, 2012, p. 50). From an evidence-based policy standpoint, when new laws are being created the key considerations should be: what is trying to be achieved, if that is desirable, and if it is possible to achieve that through the proposed approach. Once enacted evidence should then be gathered, examined, and interpreted in order to understand what effect the law is actually having (Orr, 2018, p. 51). The use of evidence-based policy has been largely driven by the health sector, where the failures of anecdotal and unscientific evidence are manifest. Through the use of Randomised Controlled Trials (RCTs) to establish effectiveness, evidence-based policy has radically improved human health since the end of the Second World War (Baron, 2018, p. 48). While RCTs are the standard method of evaluation in medicine, and they began being used to assess social programs during the mid-1960s, they have not necessarily proven to be quite as useful in the social policy field (Schorr, 2012, p. 52). Increased efforts have been made to use them in the development and implementation of crime control programmes over the last two decades though (Andersen & Hyatt, 2020, pp. 224-225).

Given the apparent methodological strengths of RCTs (or the systematic review and meta-analysis of RCTs), they are often said to be the 'gold standard' of evaluatory research.

However, researchers have typically found that while RCTs generate extremely valuable and

trustworthy data, they are often too narrow and complex to apply in social settings where criteria can be much harder to measure objectively. In relation to the complex environments and challenging populations often evaluated in crime control studies, there can also be numerous practical and ethical difficulties associated with them (Andersen & Hyatt, 2020, pp. 225-226). It is also important to note that RCTs primacy only refers to the quality of study design and not the value of a particular study. Any study design can be carried out with varying degrees of success, based on research appropriate criteria and practices (such as transparency), and in this there is little advantage in RCTs over other study designs (Cartwright, 2019, p. 64). Social scientists agree that evidence needs to be rigorously collected and analysed, but practice and non-evaluatory research can also provide a rich variety of evidence, and evidence-based does not necessarily mean experiment-based (Schorr, 2012, p. 50). While attempts to evaluate complex social programs or interventions are often seen as unscientific by those favouring RCTs, it is slowly becoming more widely recognised that the most promising social programs and interventions are some of the hardest to adequately assess using traditional approaches (Schorr, 2012, p. 52). Non-experimental methods of evaluation can reveal whether certain policies are effective in situations where RCTs cannot be applied, and one of the keys is drawing on evidence from a variety of sources (Schorr, 2012, p. 54). Thus, while RCTs are not necessarily the preferred method for evaluating crime prevention and criminal justice programs, any efforts to widen the bounds of what can be considered evidence must also be done carefully as they have the potential to undermine the term 'evidence-based' and reduce it to little more than tool in the political process (Sherman et al., 2002, p. 1).

Evidence-based policymaking is comprised of two key components: thorough research to establish reliable evidence about what works; and using the evidence to establish effective

programs, practices and interventions (Baron, 2018, p. 40). While the advantages of using reliable evidence and rational analysis to create new policies with what amounts to the lowest price-performance ratio are clear, and the argument for evidence-based social policy or ‘what works’ is both reasonable and logical, an evidence-based approach is often incompatible with principles of parliamentary democracy (Baron, 2018, p. 48; Monaghan, 2009). Thus, the need for such evaluation is not always appreciated, and as it does not necessarily align with various political goals it only plays a relatively minor role in an essentially politically and ideologically driven legislative process. Policies are shaped by a large number of competing interests and the results of objective research often have little influence over them (Orr, 2018, pp. 55-56). While difficulties can stem from a lack of adequate resources to carry out a thorough evaluation or resistance to such evaluations taking place, the biggest hurdle is often convincing policymakers to act on the results (Haskins, 2018, p. 8). In many cases evidence is used selectively in policymaking, such that it has been suggested that ‘policy-based evidence’ is perhaps a more accurate description. Policies created around highly politicised issues are often more ad hoc in nature, and typically devoid of any kind of inbuilt Key Performance Indicators (KPIs) by which their success can be measured (Monaghan, 2009, p. 2).

This is especially true for crime control where policy considerations are often political, and when crime prevention becomes entwined in symbolism and narrative, policymakers typically give greater weight to the emotional appeal of policies rather than any evidence regarding their effectiveness (Sherman et al., 2002, p. 3). This is not intended to frame policymakers as villains, simply to highlight that when the public perceive a phenomenon to be a problem that is getting worse, the political system requires policymakers to act, which can lead to redundant, ineffective or detrimental policy outcomes (Cairney & Oliver, 2017, p. 9; Mears, 2007, p. 667; Sherman et al., 2002, p. 1). Some considerations are also more or less

unique to crime control such as politicians appearing ‘tough’ or ‘soft’ on crime, and the appeal of criminologically sound programs which will only show benefits over long-term timeframes is not always apparent to politicians who need to stand for election every few years (Welsh & Farrington, 2002, p. 418).

From a theoretical perspective, an evidence-based approach thus provides a logical basis for any new laws, and focussed, proportionate, legitimate, and effective responses are needed if organised crime is to be combatted effectively (Ayling, 2011a, p. 169). However, the efficacy of any crime control policies should always be balanced with other considerations such as freedoms, rights and the rule of law, lest they lead to tyranny. Thus, rather than simply extending police powers a criminologically sound approach to law making and crime control needs to take into account civil liberties; police resources; the justice system; victims and offenders; the long-term ramifications and potential pitfalls; the costs, benefits, and risks; and incorporate the most up to date research (Ayling, 2013, pp. 13-15 & 26). Further, new laws should be open to public scrutiny both in the planning stage and during their operation, and an ongoing examination of how they are working and any adverse effects they might be causing is required (Ransley, 2015). While such reviews are important it is also necessary that their findings are acted upon.

Anti-association laws and the Australian Constitution

While draconian and pre-modern legal practices have been used in Australia with great success in the past, they have significant risks. Anti-association or consorting laws were first introduced in South Australia in 1928 and their utility saw them spread throughout all the other Australian jurisdictions. Gang related violence had become a serious problem during the 1920s in Sydney, and when the NSW parliament passed stricter firearms laws, gang

members started carrying razor blades because they were much more difficult to prosecute. In 1929 the New South Wales' *Vagrancy (Amendment) Act* consorting clause gave police the almost unlimited power to arrest and incarcerate anyone they suspected of committing a crime, and as a result they all but eradicated cocaine trafficking (McCoy, 1980, p. 140). Consorting laws remained almost unchanged throughout Australian jurisdictions until the early 1980s, with the exception of NSW and Victoria where the scope of the offence had been narrowed (McLeod, 2013, pp. 132-133). In 1983 then Chief Justice of the South Australian Supreme Court, Leonard King, noted that:

The offence of consorting presents special difficulties to a sentencing court. Apart from the statute the conduct to be punished may be quite innocent. A person may find, by reason of the family into which he was born and the environment in which he must live, that it is virtually impossible to avoid mixing with people who must be classed reputed thieves. He is to be punished not for any harm which he has done to others, but merely for the company which he has been keeping, however difficult or even disloyal it might be to avoid it. The wisdom and even the justice of such a law may be, and often has been, questioned. (Steel, 2003, p. 599)

Historically, despite being very effective consorting laws have been found to be open to abuse and have eventually had to be re-examined because they also often cause widespread police corruption (Crime and Misconduct Commission (Queensland), 2008, pp. 7-8). The Fitzgerald Report found in 1989 that police in the Consorting Squad and Licensing Branch were 'patently susceptible to corruption', the Queensland Consorting Squad was disbanded, and their consorting laws were eventually repealed (Fitzgerald, 1989, p. 31). In other Australian jurisdictions such laws were rarely used. One of the problems with consorting

laws is that they essentially judge people by whose company they choose to keep and are used to target objectionable individuals rather than objectionable behaviour (Shand, 2010, p. 186). The history of, and potential for consorting laws to be used in relation to disadvantaged and vulnerable groups such as aboriginal and homeless people is particularly concerning (McNamara, 2014). When the consorting laws were re-established as part of the suite of ‘anti-bikie’ laws in NSW in 2012 the first person charged was not a member of an OMC, he was ‘an intellectually disabled’ 21-year-old who was charged while shopping for groceries with his housemate and was subsequently sentenced to 12 months jail (L. Hall, 2014, 2015). During the first 12 months of their use 40% of the people subject to the provisions were Aboriginal, despite Aboriginal and Torres Strait Islanders only making up 2.5% of the NSW population, and 7% of people were under the age of 18 (New South Wales Ombudsman, 2013, p. 9). However, the biggest concern is not necessarily how they are currently being used, it is the legal precedent they set and what consequences that might have in the future (Berry & Stewart, 2011, p. 2).

In numerous Australian states’ reviews of their OMC focussed organised crime laws with anti-association or consorting provisions have found them to be largely ineffective (as discussed in chapter three). Anti-association and consorting laws have not been shown to decrease offending in general, nor more specifically in relation to organised crime (Goldsworthy & Brotto, 2019, p. 8). Further, the introduction of the ‘anti-bikie’ laws highlights how few protections the Australian Constitution provides, as the Westminster system of government relies heavily on the idea that the combination of common law and a parliamentary responsible elected government will protect Australians’ freedoms and rights (Ananian-Welsh et al., 2016, pp. 187-189; Greg Martin, 2017, pp. 102, 108 & 111). While the restriction of some freedoms and rights may be warranted in certain circumstances, without a

codified list of guaranteed universal freedoms and rights, the courts are severely limited in their ability to invalidate legislation unfairly infringing upon them (Appleby, 2013).

It has previously been observed that the Australian Constitution implies a number of rights, however the High Court has ruled that other issues deemed more important can take precedence over those rights. In acknowledging those rights and their relation to the law, Justice Gleeson said:

What courts will look for is a clear indication that the legislature has directed its attention to the rights or freedoms in question, and has consciously decided upon abrogation or curtailment. (*Plaintiff S157/2002 v Commonwealth [2003] HCA 2 211 CL 476, 2003, p. [30]*)

Thus, any implied rights are subject to laws created with the intent to override them, and while legal challenges to the various ‘anti-bikie’ laws have met with some success, the provisions preventing certain groups of people from associating with one another have remained intact. It has become clear that the government can legally prohibit communication between whoever it chooses regardless of whether any evidence exists to suggest that any illegal activity may have, or potentially will take place as a result of that communication (R Sarre, 2014). While the High Court has moved to protect judicial integrity, it has not prevented state governments from legislating in a way that removes the judiciary from the decision-making process altogether. The ability of governments to pass laws criminalising organisations and limiting certain citizens’ freedoms and rights does not justify them doing so, and it is difficult to understand how the particular threat that OMCs pose could possibly warrant undermining some of the most basic principles underpinning the criminal justice

system (Lauchs et al., 2015, p. 101).

Civil liberties and rights

‘Civil liberties’ and ‘human rights’ are central to any discussion of criminal law; however, they are particularly relevant when discussing the effect of preemptive crime laws. These terms relate to the fundamental freedoms and rights enjoyed by the citizens of a democratic society and are said to be universal. Many people particularly in Western democracies place great value on the individuals’ right to act or speak freely, but largely take the concepts of both democracy and freedom for granted. The freedoms and rights of the individual often conflict with the interests of the state, and how these conflicts are resolved largely depends on how democracy is conceptualised and the role given to the law in protecting those liberties. Many of the arguments surrounding civil rights are complicated by the difference between moral and legal entitlements. Australians generally assume their civil liberties will be respected, but on closer examination we find that the law does not explicitly safeguard many of even what have traditionally been considered fundamental civil rights. Inequality and discrimination are pervasive in society, and despite egalitarian rhetoric, seem to be increasing. It has been said that in a just, free, and democratic society equality in outcomes is vital (Chomsky, 1999, p. 40). However, equality is an abstract philosophical principle, and it can be difficult, if not impossible, to apply substantively (Gaze & Jones, 1990, p. 398). Legal equality takes on two meanings; equality in the law (that the law itself should not discriminate) and equality before the law (that the law should be applied equally).

Contemporary understandings of civil liberties largely stem from Hobbes’ *Leviathan* (1641) and Locke’s *Two Treatises of Government* (1689), which form the theoretical basis of the ‘social contract’ concerning the legitimacy of the authority of the state over the individual and

the distinction between public and private realms (Gaze & Jones, 1990, pp. 3-4). An individual's freedom to make their own choices and live however they see fit is tempered by the basic realities of being a member of an organised society and living peacefully with others (Mill, 1859). Locke posited that life, liberty, and property, were inalienable natural rights, although today many would argue that the United Nations' Universal Declaration of Human Rights (1948) provide our inalienable rights despite its breadth. Legal rights, on the other hand, are those guaranteed by the law and differ from natural rights in that they can be modified or repealed at any time. There is a difference between civil rights and civil liberties; civil rights are those freedoms protected by law, and civil liberties are freedoms unregulated by the law. Thus, one only has freedom so long as it does not contradict the law. While the idea of civil rights and civil liberties incorporate much more than just what the government of the day determines to be the law, if we assume that the political culture should accurately reflect the values of society, then the differences between liberties and rights are open to debate.

Civil and political rights form the basis of human rights, and they were created primarily to prevent the arbitrary use of government power and to ensure people's ongoing consent as citizens. The legal principles which institutionalise this rationale theoretically grant individuals the right to privacy, the freedom to associate with whomever they choose, and an open, transparent, contestable, and representative system of government, especially in relation to justice. This means that while a government must be open and accountable to its citizens, as individuals, citizens are entitled to their privacy. Likewise, any information used in judicial process must be scrutinised in an open and adversarial court (de Lint, 2014, p. 220). Government authority in liberal democracies rests upon the consent of its citizens, which is achieved through the provision of sufficient information to allow informed decision

making and by the protection of various individual freedoms and rights. This means that citizens have the power to approve or revoke their tacit consent of the state's authority and use coercive of powers, because de facto government is not legitimate authority (de Lint, 2014, pp. 222-223).

Most Australians can enjoy their civil liberties and civil rights most of the time, but this is not the result of any formal legal commitment. On closer examination Australian law limits freedoms, fails to respect civil liberties, and does not protect basic civil rights (Gaze & Jones, 1990, p. 493). The widely held beliefs and values that freedom and democracy imply are not protected under Australian law, and as such there is no guarantee that the freedoms most of us currently enjoy will continue to be respected. As a whole, and when compared to many other countries, Australia has traditionally respected the civil rights of its citizens. However, there has only been a commitment to the protection of those rights more recently in Victoria (*Charter of Human Rights and Responsibilities Act*, 2006), the ACT (*Human Rights Act*, 2004), and Queensland (*Human Rights Act*, 2019), and certain minority groups have not always enjoyed the same rights as the majority.⁵⁶ The Australian Government's commitment to civil rights and liberties in times of political or social turmoil has historically, such as during the Cold and Vietnam Wars, been poor (Gaze & Jones, 1990, p. 71). 'National security' is recognised under international law as a justifiable reason for limiting civil rights in times of public emergency, but it differs greatly from the more general 'state security' as carried out by the intelligence services during peacetime. 'National security' is both an ill-

⁵⁶ The Bill of Rights was added to the United States Constitution in 1791 guaranteeing Americans' personal freedoms and rights and establishing clear limits on the government's power. The Fifth Amendment states, 'No person shall be deprived of life, liberty, or property, without due process of law...' a right which in essence dates back to 1215 and the Magna Carta. However, it is worth noting that this basic right did not apply to Native Americans, slaves, or, until 1975, women. Essentially these people were not legally viewed as 'persons', a concerning systematic exclusion that was again explored during the Reagan administration's 'drug war' (Chomsky, 2016, pp. 46-47).

defined term and concept, and the limits placed on its power are further complicated by how widely the state is conceptualised; territorially, institutionally, and ideologically (Gaze & Jones, 1990, p. 209 & 213).

Much of the language surrounding civil rights and liberties has been used so loosely over such a long period that in many respects it seems to have lost its meaning and its power has been reduced to little more than rhetoric. It is necessary in a democracy for the state to protect certain core civil rights, but how democracy is conceptualised and therefore what the role of the state is, dictates which liberties the law must protect. In its most basic form, a democracy only needs to protect those rights fundamental to its function, i.e., political participation. Without specific protections under the law civil liberties are at the mercy of those in power, and the state's long-term commitment is further complicated by ongoing electoral and party politics. Considering the ad hoc way civil liberties are protected under Australian law, and the direction many state governments are heading in respect to the freedoms and rights of the individual, many commentators have suggested it is perhaps time for wholesale reform. The function of the law in a democratic society is to enable governance, preserve order and safeguard human rights, not to enforce a specific political or moral agenda. The 'harm principle' should typically guide criminal law, the justice system should be fair, and sentences should not surpass what could be considered reasonable and necessary to ensure the safety of the public (Crispin, 2010, p. 54).

Re-visiting the moral panic

This thesis examines the 'anti-bikie' laws through the lens of moral panic, and although the concept is well established in criminology and is widely accepted as being valid, its continued utility has often been questioned (as discussed in chapter two). This is due in part

to the term's inconsistent usage, and the way numerous commentators have used it inaccurately when apportioning blame for an excessive social reaction. The term has been applied so broadly by the media in reference to different phenomena that today it is often perceived as meaning an 'elaborate media scam' to deliberately 'spin social problems' (Cavanagh, 2007, p. 2). While the term implies that the scale of the response is disproportionately greater than the problem, it should be used judiciously as it is a common mistake to simply focus on the media's hyperbolic claims rather than fully examining the scale of the problem. It is easy for researchers seeking a conceptual model to fall into the trap of either underestimating the magnitude of a problem or overestimating the disproportionality of a reaction (J. Young, 2009, p. 13). Ungar (2001, pp. 279-281) argues that reliable indicators of a moral panic are often difficult to establish, and one of the key difficulties in utilising the concept is that it lacks the necessary criteria for determining proportionality. It is possible for people to panic over legitimate problems, and the empirical basis of any analytic judgements are essentially based on the authors own normative values of what is a rational level of concern, anxiety or alarm (Hier, 2008, p. 180; A. Hunt, 1997, p. 637). Garland (2008, p. 22) further questions whether objects can be known with any objectivity or if there are only ever subjective interpretations and representations, and if we are unable to establish proportionality the concept represents little more than a polemical value-judgement (Waddington, 1986, pp. 257-258).

Claimsmakers identified OMCs as 'folk devils' and the media both stimulated and reflected growing public concern. Without revealing what was known about the true scale of the problem, new laws were passed, and police powers were increased. After the laws were struck down by the High Court, several new iterations of the laws were subsequently introduced and every time the issue began to fade from the public consciousness it was

resurrected by governments attempting to appear tough on crime. Young (2009, p. 14) notes that continually reappearing in this way is the hallmark of a 'successful' moral panic. While the key elements associated with a moral panic are apparent in this case, the limited official data available made establishing proportionality much more difficult. The publicly available data regarding the scale of the 'bikie' problem suggests claims that OMCs monopolise the Australian methamphetamine market are wildly inaccurate, and that the response is the result of what de Lint and Dalton (2020, p. 1) refer to as 'runaway constructionism'. In this case generalised and inaccurate anecdotal evidence regarding the scope of the problem has seemingly been substituted in place of official data. However, the symbolism and emotion tied up in the representation and response cannot simply be translated into a figure that allows us to measure its appropriateness, and even in an era of 'post-truth politics' and 'fake news' moral panics are still built on core empirical claims (S. Cohen, 2002, p. xxxv). Thus, in effort to determine if the response is disproportionate, we have examined how all the various elements fit together in greater detail. The crime 'facts' as they have been presented to the public on this matter are highly questionable and as the foundation for what has essentially become a political crusade in recent years, it is concerning that anyone who seeks to review them or challenge the laws based on them is readily dismissed as a 'so-called academic' or 'bikie apologist' (Premier Rann in *Parliamentary Debates*, 2003, p. 542).

Moral panics typically reinforce stereotypes and exacerbate perceived differences between already marginalised groups and the rest of society, and lead to the creation of new laws which target them, which often allows governments to both increase social control in ways that would not otherwise be possible and reinforce their own authority. Thus, it is important to examine phenomena and determine whether they meet moral panic criteria so that, if so, steps can be taken to address the various issues such as equality, re-examine the continued

need for and any negative effects of resulting laws, and prevent the legislative measures from ‘creeping’ into other areas. It is also important to identify moral panics from an academic standpoint, and how they fit within existing framework, as it invites new perspectives and reaffirms the relevance of the concept in the social sciences and criminology. While Cohen’s model still provides a general guide, the conceptual base is now much broader, and sites of panic should be examined inductively so as to either support or challenge those conceptual limits. Vakalis (2013, p. 116) concluded based on Cohen’s model and primarily analysing newspaper articles, that without clear signs of widespread panic the initial introduction of the South Australian ‘anti-bikie’ laws could not be considered a moral panic. This highlights that one of the complexities inherent in moral panic analysis stems from researchers’ abilities to accurately measure public concern. However, there has been a considerable amount of research focussed on the moral panic concept since it was originally outlined by Cohen, and it has been continually revised and refined over the years (D. L. Altheide, 2009, p. 80). While Hall et al. (1987, pp. 61-63) discuss how the media translate official viewpoints into a ‘public idiom’ during a panic, which functions like a feedback loop between the media and politicians, Young (2005, p. 104) notes that older models of moral panic connected the media and agencies of social control, whereas nowadays the agencies of control ‘exist in a world of press release, spin and representation and counter-representation’. Heir (2008, p. 177) also observes complexities stemming from the way the traditional models stress the distinction between both media and society and politics and social control, and that today politics is interwoven with media considerations and the link between claims-making and social control is often much stronger. To this end Wright Monod (2017, p. 29) argues that Cohen’s model in singularity ‘is appallingly outdated for examining the complexities of social reactions emerging in the present-day era’.

McRobbie (1994, p. 211) highlights that the differences between what is ‘real’ and what is said in the media is not always clear, to which Hunt (1997, p. 645) adds that the differences between what the public thinks and what is reported in the media is often equally ambiguous. Stabile goes further suggesting that simply taking media ‘constructions of public opinion as evidence of consent is both intellectually and politically dangerous’, although Young (1999, p. 120) counters that even Hall et al.’s ‘Policing the Crisis’ (1978), one of the moral panic concept’s formative pieces of literature, was unable to determine with any certainty that there was consensus among the media or that public opinion was mobilised (Stabile, 2001, p. 263). In relation to accurately measuring concern Unger (2001, pp. 279-280) notes how any attempt is complicated by the way the vague and shifting outlines of public opinion are interpreted, and how these interpretations are readily susceptible to manipulation by politicians and other claimsmakers for their own purposes. Although many studies have similarly relied on media reports as a representation of public opinion, and media attention and public concern do generally correspond to some degree, Goode and Ben-Yehuda (1994, pp. 156-159) discuss the plurality of ways in which moral panics are manifested, and that concern can also be measured through such means as proposed legislation, action groups, or social movement activity. Ungar (2001, pp. 280-281) suggests that:

[the] evidence of media moderation appears to afford a better indicator of outbreaks of public concern than simple counts of media coverage

[and that] rather than drawing inferences from a single source or indicator, investigators are asked to look for clusters of cohering evidence.

There is often only a fine line between concern, alarm, and panic; and nearly 50 years after Cohen's original thesis, it is perhaps no longer reasonable for researchers to simply conclude what the public is thinking and doing based exclusively on what is written in the newspaper (Wright Monod, 2017, pp. 41-42). Wright Monod (2017, p. 48) offers that it may not, therefore:

...be necessary to source and include genuine public sentiment in the study of a moral panic as the legitimacy of a panic can be achieved with only a sense that the public is concerned.

Developments in our understanding of the phenomenon have both added to and questioned many aspects of all three of the prominent models first described by Cohen, Hall et al., and Goode and Ben-Yehuda. Over the years, theories of moral regulation and risk, the culture of fear, and collective emotion, have all threatened to overtake it in terms of relevance.

However, as a way of analysing the construction of social problems and unpacking responses to mediated crime and deviance, moral panic theory still has broad appeal. While the breadth of disciplinary perspectives makes any attempt at incorporating all of them in a single study somewhat impractical, a synthesis does seem to be the most promising direction for the continued applicability of the concept (Critcher, 2017).

Moral panics form in reaction to legitimate social problems, and while much exaggerated, the identified folk devils are themselves not complete myths and at least some of the labelling is justified. While their threat is not imaginary, the panic distorts our understanding of the actual problem (Barker, 2015, p. 20; Critcher, 2003, p. 117; Hallsworth, 2013, p. 90). Regardless of

how one chooses to define OMCs there are certain facts that we need to fully understand the gravity of; their members can be extremely violent and some of them leverage that potential to further their own goals. In this respect OMCs and the lives of their members do closely align with certain aspects of their more widely perceived image. Guns and drugs are not simply constructs of overly imaginative journalists, and while not necessarily always a part of the culture in quite the same way they have often been depicted, they are nonetheless a distinct part of the culture. In this respect some parts of the 'anti-bikie' laws, such as Firearms Prevention Orders and Public Safety Orders, could be judged as being one of the more proportionate elements. However, typically when the subculture is talked about in the mainstream media only certain aspects and particular incidents are mentioned, and although based at least somewhat on fact, all proportionality is lost, and cumulatively they produce a largely imaginary archetype. Essentially isolated incidents are discussed as if they are everyday occurrences and sometimes members of a rather complicated subculture are presented to the public in the form of evil caricatures. In this extreme version of the subculture all of its members are misrepresented as universally embodying only the worst traits and behaviours of a few. Mass media discussions do in some ways resemble the realities of club life, but the suggestion that members of OMCs are criminal kingpins and hyperbolically somehow harbingers of the apocalypse seem to have over time become ingrained on the social consciousness (Goldsworthy & McGillivray, 2015; Hallsworth, 2013, p. 81; Lauchs, 2013). The image of the OMC in this way mirrors the image of outsiders and folk devils everywhere, and essentially once a deviant has been identified steps can then theoretically be taken to control it, even if they are more symbolic than practical in nature (Ungar, 2001, p. 287).

Elements of this depiction of ‘the other’ have long existed in fairy tales, fantasy literature, and myth. This portrayal of the world is much easier to comprehend than reality, with a simple narrative whereby everything can be reduced to a basic binary of either good or bad, black or white, right or wrong. By using this imagery, the narrator has access to language that is universally recognised and can quickly and easily give context to a story. These same primordial fears can also be seen manifested in the way terrorism is presented today (Hallsworth, 2013, p. 82). By constructing reality in this way and placing the folk devil in this position, those in authority also have access to a ready-made strategy of management and control. This concept is effectively largely because of the emotional response it is able to generate. The power of the imagery and language comes from its ability to distil, exploit, and focus many of the community’s most deep-seated fears and anxieties, and with the right amplification then stimulate demand for a strong coercive control response (Hallsworth, 2013, p. 83 & 87). Once the myth is established everything the outsider, other, or folk devil does can then be framed in the same way. Everything can be given context and even evidence to the contrary rarely challenges the discourse, rather it becomes skewed and seemingly confirms the belief. Formulating coercive control policies in response to this discourse and the fictional enemy is rarely rational and proportionate to the social problems the folk devil poses (Hallsworth, 2013, p. 84). Thus, through this lens we can see why any attempt at reasonable and rational debate on OMCs is problematic. In an area where accurate statistics are scarce, the clubs themselves generally show hostility towards cultural outsiders, they have little interest in being studied, and perceive that they have little to gain, this narrative is unlikely to change. Through this study we have seen that the ‘truths’ of the discourse are vastly different from the ‘truths’ according to the members of the subculture, and that the real truths are likely located somewhere in between.

There are a number of limiting factors in the use of the moral panic model. Reactions to social problems are often labelled as moral panics, but in many instances it is more useful to discuss them in slightly different terms, such as risk management and harm avoidance (Critcher, 2003, p. 164; Hier, 2008, p. 174). Risk and risk management play a significant role in policy and governance, and they have had a significant impact on the way crime and criminal justice are conceptualised. Perceived risk and fears can often lead to ineffective, disproportionate, and counter-productive reactions from elected officials, however moral panics should not be conceptualised in terms of mindless behaviour by either the deviant group or the authorities, and rather as meaningful behaviour which is based on erroneous rationale (J. Young, 2011, p. 212). Traditionally moral panics are intense but short lived, and after authorities find solutions, the media start to lose interest. Many of the moral panics examined since Cohen established the model have mirrored this process, however in contrast at least three contemporary phenomena which appear to be moral panics have not. Public concerns surrounding terrorism, youth gangs, and OMCs all share apparent characteristics of a moral panic: distortion, exaggeration and symbolisation. All three grew rapidly and have seemingly maintained their momentum, yet show few signs of waning (Critcher, 2003, p. 164; Hallsworth, 2013, p. 89). This suggests that some moral panics now seem to be more permanent in nature (J. Young, 2005, p. 105). They can perhaps be better described as having a more recurrent form of a fearful moralizing and regulating dynamic rather than constantly operating at a peak as Cohen originally defined, despite retaining many of the other traditional features. However, even as a more generalised moral stance based on social anxieties, there are spasmodic waves of publicity and panic which are initiated and maintained by various social and political forces, that reflect Cohen's argument regarding volatility (S. Cohen, 2002, pp. xxxvi-xxxix).

The continued discovery and rediscovery of folk devils aligns with the post-welfare security state's need for a corporeal enemy to concentrate on. By focussing the community's attention on a mythic organised adversary, as opposed to the more obscure and chaotic reality of the situation, people are much less likely to think about the social and economic conditions that lead to crime and violence in the first place. Conceptualising and fully comprehending society and more specifically crime as a dynamic, unstructured, and complicated mess is not only challenging for those in power, but also incredibly problematic for them in terms of then providing a crime control solution and communicating, or rather selling, it effectively to the people. It is far more convenient for the people in charge if a problem can be broken down into small clearly defined and manageable pieces which can then be focussed on and the control apparatus can either contain or eliminate (Hallsworth, 2013, p. 103). By identifying folk devils and reacting quickly with extreme force politicians can prove their governing competence and expound their tough on crime bona fides within the paradigm of the developing security state. Law enforcement support the charade because it gives them a prominent display of symbolic policing which serves as both a tremendous public relations gambit and a superb opportunity to acquire further resources (Hallsworth, 2013, p. 104).

McRobbie (1994, p. 192) suggests that:

Moral panics remain one of the most effective strategies of the right for securing popular support for its values and its policies... However, it has become, over the years, a standard response, a familiar, sometimes weary, even ridiculous rhetoric rather than an exceptional, emergency intervention.

As such, Hier et al. (2011, p. 260) discuss widening the focus of moral panic analysis, arguing that the traditional way in which moral panics have been conceptualised, in terms of their short, intense and re-occurring nature, needs to be extended, and that they should be considered as episodes of conflict and debate that develop as part, and in support, of a broader and continuous process of moral regulation. Moral regulation in this sense is not simply a monolithic social control effort carried out by the state or ruling elite, it is a wide-ranging kind of social control that is primarily based on changing the way people perceive themselves and the way they live their lives through persuasion rather than coercion (Ruonavaara, 1997, pp. 284-285 & 289-290). Hier et al. (2011, p. 272) suggest that while sensationalised folk devils represent flash points for short-term panics, moral panic analysis should also include the underlying issues associated with existing regulatory measures. Thus, a moral panic can be seen as essentially both a dispute over the attribution of blame and dispute over what kind of regulatory responses are reasonable for issues of crime and order maintenance. Further, by 'conceptualising moral panics as formative moments in the long-term reproduction of social order', panics can be understood as routine and rational expressions of social action (Hier, 2019, pp. 883-884).

Moral panic theory was originally grounded in concepts of essentially monolithic hierarchical power, absolute truths, and deliberate political lies, and it was expressed in terms of binary oppositions. Discussions of moral regulation or outbreaks of moral panic are often still somewhat limited by the traditional model's foundations, which no longer accurately reflect contemporary social structures and power relations (Horsley, 2017, p. 88). However, postmodernist conceptualisations that suggest power is dispersed across a multiplicity of sites and actors, are not bound by language that implies any kind of dichotomy. This is not to suggest that there are no binary divisions, but that points of resistance are more fluid and in a

constant state of flux (Foucault, 1978, p. 96). Foucault posits that ‘we are entering the age of the infinite examination and of compulsory objectification’ (Foucault, 1977, p. 184). In ‘reconceptualising moral panics as extreme instances of risk discourses within the process of moral regulation’ (Critchler, 2009, p. 17), we can see that the analytic tools governments use and the data they produce are the result of specific knowledge and ideas, and are essentially imbued with power that is intended to guide the conduct of those being measured. Therefore, how something is quantified is subject to various political and cultural values, interests and capacities. As a separate expression of power, disciplinary power seeks to neutralise resistance through criminalisation, and the expansion of criminal law makes individual freedoms and rights vulnerable to disciplinary and governmental incursions. Although, in the Foucauldian tradition, the episodic panics that target deviants are not conceptualised as the result of binary morality, but instead as a plurality of value interests. Consequently, it can be seen that the original moral panic model is now simply a starting point, and in drawing relevant conclusions it is necessary to observe a much wider field of view.

Conclusion

This chapter started by examining the meaning and relevance of an evidence-based approach to policy making and considered some of the issues that stem from anti-association laws and the Australian Constitution. It then discussed civil liberties and rights and further explored some of the key concerns that previous chapters have raised, such as the importance of preserving the balance between liberty and authority, and how guarantees that human rights and civil liberties will be observed become more necessary in the face of the constant expansion of government powers. While the crime and violence associated with members of OMCs is concerning, as Nietzsche (1997, p. 52) warned ‘[h]e who fights with monsters should be careful lest he thereby become a monster.’ The chapter went on to revisit moral

panic theory to see how the research fits within the concept's framework. It found that using Foucault's understanding of power allows us to interpret how the goals of the various actors in their conflicts over knowledge and truth, and the role of governmental and disciplinary power in defining the other, define the norm. This led to the conclusion that while Cohen's original moral panic model provides useful place to begin any analysis, the concept has expanded such that it is no longer sufficient on its own to determine if a phenomenon is or is not a moral panic. The concept has been advanced by a number of key scholars since it was originally expressed, and it is thanks to their contribution to the field that this study has been able re-examine the South Australian 'anti-bikie' laws and conclude that a moral panic over 'bikies' likely led to the creation of largely symbolic preemptive 'anti-bikie' laws that do little more than act as moral boundaries.

Conclusion

This thesis was inspired by claims that OMCs were ‘the biggest threat to society’ after terrorism (Barrett, 2004), that they controlled ‘75 per cent of Australia's methamphetamine trade’ (Robinson, 2007), and that they were expanding into people smuggling and sex slavery (unattributed, 2005). A cursory investigation of literature from the popular culture sphere, much of which was from North America, largely concurred suggesting that ‘1%’ OMCs were the criminal organisations politicians, the police and the media claimed them to be. However, the limited official statistics failed to support such claims, leading some researchers to label the phenomenon a moral panic, and others to refute it. During the course of the research a number of states’ laws came under scrutiny, the most notable academic inquiries coming from Lauchs and Goldsworthy in relation to the laws in Queensland and the ACT, and the Queensland Government’s own Taskforce on Organised Crime Legislation. In both those states it was found that the threat OMCs presented did not match the magnitude of the government’s response. The most recent statistics have further indicated that OMC members can only be linked to a very small number of drug trafficking networks and that only a small number of known members are responsible for much of the crime associated with the subculture. While the limited scope of the infield research makes drawing firm conclusions difficult, it indicates that the laws have ‘hardened’ the outlook of the existing members, prevented them from engaging in the traditional subcultural activities to the same extent they previously had, and changed the kind of members the subculture attracts, although members of three of the then five ‘1%’ clubs active in the state argued that the vast majority of members still adhere to a more traditional subcultural outlook. Despite the laws having disrupted the activities of OMCs and appearing to have reduced street level expressive acts of violence, they have not achieved their other stated aims of dismantling and ‘wiping out gangs’, nor have they seemingly reduced OMC members’ involvement in organised crime

type activities.

Chapter one explored who and what an ‘outlaw’ is, the subculture’s reciprocal relationship with popular culture, the Australian ‘bikie’, and the evolution of South Australian OMCs. It briefly discussed how an identifiable ‘folk devil’ is a fundamental element of the moral panic, and as the ‘folk devil’ in numerous episodes of moral panic, the OMC has continually evolved through processes of deviance amplification and secondary deviance. OMCs have been highly visible in Australia since the 1960’s and it was argued that how they are more widely perceived today is essentially the result of a collection of prejudices built-up over more than fifty years. The public’s perception of Australian OMCs has been shaped by a number of high-profile and extremely violent incidents, and while subculture has evolved in a number of ways over the years, to mainstream society the biggest change has undoubtedly been a shift toward organised crime and the production and distribution of methamphetamines. The central premise of South Australian ‘anti-bikie’ laws is that OMCs are violent criminal organisations which monopolise the methamphetamine market, and that they cannot be dealt with by traditional means. Thus, this chapter examined what is known about the scale of the problem and explored the literature regarding the role of the club structure in any of the organised crime type activities of its members. While the limited publicly available data does not provide significant detail regarding the problem in South Australia, it does give a reference point for comparison with some of the claims made about it. The chapter therefore concluded that although the true extent of OMC members’ involvement in organised crime could not be determined, nor the percentage of the methamphetamine supply they are responsible for, what could be determined is that many of the claims are inflated. The subculture is hypermasculine and machismo plays a large role in many of the violent crimes its members have been convicted of, so the chapter looked at the

meaning of violence within the subculture, discussed the difference between expressive and instrumental violence, and the effect it can have on the way the other criminal activities of some of its members are reported by the mass media.

Chapter two discussed the moral panic as both a concept and model. The term suggests that a social issue of some kind, which is perceived as posing a significant threat to society, has led to hysteria and a legislative overreaction in response. Led by claimsmakers and moral entrepreneurs, and stimulated by the mass media, moral panics use problems as symbols that play on people's fears to drive changes to policy or law (Drislane & Parkinson, 2002).

Politicians have a long history of emphasising various threats in order to stimulate fears and generate support for new crime control policies. This tactic is particularly common as a way of motivating voters in the lead up to an election, and a 'tough on crime' stance is often politically successful because crime is a constant concern for the community, and as such receives considerable mainstream media attention (Furedi, 2005; Veno & van den Eynde, 2007, pp. 490-491). As the issue builds momentum, the perceived threat of the evildoers becomes amplified (Veno & van den Eynde, 2008, p. 3), and these actions develop into a moral panic when society's deep seeded fears and anxieties combine with the imagery used in the mass media's story telling format and become mobilised (S. Hall et al., 1987, p. 165).

Cohen (2002) identified several key elements in the way the mass media construct/present a moral panic: exaggeration, distortion, misreporting, misleading headlines, multiple reporting of the same incident, and demonology. Goode and Ben-Yehuda (2009) further defined the key elements as: concern, hostility, consensus, disproportionality, and volatility. The chapter went on to explain the interrelated issues of labelling, deviance, criminalisation, crime reporting, quantification, narrative, and how the thesis would unpack the problem. It then examined the 'anti-bikie' laws as an example of the paradigm shift in the way legislators

have come to conceptualise nature of control in recent decades. Today governments seem to perceive the unknowable nature of the future as a problem, and in a society governed by risk management, their solution has often been preemptive. Cohen's original moral panic model was based on a top-down conception of power, with universal truths, and deliberate lies. However, Foucault's theories provide an alternative way of conceptualising these issues (Hier, 2002b, p. 52). He argued that instead of being exercised by individuals or groups, power is spread throughout society and is in a constant state of flux. The chapter concluded with a discussion of subjugated knowledge, the utility of qualitative research, and some of the problems found in regard to in-field research.

Chapter three examined drug abuse, the Australian methamphetamine problem, and the OMC subculture's links to it. As previously discussed in chapter one, the various data sources suggest that OMCs do not control or monopolise the market (Hughes et al., 2020), and that most of the serious offences have been committed by a relatively small number of club members (A. Morgan et al., 2020). Thus, the Australian approach seems, based on its stated aims, to be largely the result of misattributing the activities of individual OMC members to that of the group, and outwardly aligns with the way moral panic theory suggests a 'folk devil' is constructed and responded to. The chapter then looked at the ways different Australian states have approached their 'anti-bikie' focussed organised crime laws, highlighting their similarities and weaknesses. One of their glaring weaknesses was shown as being that their mutually recognised declaration and control orders schemes are overly complicated, resources intensive, and do not work. Further the potential for similarly broadly worded laws to have unintended consequences was shown under Queensland's 'VLAD' legislative suite (and later discussed in regard to NSW' consorting laws in chapter seven). This led to a discussion about symbolic laws, criminalisation, and the history various

Australian states and territories have of borrowing innovative new legislation from each other, regardless of its effectiveness. This kind of cross-jurisdictional borrowing is particularly concerning in cases such as the ‘anti-bikie’ laws, which this thesis suggests are likely the result of a moral panic, as the political utility of what amounts to symbolic legislation has allowed the extraordinary preemptive measures first used in ‘anti-terror’ laws to be further normalised in ordinary criminal law.

Chapter four narrated the introduction and evolution of the South Australian ‘anti-bikie’ laws and analysed the discourse as a way of deconstructing events. When OMCs were identified as folk devils, the idea that they pose the single greatest organised crime threat to the South Australian community gained momentum and otherwise corresponds relatively closely with the moral panic cycle as explained by Cohen, Hall et al., Critcher and others. Claimsmakers made numerous claims regarding the severity of the problem, the government passed extreme laws to ‘solve’ it, and after the clubs fought the legislation in the High Court the panic was seemingly over. However, having seen the South Australian Premier’s success in the polls, politicians in other states followed Mr. Rann’s example and variations of the laws spread nationally. The moral panic seemingly came full circle when the South Australian legislation was amended to ‘mirror’ that of other states, and after nearly two decades the ongoing nature of the panic seems to have countered the traditional model’s short-term timeframe. The discourse analysis revealed that while there was a significant level of inflation on crimes allegedly related to OMCs, without a second source of data or a baseline for reporting similar kinds of crimes, it could not determine how this level inflation might differ from reporting on other issues. As a yardstick for measuring public concern in relation to OMCs, it was evident that violence is perceived as a bigger problem than drugs, and similarly that shootings are perceived as a bigger problem than methamphetamine.

Chapter five discussed the way that various issues are approached by politicians, police, and the mass media based not only on the size or potential threat, but also on how they align with their own individual and organisational needs. Even when a threat is serious, the way it is depicted may be exaggerated and misleading, as facts and discerning analysis can easily become obscured by rhetoric (Beare, 1997, p. 156). Although there are many conflicting interests, the mass media are typically driven by exposure and advertising, politicians by election/re-election and maintaining the status quo, and the police by maintaining order, increased resources in order to do that at an organisational level, and often by a genuine desire to do what they believe is best for the community at an operational level. As the mass media has the power to influence its consumers, it is in the best interests of politicians and the police to engage with it in a way that ensures they are all able to achieve their goals. A feedback loop thus exists between the mainstream media, politicians, police, and public opinion, and the result in this case is purely symbolic legislation that does little to address the underlying issues. While their various institutional goals all vary and may conflict at times, even within each institution, they all also unite in favour of maintaining order and, in the case of this research, they appear to be largely in favour of the ‘anti-bikie’ laws.

Chapter six examined issues stemming from previous discussions of power and subjugated knowledge in chapter two by hearing the perspective of members of local Adelaide based clubs and chapters. In an effort to address both the issues of exaggeration in claims about the nature of the subculture and its members behaviour, and how the laws are being used, the chapter reported the results of infield research focussing on members’ experiences of the more recent evolution of the subculture and their perception of the impact of the ‘anti-bikie’ laws and associated control measures on it. In combination with various other pre-existing

sources of information the chapter investigated: what the clubs represent, why they exist and who their members are, the concept of ‘brotherhood’, their rules and behaviour, club ‘colours’, their structure and hierarchy, club sizes and the age of their members, how members are employed, and their involvement in crime. It then discussed long-term changes in the subculture, the emergence of ‘Nike bikies’, and the nature of clubs’ extended networks and support clubs. The interviewees argued that while the laws and associated control measures have had a significant impact on the subculture, it has retained a largely traditional outlook, and although it will continue to evolve, it still does not resemble what claimsmakers have declared it as being. The interviews highlighted that whether or not the laws are deemed as being effective depends largely on how effectiveness is measured as they have reduced public displays of violence. Thus, while the violent nature of the OMC subculture is a problem that should not be minimized, and although it does require a strong policing response, it does not require the same kind of specialised organised crime laws.

Chapter seven discussed the meaning and importance of evidence-based policy and examined some of the issues associated with anti-association laws and the Australian Constitution. It then looked at the importance of civil liberties and human rights in order to address some of the key concerns that previous chapters have highlighted, such as the importance of preserving the balance between liberty and authority, and how in order to counter governments’ constant efforts to expand their powers guarantees that essential liberties and rights will be observed become more necessary. The chapter finally revisited moral panic theory to see how the phenomenon fits within the moral panic framework. Based on Foucault’s understanding of power this study argues that while Cohen’s original moral panic model is useful as a starting point, the concept has expanded such that it is no longer sufficient in isolation to determine if phenomena meet the moral panic criteria. A number of

key academics have advanced the concept, and it is thanks to their continued efforts this study has been able re-examine the South Australian ‘anti-bikie’ laws and conclude that a moral panic over ‘bikies’ likely led to the creation of largely symbolic preemptive ‘anti-bikie’ laws that do little more than act as moral boundaries.

The ‘anti-bikie’ laws are a relatively recent regulatory phenomenon that have been predicated by an incremental demonisation of a decades old subculture which is constantly evolving and has both positive and negative attributes. OMC members proudly identify as ‘outlaws’ and place great value on freedom, however the state has redrawn the boundaries of the law around them such that they are now amongst some of the most heavily regulated groups of people in Australia. OMC members often join because they share particular interests, however membership typically leads to identity fusion whereby their individual personalities begin to change to reflect that of the group. Their tribal mentality is manifested through brotherhood, colours, Harley-Davidson motorcycles, territoriality, and extreme machismo. This hypermasculinity often play a central role in the crimes members commit. They are involved in acts of both expressive and instrumental violence, but as violence is a key feature of news reporting, it has typically been the public displays of expressive violence that have attracted the most mainstream media attention. Given that OMCs thrive on their notoriety, and they tend to encourage their reputation rather than challenge it, this level of ongoing mass media attention has significantly inflated the public’s perception of their criminal activities. This thesis argues that exaggerated claims have been supported by the mass media and created waves of fear which have then both led to and been further encouraged by various government initiatives, in a way that closely aligns with the moral panic model. Moral panics normally reinforce stereotypes and exacerbate perceived differences between marginalised groups and the rest of society, leading to the creation of new laws that target them. Although,

moral panic analysis in this case is complicated because OMCs intentionally and actively marginalise themselves, meaning that claims cannot be examined in the same more straightforward ways that other groups who reject such marginalisation can.

It is important that situations such as this are examined to determine whether they meet the moral panic criteria so that if they do, steps can be taken to understand any negative effects stemming from the laws and control measures, re-examine their continued need, and provide a reference point to help prevent further legislative moves in that direction. From an academic standpoint it is also important to identify how moral panics fit within existing framework, as it invites new perspectives and reaffirms the relevance of the concept.

Goode and Ben-Yehuda (2009, pp. 37-43) listed five key elements that constitute a moral panic: public concern, hostility (toward the group in question), consensus, disproportionality, and volatility. Most scholars agree that the key to determining whether or not a particular phenomenon meets the criteria moral panic is to establish that distortion and exaggeration have led to disproportionate reaction (Cavanagh, 2007, p. 10; S. Cohen, 2002, p. xxxiv; Goode & Ben-Yehuda, 2009, p. 41; J. Young, 2009, p. 13). Chapter four found all five elements to be present, and the available evidence suggests that the 'anti-bikie' laws are disproportionate, however a lack of publicly available data makes it difficult to accurately measure the level of exaggeration and distortion in reporting regarding OMC members' criminality. While it is possible to show that the claims used to justify the laws were inflated, as numerous key claims made regarding the nature and activities of the subculture are not supported by the limited evidence, disproportionality cannot be proved. In such cases, Cohen (2002, p. xxxv) asserted that 'the judgement of proportionality can and should be made – even when the object of evaluation is vocabulary and rhetorical style alone.' This thesis

therefore finds that the South Australian ‘anti-bikie’ laws are likely disproportionate and the result of a moral panic. Although the construction and regulation of ‘bikies’ can be seen as a poignant example of over-criminalisation and symbolic ‘law and order’ policy making, it is also apparent that there are several individual OMC members who do represent a serious criminal problem and who the police do need to focus attention on, which based on the stated aims of the laws suggests that policymakers could simply be misattributing organised crime at group level. This research has relied on critical theory, and two of its key aims are contesting beliefs and opening or continuing a dialogue about social change, therefore it is hoped that in examining the phenomenon this study does just that.

This thesis set out to examine what impact the ‘anti-bikie’ laws have had and based on that, to suggest a logical course of action. While the in-field component of the study was regrettably limited, this research identified long-term changes in the OMC subculture that the laws seem to have amplified, and although they have reduced street level expressive violence which the discourse analysis revealed is most people’s major concern, if we accept the ACIC figures at face value (Dowling & Morgan, 2021, p. 7) the laws do not appear to have had a positive effect on decreasing club members’ involvement in organised crime which was the stated problem they were said to address. Such deviance amplification and secondary deviance aligns with Cohen’s original moral panic framework. SAPOL has acknowledged that the ‘anti-bikie’ laws have not been effective against organised crime, primarily because of their complicated and resource intensive nature (*Inquiry into Serious and Organised Crime: Clarification of SAPOL's evidence*, 2015, p. 18). Thus, from all the information gathered and examined throughout the course of this study, the most reasonable and logical next step for legislators would be to commission a review of the effectiveness of the ‘anti-bikie’ laws similar to that conducted in Queensland, and the review conducted in the ACT to

ascertain the need for such laws, in order to establish some ‘hard numbers’ on the scope of the problem. This would likely confirm the Queensland inquiry’s conclusion that their laws (which the SA laws were said to ‘mirror’) should be amended or repealed (and perhaps be replaced by the British style SCPO which is more proportionate because of its focus on the individual rather than the group). Public perception is not an accurate measure of the actual problem, and the comprehensive collection, examination, and interpretation of crime figures is a vital starting point for the creation of any criminologically sound and effective crime laws. The dearth of data surrounding the crimes committed by members of OMCs and the effectiveness of ‘anti-bikie’ legislation further highlights the need for crime data to regularly be published. When new criminal laws are passed, any legislation that cannot be open and transparent for specific reasons relating to their nature should be independently reviewed so that their benefits can be weighed against any unintended consequences. However, it also crucial when such reviews take place that any identified issues are then addressed. This study also found that government’s freedom of information policies are in dire need of an overhaul, so that it is possible to review the processes behind various government decisions.

This thesis’ original contribution to knowledge is that the public’s perception of South Australia’s OMC problem is inflated, that legislators have misattributed individual members’ organised crime activities at club level, and re-enforces previous suggestions that the ‘anti-bikie’ laws were likely introduced and continue to evolve as part of an ongoing moral panic. By interviewing members of the subculture it gives further insight into how the laws are being used and the effects they are having, provides an up-to-date picture of the OMC problem, and suggests that while deviance amplification and secondary deviance have eroded the traditional subcultural values, it does not appear to have devolved to the point that it exists primarily for criminal purposes (N. Hunt, 2019c). In determining that the South

Australian 'anti-bikie' laws are likely the result of a moral panic, this research underlines the complexity involved in moral panic analysis nearly fifty years after Cohen's original thesis. The differing conclusion of scholars' analysis show that while Cohen's model is extremely useful, it is no longer sufficient in determining whether a phenomenon can be classified as a moral panic. Numerous critics have argued the need for revision of the moral panic framework, and the broader moral panic literature is now so wide that the concept is at risk of becoming obsolete, however the continuing work of a few key scholars such as Ungar, Hier, and Rohloff have ensured its ongoing relevance. This thesis gives back to the discipline by emphasising the value of interpreting the modern moral panic theory through Foucault's post-modern concept of power/knowledge and enhances academic understanding of OMCs in regard to both moral panic and in the local context.

It is both logical and expected that governments will take steps to control organised crime and provide police with necessary the tools and resources to do so. However, various pieces of legislation within the South Australian 'anti-bikie' laws are overly broad, resource intensive, complex and largely unworkable. Further, the declaration and control order scheme radically favours security over liberty, creating a dangerous legal precedent. Despite various state governments around Australia passing similarly extreme 'anti-bikie' laws and spending astonishingly large sums on enforcing them, the drug problem which has been associated with OMCs has not been eradicated for the simplest of reasons; market demand. The fundamental characteristic of organised crime is that it is motivated by financial gain, and while we do not know how big the black market is, nor if law enforcement strategies have any significant impact on it, what we do know is that the drug problem cannot be addressed effectively by policing alone (Quaedvlieg, 2020, p. 175). So, perhaps by targeting the root cause, creating more effective proceeds of crime legislation and re-examining drug policy,

there would be a more positive impact in dismantling organised crime groups without violating basic human rights and civil liberties (Schloenhardt in Macey, 2009). However, it is yet to be seen if more progressive ideas about decriminalised or legalised drug markets will ever be politically viable in Australia.

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Appendix

Interview One

What do club members do at weekends, what makes their lives different from the average persons?

Ride motorcycles and hang out with mates. Ride together with a group of brothers. The 'Grey Nomads' and four-wheel drivers do a similar thing in some ways; they get out there and enjoy the country. It's bikes, brotherhood and belonging. A lot of blokes come from a background without a lot of family support and this is their sense of belonging to something bigger, their family. Before these laws we/they were seen, now the clubs are still here, They're just unseen. There has been a gangster element in some clubs but it's never been all clubs and all members as the law makers and police have the public believing. With the government pushing clubs underground and by the police harassing us, the older blokes, more sensible blokes, family men with kids, business owners – the guys that were the stabilising influence on the club scene – they're leaving. Particularly in the last few years, so the future...I think will see the clubs becoming more covert. There was one guy who was in a club and he went to uni and studied to be a lawyer. He was told that if he stayed with his club, he wouldn't pass the bar. That was probably about six years ago – he was given a choice, his club or what he'd worked hard for, He chose his career. Some would see this as a win for the laws but I see it as unfair on his individual rights and an example of pushing the decent blokes out of the clubs leaving those who are more anti-social which will only serve to make them 'harder' against the law and society as they see themselves as victims of an unjust system

Why are members involved with in outlaw motorcycle clubs?

There's a real commitment to each other, loyalty to brothers, and for a lot of blokes, particularly the newer members and noms, the club comes first, above all else. Blokes come

from different backgrounds, boys homes and state care some of them, so the club becomes family. And that can make the club/ own family balance difficult. Being a biker, especially now, can be a kind of contradictory thing, riding your bike used to bring a sense of freedom now you have to sacrifice a lot of freedom to get freedom. There's the freedom on the bike and what not, but being in the police spotlight is really a massive invasion of privacy. In general, most police seem to see all bikers as criminal, so there's a lot of harassment. It's part of the way the police and everyone else who doesn't know you reacts to your image, an image made negative by the media. Even in my club we've had the police coming around trying to infiltrate us, undercover police posing as bikers to investigate us. I've had my phone tapped by police, my home raided and one of our members who's a single dad was monitored for weeks, with two cops following him when he took his kids to school and when he picked them up. There's been a huge waste of policing resources gone into this whole thing

How would you describe involvement in a club?

Now? The pressures of these new laws and all the police attention has really made the clubs harder, harder and smarter. Things never get said in e-mails or on the phone anymore because you never know how they might find a way of using it against you. It could be as innocent as arranging to meet up with a couple of mates for a beer or a coffee

Once members have joined, what makes them stay?

Loyalty makes it hard to leave. When you hear talk about guys getting flogged when they leave it's usually because they've done something bad to get kicked out. When you hear talk about the club taking a guy's bike when he leaves it could also be that the newer style of clubs give members' bikes when they join, so it's really the club's bike. With the older style of clubs, like the Gypsy Jokers, members tend to be bikers first and already have a bike when

they join, whereas the new style of clubs, like the Comancheros, in this state, not necessarily in other states often recruit from street gangs or the prison system and so they don't have bikes when they join up because they don't ride. Other old school clubs are the Descendants and the Finks - now Mongols, some of the older members didn't go across but dropped out.

What would make members drop out?

Police pressure gets rid of the wrong members – the good influences. It puts a lot of pressure on the families. No one wants the cops bursting in to their homes in the early hours terrorising their kids. Harassment at the workplace, unfair pressure from police especially on small businesses. Look at the Tattoo shops. There was even a younger member of one of the clubs that worked at a major multi-national corporation and when the police notified management, he got the sack straight away.

How important is the club in members' lives?

It's the most important thing, but the life /family balance can change that.

What sort of work do club members do?

Across the board there's a huge range of jobs. From labouring in the building industry, earth moving, trucking and tattooists to small business owners and white-collar workers.

How have the anti-bikie laws affected members? Their families? Their friends?

Well, club members can't do a lot of things like attend each other's weddings or funerals, or be seen together in public. Visas for foreign travel are often denied, even interstate travel can be difficult, and then of course there's the well-publicised deportations for members who aren't Australian citizens even if they've lived here for more than 20 years.

How have the anti-bikie laws changed the lifestyle?

Every thing's out of the public eye, and the criminal activity that is there, which as we know by legitimate stats. is minimal just goes further underground.

Do you think it's fair that politicians and the media have linked outlaw motorcycle clubs to organised crime and violence?

It's not fair, whatever happened to the Aussie 'fair go' and the supposed Aussie morals and ethics? There was a time when some blokes brought it on the clubs – with public fights etc. But it's gone well past that. These laws infringe on peoples' rights. The clubs have always said 'IF we're doing something wrong and we get caught, that's a fair cop, but don't make us criminals by who we choose to associate with, that's not fair at all'

How have these new laws changed the club, the way it works, the types of guys involved?

Have they made it more disciplined?

The whole thing's gone underground, more and more it's young thugs rather than motorcyclists who join clubs. The old school values of 20 years ago were bikes, brotherhood and parties, but the new guys don't have the old values of honesty and respect. There's been a shift in club culture, for instance in the old days a guy would never get hit in front of his family. The laws are sort of becoming a self-fulfilling prophecy, in the future many clubs won't be motorcycle clubs at all anymore. Maybe they'll still have all the MC imagery but more and more they'll become street gangs. It used to be all about the bikes but it just isn't in the newer clubs. Old school club still exist and sons and nephews join after their fathers and uncles but it's getting smaller.

What do you think these laws have achieved? What do you think they will achieve?

One thing's for certain, they haven't done anything positive. The law makers and police may say that because clubs aren't riding around in groups any more the laws are working, but that's only on the surface. The big concern is that power is being taken away from the judiciary and being given to politicians who only hear one side of the story and use that power for political gains and games rather than the best interest of the people they are supposed to be serving. They have pulled the wool over the public's eyes with these laws under the guise of keeping them safe from 'bad bikies' now these laws are in place who will they be used on in the future?

Interview Two

What do club members do at weekends, what makes their lives different from the average persons?

It's about something stronger than just friendship, people you can rely on more than general friends. It's a military style of friendship and there's a military like structure, everything goes through the committee, in that way it's organised. Everything, individual behaviour – fuck ups – all come back on the club. The club is not [necessarily] all-inclusive of members' behaviour. All of the clubs are very different, we get called 'old school', we're still about what we have always been about. There are some clubs that have become 'Nike bikies' or 'plastic gangsters', but like I said, all clubs are different.

Why are members involved with in outlaw motorcycle clubs?

Well, I met blokes who ride, became friends with them, and it just became the club. It's kind of like a secret society, you're curious about what you hear. It's about a group of like-minded people, but even then, there are different groups of guys within the club. There's guys that like to smoke, there's guys that like to drink, and then there's guys like me that'd rather race.

How would you describe involvement in a club?

Well, being on the committee can be like baby-sitting a bunch of kids at times, just trying to keep everyone on the same page. You know some guys have criminal records before they join the club, and people always bring that up, but the club keeps them in line. We don't tolerate ice, it can really change a bloke's personality, so they get thrown out.

Once members have joined, what makes them stay?

It's supposed to be a free country, so don't tell me what to do. The reason you join a club is freedom, and this authoritarian attitude... like trying to ban colours up in Queensland, it's like what the English did to the Scots.

What would make members drop out?

Women. The club is a huge commitment. I said to my wife once in an argument when she said that she clearly wasn't my first priority; first is my bike, second is my club, third is my wife. All the police pressure just makes me dig my heels in harder. Something that wasn't illegal, and now is? I don't listen. Basically, guys who've done their time in the past, paid their debt, are effectively getting re-prosecuted by these laws. It's like double jeopardy.

[Discussing the friction/animosity between clubs and police] It's possible this whole thing between police and bikers started in the Vietnam era when my club was formed because police were free from conscription and that upset a lot of the veterans who'd been conscripted. But still, veterans can often find that same brotherhood by joining clubs or by joining the police.

How important is the club in members' lives?

Right at the top. Number one. It can be everything, but you find your niche over time. You prospect for twelve months, then there's two years probation, and after about five years guys tend to decide whether it's really for them.

[Discussing media attention and when asked if it had changed anything] When the laws first came in there was a bit more interest and it's a little bit quieter now, but not really, no.

What sort of work do club members do?

Motorcycle shops are one but there's only a few guys in this state, more transport/trucking, and sex shops, there used to be tattooists before the laws... what's going to be legislated next? I can understand some guys with criminal records not being 'fit and proper' in the security industry, but the prohibition on firearms for all members?

How have the anti-bikie laws affected members? Their families? Their friends?

There hasn't been much direct impact on families, but people certainly look at you differently. It hasn't affected my friendships because I've never hidden the fact that I'm in a club.

How have the anti-bikie laws changed the lifestyle?

They've fucked the lifestyle. We can't have a meeting and then go to a couple of pubs like we used to do. We can't even go on runs together; we have to meet up over the border. A lot of the reported problems come from that friction with the police.

Do you think it's fair that politicians and the media have linked outlaw motorcycle clubs to organised crime and violence?

It's not fair. There have been links in certain circumstance but it's not fair as a whole.

[Discussing the difference between members and associates in the crime figures] Some people say they're members to boost their reputation, some people assume that a guy is in the club because his friends are, and during prosecutions some people claim they committed crimes because they owed money to bikies to help when it comes to sentencing.

How have these new laws changed the club, the way it works, the types of guys involved?

Have they made it more disciplined?

Clubs are still clubs; the structure hasn't changed. There's not as many runs, or club houses etcetera, so we're forced to sneak around, almost like the I.R.A. We meet at private residences now. There's this thing the police are doing where they charge someone under the laws and then drop it, and charge again, and drop it again, that way the laws can't be tested in the High Court. But it's a two-year on-going process.

What do you think these laws have achieved? What do you think they will achieve?

Pissing people off. It doesn't affect crime and violence. Just look at the Queensland figures, crime and violence has gone up since the introduction of their laws. There's probably more violence in and round bars now, because people don't tend to start violence when club members are there.

Interview Three

What do club members do at weekends, what makes their lives different from the average persons?

Clubs are like extended family, most clubs started like that and at least some still operate that way. Like in a country town or small geographical area, where a big extended family play together, drink together, and do their hobbies together. A group of likeminded people with the same cultural core. Similar to mates from a footy club or country town or extended family, but we're motorcycle orientated, they're our common bond. It's mateship, it's often called brotherhood but that's sort of an American term, more like cousins. Much of the terminology is mimicked or bastardised from the Americans but Australia really is a bit different. A lot of the clubs originally had a lot of ex-military members, particularly after Vietnam, hence the military ranks. But others didn't, and they don't. Club life is (for younger members at least) all about riding, drinking, and chasing girls. There's not always that same hierarchical structure in clubs without military origins. Not even those same terms like 'president', there's someone who's more like a spokesman. Perhaps a more senior member, someone to talk to police, media, or academia. Not necessarily voted in, just someone who doesn't mind doing it, and is okay at it. Generally, or not necessarily the toughest, just someone with an even temperament who's good at disarming tense situations. Neither is there necessarily a Sargent at Arms. Imagine a big family where dad or granddad is the patriarchal head of the family, and mum's the treasurer. If everybody has an understanding about how the club works, then those strict roles aren't necessarily needed. If a teenage kid is running amok then the family will try and warn him but he is his own person. Smaller clubs really are much more like families. Those clubs with massive memberships do need to be run differently though. All the clubs tend to get labelled as if they were one, not only in structure but also in terms of crime. Misbehaviour is not top-down, it's bottom-up. Those members

aren't acting for the leaders or for the group, they're acting against. Most of the police, like the Crime Gangs Task Force, know the reality but they won't go on record. Being classed as an associate is something, but they probably don't have any real police issues other than when they apply for a licence or a government job or contract.

Why are members involved with outlaw motorcycle clubs?

It's family. We're likeminded. We like bikes, we like the company. It's a tribal instinct, we amalgamate around our common interest. It's a friendship based on similarities. Clubs have a unique little spot in that and exist for a myriad of reasons. But there's a cultural attachment to Motorcycle Clubs that's different to say golfers or hot-rodders.

How would you describe involvement in a club?

It's different for everybody. Some people really thrive in the club culture, in terms of self-worth and self-esteem. Most outsiders who get to know us say we're nothing like what you'd think. It's all laughter, half pissed people laughing their heads off. We're the most legislatively oppressed people and the police are generally waiting for us halfway down the street when we go anywhere, but we're just having a laugh. We're not getting together in secret to plan the end of the world, we're piss-taking, having a good time, finding release. Laughing at what can be a pretty dismal life. Drink, roar, chase tail. It's on a different level than a footy club but it's also the same thing. It's respite. We congregate, share stories, and have fun. We get on the turps together and have a good time. It's our sanctuary from the rest of the week.

Once members have joined, what makes them stay?

If you're enjoying the experience, and if you bond with likeminded people then you take on their values. It's tribal, with colours, and sharing the geography. You identify with your club mates, the badging, and the lifestyle. There's a variety of reasons for different people, but a majority just really enjoy the journey. It's about enjoying life and the people. If you're not doing that much wrong and the police are coming after you all the time, all of that police attention, speculative reporting in the media, house being raided, then it's fight or flight. You push back, it's resistance. You're in this having a hoot, then there's all this injustice against you, but you resist and just keep doing what you want to do. Resisting what you deem unjust. It's not 'preserving a criminal empire', it's simply fighting being oppressed. And that can be a bonding thing, there's nothing better to bond a group than a fight, even if it's just a legislative one. We reserve the right to exist. It may well be the downfall of the law that no one's going anywhere.

What would make members drop out?

A variety of things. As with any other group, there's a variety of problems in life that can cause you to drift. The biggest thing would be domestic pressure from women, wives.

Domestic troubles that lead you to re-think your direction, same thing in any group of men.

Something tumultuous in their 'other' life, like a domestic ultimatum. When men spend a lot of time in the tribal situation, women need attention, so they give ultimatums. The other thing is drug and alcohol abuse. Going from a young 19/20 year-old drink till you drop mentality, not everyone's equipped with a mechanism to restrict themselves past a recreational level.

Some members get asked to move on and others see the writing on the wall themselves when they're no longer team players. Alcohol is more of a problem than illicit substances, probably because it's cheaper and more readily available. It's primarily women or drug and alcohol abuse that makes members just missing from the club. Some people after 5/10 years just have

or find a different direction in life. But it's rare in smaller clubs because club membership is more like a lifelong interaction. Every club is different and some have a flexible standing on leaving and coming back. Clubs may have originally had military like rules, but things can change and every case has to be judged on case by case basis. Hard and fast rules don't always work. When it comes to leaving, they're more like flexible guidelines than rules. You'd need a good argument to convince your mates, but you always support your mates. Especially with family or health, like when it come kids or if you can't ride a bike. Every now and then you get a disgruntled member but they are very rare.

How important is the club in members' lives?

That will range and depend on the member. For some it will be their whole life, like if they're a single guy, with no kids, living at the club house, thriving on being in the club, then the club is their entire friggin' world. Right to the busy working guy with huge family commitments, the club would still mean as much to him, but he can't spare the time. You get out of it what you need. Mate, comrade, drinking buddy, shoulder to cry on, if you need it you can find it. It's hard to say, but for me it's a big part of my life, an extension of family. They are the people I mix with, regardless of any badging. The people you gravitate towards, spend your leisure time and are comfortable with on all levels. You know and trust them. Friends and family. The essence of most people's lives.

What sort of work do club members do?

Traditional motorbike shop owners, mechanics, entertainment industry workers, riggers, hardware shop owners, truck drivers, heavy plant equipment operators, and in hire companies. Traditionally their non-professional jobs but from there anything and everything. Although one club had an accountant at one time and another a lawyer. Factory workers,

labourers, and there used to be quite a few in security, like hotel security. In the old days we had second hand dealers, car dealers, and a few who worked in tattoo shops. The legislation targets ownership and management positions but members can still work in a lot of restricted industries. Certain types of businesses potentially would allow members to launder money so the government won't let them run them even though no members have been prosecuted for those kinds of offences. It's a case of being punished before you had even thought of committing a crime.

How have the anti-bikie laws affected members? Their families? Their friends?

Primarily you've got to be diligent on where you congregate and how you travel. Because if more than two people are together... you just have to be really organised when you go out. We're used to it. But for most families trying to travel with no more than two members together and stay more than a hundred metres apart, most people would say that's ludicrous. We could still be a hundred strong in a private house, we just can't get there in groups of more than two. That's as long we don't go past the letterbox. So what does the law really achieve? Sure we get what the legislation is supposed to do, like stop forty or fifty bikers going into a nightclub and overwhelming security. That doesn't stop us from doing it, it just adds another charge to the sheet. The law is designed to protect the venue.

How have the anti-bikie laws changed the lifestyle?

In terms of what I call curbing innocent behaviour, no members can go to weddings, funerals, birthdays or on family outings. There's no more mile stone family functions like children's 21sts or dad's 80th in a function centre, park, or pub. There's no rides, so small town hotels and pubs suffer because they're not selling us meals or drinks. A small-town publican could have lost five grand in business, that's the sort of money we'd put over the bar in an

afternoon, because we can't ride through anymore. Good legislation should protect the innocent. Bad legislation prevents people from going about their daily business, without exemptions. Law maker might think that we would manipulate any exemptions, but it's not like we'd stage a wedding or a funeral just to sit in a chapel. So the effect is that everything event wise is held on private property. What does that mean if there's a few brothers, multiple children, and other close family members all in one club? There's no exemption for that. It's not likely that you'd be prosecuted but you could be, there's not exemptions and no protections. You could still easily be arrested, have twenty months on bail, and spend twenty thousand dollars in legal fees, just to have a judge to say you were consorting for legal purposes even you're part of the same family. It's hardly likely to happen, but it shouldn't be possible. The South Australian police have been pretty good in terms of using their discretion, they've kept their powers in reserve. Here the legislation is enforced by the Crime Gangs Task Force, not patrolmen, and for the most part they use it reasonably. We get what the laws are trying to do, what the legislation is trying to stop, but there were already laws to do that. Catching you all sitting at a table discussing dinner is a crime. There are always crooks around, but the onus should be on the prosecution to show that they were planning a criminal act. Gathering is illegal regardless of the purpose.

Do you think it's fair that politicians and the media have linked outlaw motorcycle clubs to organised crime and violence?

No, I don't think it's fair that an entire group can be legislated against based on the actions of a few. There shouldn't be restrictions on a religion, profession, or any group of people for the actions of a few. For instance there's proven large scale, institutionalised, paedophilia in the church, but the church isn't legislated against. Priests were getting moved around to cover their actions and that's conspiracy. Yet, there's no legislation directly targeting paedophilia

groups. Two members out of a motorcycle club of twenty might get caught dealing drugs or extorting businesses so why are the other eighteen legislated against when the evidence shows that they didn't play a role. It's not hard to work out what the legislation is designed to stop, but the whole group shouldn't be culpable. Terrorism has led a change world wide in the onus of culpability in legislation. We don't dob each other in, but we don't do criminal things as an organisation. No motorcycle club has had a Royal Commission and yet we're declared criminal. Unfair? Fuck yeah! Most illegal behaviour is making money, not rape, not murder, and not hurting people. Not crime against humanity, not crime against society. Prohibition. If you make something illegal, and it's something people like, it makes it expensive and then there's a black market. Gangsters and entrepreneurs. It's pretty basic, pretty simple in my mind. If there's a shit load of money to be made... you want to fix the problem, make it legal.

How have these new laws changed the club, the way it works, the types of guys involved?

Have they made it more disciplined?

More diligent. You don't want to expose your club to a hugely expensive legal battle in the High Court. The effect on the membership, for the majority of members who don't do anything majorly wrong, is that you have to be careful, you have to be diligent, and you can't be with your mates. Like you can't go to the footy, can't sit together, can't go there to together. You might not get caught at the time, but most public places have cameras these days, and you'll probably get caught later. You've gotta think about living in a free country, gotta think about breaking a law that makes something innocent you've been doing your whole life illegal. Gotta always think ahead. Do you want to face imprisonment for something like going to work with a mate? What it does is make you do is become cagey, to be compliant you have to become cagey. Like only having two people in a car might mean

having to take two cars. Your objective, whatever that is, still gets achieved, but you have to be cagey about how you do it. Saying that the legislation is 'driving clubs underground' sounds ominous. The thing is you're not necessarily doing anything illegal, but you have to become invisible so you don't end up in jail. It drives you 'underground' just to do normal things like having a drink with your mates. 'Underground' sounds dark or even worse, but it's true and it has nothing to do with criminal activities. It makes us appear nefarious but it's innocent. Like when moving around, three is jail, two is not. Or when other clubs meet over the boarder to ride together. Complying with the law can be seen as complaint, or if the government wants to spin it that way it can be seen almost as evasion or somehow complicit in a crime. It's wrongly tainted when complying is called evading, we can't win. Evading prosecution is not sinister. It could be, but it's not necessarily. That's what [Arthur] Veno didn't explain thoroughly when labelled it 'underground'. The legislation didn't 'drive' anything it just made certain things illegal, and that makes it sound bad. You're being accused of doing something wrong for complying. It's a manipulation of what's actually going on. It's misconstrued. Yeah, there's no packs of bikes, but we still go to parties in compliance with the legislation, jut in groups of two. Just as outlaw motorcycle clubs have been re-named criminal motorcycle gangs, complying with the legislation has been re-named 'evading' or 'going underground'.

What do you think these laws have achieved? What do you think they will achieve?

They've stopped large numbers of known club members attending public venues, which was their aim, and there's no riding in packs. But the government's smart enough not to want to take something innocent like the Queensland government did with the five bikers who were arrested buying ice cream as a test case. While nobody's stupid enough to seriously test the legislation by riding together, a few guys riding together wouldn't make a pretty test case. If

they wait for a few guys to get involved in a pub brawl, then they'll test the laws. The legislation has achieved compliance which from the police and public point of view is a win. There are brawls breaking out in nightclubs and bars all the time, but bikers aren't involved. So statistically it's probably cut down 0.0001% of public violence. Politically it's good because they can say 'we stopped...' or 'it has prevented...', which is a nice drum to beat, because it appears as if the legislation is working at least in terms of public violence. And they're not concerned with our rights, they don't take them into consideration. It doesn't matter that some guys went out for twenty years and never has any trouble, and now they can't anymore. They don't care. From our point of view, there were plenty of laws for those things already, so it's like double dipping.

Interview Four

What do club members do at weekends, what makes their lives different from the average persons?

We go on rides, party at the clubhouse – we have a club house, we drink, have fun, and we work on our bikes. There are rules, and there is discipline – but basically, it's about being a good member, that is, being loyal and looking after your own. But you know we're still normal everyday people.

Why are members involved with in outlaw motorcycle clubs?

Usually guys get involved because the club is a group of guys that they get along with really well; they're good friends that enjoy going on rides together. Guys can meet and get involved initially through bikes, or meet other members through sports, that sort of thing. It's about comradery, good fun, and relaxing – we don't let the shit that bothers the rest of society bother us. Bikes and riding with your mates are like therapy, a lot of us look younger than we are because we relax. Essentially guys get involved because it's fun, really good fun.

How would you describe involvement in a club?

Fun, loyalty, always watching your brothers' backs. Family, for a lot of us the club is like family – lots of guys are members for twenty or thirty years, it's a long-term commitment.

Once members have joined, what makes them stay?

The comradery, that bond, and it's a very hard bond to break. Most people can count the number of their really good friends on one hand, but in a club you can have a hundred really good friends all around the country, with new ones coming in and that circle always growing. There's that many people who you really care about. In a club there's that level of friendship

that can't really be found anywhere else. I hate funerals, but I've probably been to about thirty over the years – and I mean that in a good way - because there's just that many guys, friends, who I really care about enough that I want to be there.

What would make members drop out?

Family pressures - wives and girlfriends, sick family members that need to be cared for; illness; financial strain – it's an expensive lifestyle, drinking heavily, and a decent bike isn't cheap - mostly we're not drug dealers, most of us work for a living. Maybe guys leave because they have a falling out with other guys and it sort of breaks that bond for them. But we had one member fighting cancer for ten years and he still stayed a member the whole way through it.

How important is the club in members' lives?

Very. Sometimes it's the one thing that holds a guy together. Some guys are on a road to nowhere, they've got nothing else, and that discipline holds them together. Not just that, but the good feeling that comes from the comradery.

What sort of work do club members do?

Tattooists; mechanics – motorcycle, but cars too. A lot of guys own their own businesses, like building companies for example, but one guy is even the CEO of a large company.

How have the anti-bikie laws affected members? Their families? Their friends?

Some members haven't been affected at all. Others could do fifteen years for having a tattoo studio in South Australia. The tattoo laws are a negative licensing system, their implementation was a farce, and the way it works is to simply disqualify people as

information becomes available. The laws show how out of touch some politicians are, and they're a huge waste of taxpayer's money. Tattoo studios money laundering!? Take a look at the Commonwealth Bank if you want to see a real example of money laundering. These laws aren't about controlling bikies, they're about controlling people – all people, and the laws aren't limited to just bikies.

How have the anti-bikie laws changed the lifestyle?

Well, you've got to be careful now. There're still parties, and there's still meetings. We still have club houses – it's just that the police don't know about them now. We still get around, just not in colours. And that's because not everyone can afford a million-dollar court case to contest unjust and illegitimate laws. Members still get around on bikes, and still wear their colours – they just do it on their own or don't ride as a group in colours. The laws haven't really changed a lot.

Do you think it's fair that politicians and the media have linked outlaw motorcycle clubs to organised crime and violence?

Have a look at the government if you want to see real organised crime. Take the Australian citizenship fiasco, everyone involved in politics knows that you have to first of all be an Australian citizen and only an Australian citizen. Really that makes all the laws that have been passed in the last few years – that is under illegitimate governments - invalid.

How have these new laws changed the club, the way it works, the types of guys involved?

Have they made it more disciplined?

We've become more organised. We're smarter about the way we do everything. Clubs still exist, and still have meetings – but the cops don't know about them. If there were any informants at the beginning, there certainly aren't any now.

What do you think these laws have achieved? What do you think they will achieve?

Nothing really, except to waste taxpayer money. They've made things more covert on the club side of things. We can still operate in the same ways we always have; we just do it more quietly now. There's certainly more interest in membership, and the new guys come in under a cloak of invisibility – the police don't know who's who. If anything, I think they've made a lot of normal people, that is anyone who pays any kind of attention, turn against the government. These laws show just how corrupt the government is. The laws don't mention anyone specifically – that is bikies or 1%ers – they include every Australian. That's woken some people up. There's also the anti-protest laws. South Australia has them. Anti-protest laws are as bad or worse than anti-bikie laws, because you don't even have to be in a club. There's a nasty bunch of essentially invalid laws in this country. They'll be thrown out by the High Court over civil liberty violations, lately there's been some good decisions made regarding citizenship. The police are good and bad, there's even some cops who I consider friends – good guys. Then there's the arrogant ones too. At the end of the day these laws mean scrutiny, that is scrutiny for everyone. The government have to completely turnover the gang squad every five years because that's about how long it takes each new gung-ho group to realise that bikies aren't the criminal organisations they claim we are. They spend about eighty million dollars every three years on the gang squad – it's about time there was some accountability. Look at the government behind closed doors, look what's really happening. There's an unbalanced gay parliament, and I've got nothing against gays, but things need to be balanced out.