

Inquiry into the legislative arrangements to outlaw serious and organised crime groups

Parliamentary Joint Committee on the Australian Crime Commission

Date July 4th 08

SUBMISSION BY EDWARD HORACE WITHNELL

“In Germany they first came for the Communists,
and I didn't speak up because I wasn't a Communist.

Then they came for the Jews,
and I didn't speak up because I wasn't a Jew.

Then they came for the trade unionists,
and I didn't speak up because I wasn't a trade unionist.

Then they came for the Catholics,
and I didn't speak up because I was a Protestant.

Then they came for me —
and by that time no one was left to speak up”

Pastor Martin Niemöller

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PARLIAMENTARY JOINT COMMITTEE ON
THE AUSTRALIAN CRIME COMMISSION

REC'D: *4 July 2008*

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Introduction

On 17 March 2008, the Parliamentary Joint Committee on the Australian Crime Commission (“the Committee”) initiated an inquiry into the legislative arrangements to outlaw serious and organised crime groups (“the Inquiry”).

The Terms of Reference for the Inquiry are broad, covering:

a. international legislative arrangements developed to outlaw serious and organised crime groups and association to those groups, and the effectiveness of these arrangements;

b. the need in Australia to have legislation to outlaw specific groups known to undertake criminal activities, and membership of and association with those groups;

c. Australian legislative arrangements developed to target consorting for criminal activity and to outlaw serious and organised crime groups, and membership of and association with those groups, and the effectiveness of these arrangements;

d. the impact and consequences of legislative attempts to outlaw serious and organised crime groups, and membership of and association with these groups on:
society
criminal groups and their networks
law enforcement agencies; and
the judicial/legal system

e. an assessment of how legislation which outlaws criminal groups and membership of and association with these groups might affect the functions and performance of the ACC.

My submission does not endeavor to address the full scope of the Inquiry’s Terms of Reference.

My submission will address the following three (3) issues.

These three (3) issues address the following Points raised in the Terms of Reference:

Issue 1. addresses Point b.,

Issue 2. Addresses Point a.,

Issue 3. Addresses Points d., and e., respectively

I summarize the Issues as follows and will then address them in more detail in the body of my submission.

1. False Reports and Submissions : *(with reference to Point b., of the Terms)* : that the information supplied for decades to distinguished committees such as yourselves has been tainted by self interest and by manifestly misrepresented facts (at the best) and outright lies (at the worst), with the result being Outlaw Motorcyclists and many other ethnic and minority groups and individuals have been 'set-up as fall-guys', persons on whom to shift the focus away from the level of crime and corruption that the ACC is best suited to investigate. Thus their *conduct renders invalid the reasoning on which Point (b)* of the Terms of Reference is premised.
2. Currency Generated from mythical "Bikie Code of Silence" *(with reference to Point c., of the Terms)* : these aforesaid fabrications and lies have been allowed to gain currency due to outlaw motorcyclists 'code of silence': their embargo on the media and refusal to testify against police in courts of law. By refusing to defend ourselves the allegations and lies have 'stuck'. As the true nature of these 'outlaw motorcycle clubs' has never been examined or honestly reported, it is a gross negligence to undermine the fundamental principles on which a healthy and thriving capitalist economy is based: the free exchange of speech and ideas, thus the freedom of association. This renders *Point (c) invalid* until a truthful and factual understanding is obtained via accredited and recognized universities and other such places without vested interests.
3. Criminal Misuse of Special Powers by Vested Interest : *(with reference to Point d.,and e., of the Terms)* : The persons (which term includes governmental departments and other such bodies) who have manipulated this 'code of silence' to serve their corrupt and criminal interests are those in the position to alter the law, benefiting from improper laws and the implementation of such, and as a consequence are acting criminal in behavior and corruptly in their Constitutional obligations. These same persons will also misuse any new powers gained under these Terms of Reference, thus actually hinder and have a *negative impact on Points (d) and (e) of those Terms.*

Outlaw Motorcyclists are Not Organised Crime

I speak from 35 years as a Member of the *Outlaw Motorcycle Community*. These laws are not designed to halt organized crime within *that community*, because you already know, from The National Crime Authority Reports 1996 – 1997 – 1998 that *we are not organized crime*.

'Bikie groups', those reports state, may contain 'opportunists', who take advantage of criminal opportunities. So too, I remind you, do members of the police force, political parties, the priesthood and many other organizations. So, by what criteria do you differentiate us from those organizations, who statistically speaking, are worse offenders? We must assume it is from 'police reports'.

False Reports and Submissions

But are these reports to be trusted, when their authors have a separate and vested interest, to yours, the Executive, and those of the Judiciary, under the principle of *'the Separation of Powers'*. When that vested interest is manipulated by 'secret reports' which are untested or demonstratively false, the premise of reasoning on which these special powers are being proposed, is rendered equally fallacious.

When I use the term 'secret police' I am not being melodramatic. You and I know too well that every state in Australia has followed suit with Western Australia, granting their police special 'secret' and coercive powers. These powers, as you know (perhaps belatedly), have now allowed them to take evidence in secret from informers (who, in line with the judicial philosophy of the Inquisition are forgiven their sins, no matter how heinous, so long as they give false evidence against their neighbors).

Perhaps the worst example of bureaucracy gone mad and 'special powers' galloping unchecked (that is known in the public domain that is), is the case of La Rosa, an infamous drug 'baron'. Caught with marijuana the police set him loose to catch bigger fish: who were going to manufacture amphetamines. When the bigger fish couldn't acquire the glassware to do so, it was these 'secret police' supplied all the laboratory equipment, then imported the precursors, and finally, when those precursors got 'trapped in customs', arranged to 'smuggle the ingredients thru customs', and thus, created a crime that would never have happened if they did not possess such powers. Combine this with the existing level of police corruption and you do not have to be a Rhodes Scholar to realize that the extraordinary powers you have already granted 'secret police' is what is fuelling most the major crime today.

Three Examples of False Reports

I give you three examples of police reports, masquerading as the truth, when in fact they are lies.

The First Example is, to quote *Maxwell Smart., Secret Agent 86 of Control*, "*The Old Gun in the Handlebars Trick*". "believe it, or not". Back in the 80's this gem was published in the Police Gazette as well as a Northern Territory newspaper: It alledged that "Bikies" were welding a shotgun device into one end of their motorcycles handlebars, which they activated with a firing mechanism, allowing them to shoot their opponents. A shotgun built into the end of motorcycle handlebars, and touted as the "latest weapon in the Bokie wars". But how does that work, prey tell? Do you lift the 500 pound motorcycle up under your arm and chase your target down the street. Perhaps you do a wheel stand as your riding along and twist the handlebars to aim. Maybe you get out the tool-kit, spend half an hour dismantling the handle-bars, then after firing your one shot, you discard the entire \$25,000 motorcycle and make your getaway on foot? No such weapon ever existed. A lie.

The Second Lie, is the "*Year 2000 Policy*": do you remember that? If you have forgotten, just Google it. It lingers in cyber space like the great embarrassment it is, refusing to go away.

In the Weekend Australian, August 14th, 1999., Pages 22 - 24, in a special Lift-out, the combined police forces of Australia unleashed their top secret info-bombshell: that by the year 2000 there would be only 6 outlaw motorcycle clubs left in Australia. Every act of violence, every criminal act, every drug bust, every headline for the next couple of years was put down to this inevitable juggernaut. Well, the Coffin Cheaters are prominently named in this article, but surprise, we never knew anything about it until we read this article. And its now 2008 and guess what: there are still the same number of outlaw motorcycle clubs. It never happened. It never was going to happen. It was another lie.

The Third Big Lie: is The WA Police Handbook "Motorcycle Gangs 101": this is the latest, recruitment and training manual, for police to interpret 'outlaw motorcycle gang' behavior.

Firstly, they claim that 'Bikies' wear the Number 13 insignia on their colours, not for "reversal of order to reclaim identity" ("13, unlucky for some, lucky for us", as too are the club names, such as Coffin Cheaters, Hells Angels etc using the death force as a re-affirming life force), teenage generated concepts familiar to any accredited sociologist: no, they re-interpret it as "the 13th letter in the alphabet: the letter 'M'. They claim it signifies the wearer is a Marijuana smoker".

But wait, there is more: they also add, the wearer is also "an amphetamine trafficker'. Not an amphetamine user, but a trafficker. Now, excuse my maths, but amphetamines begins with the letter "A", which is No.1, so when you add the 1 to the 13, shouldn't it be No.14. Bikers wear on their vests; if we are to stick with their logic?

The Second alleged fact contained herein, is that bikers take a 'Crash Truck' with them on Runs: 'to carry weapons and crash through police barricades'. Conversely, the police never bother to search the trucks taken by bikers on Runs, because they know they are really called "Run Trucks", used to transport food, drink and broken-down motorcycles. But how do they know this? Because they have copies of our constitutions, wherein it clearly states that no-one, at the risk of being dishonorably expelled from the club, may place drugs or weapons on the Run Truck.

Further, the *honest*, hardworking policemen who have trekked across the deserts with Bikers for the past 35 years know all too well, that never in the history of outlaw motorcyclists, has any truck, anywhere, ever crashed thru a police roadblock.

So what is the source of these "facts", if every police report written over the past 35 years contradicts them as nonsense? The source was, prepare yourself: all gleaned from a 1969 paperback, titled "*Hells Angels*", by the American author, Hunter S Thompson (more famously known for his drug taking and high jinxes in such fiction as *Fear And Loathing in Los Vegas*).

This booklet, as delusional piece of fiction as "*Alice in Wonderland*", is 'so secret' even you, this distinguished panel, are forbidden to read it. On its inside cover it claims secrecy and privilege, warning that should anyone should try to expose it to the public, or in a court of law, the police must do everything in their power to prevent it: even to the bizarre claim it is 'in breach of copyright'. Just a small 'cover-up', if you will excuse the pun.

This "Police Operational Booklet and the other 2 examples of "intelligence" prove one thing: immoral journalists have been in bed with dishonest police officers far too long, whispering sweet nothings in each others' ears, conspiring to pull their grubby underpants of lies, soaked and soiled in deceit, and embroidered with their self interest, over the eyes of some of the most prestigious committees in this country. As for their motives in doing this, I will address those shortly.

Currency Generated from the mythical “Bikie Code of Silence”

But how is it the falsified reports and propagated lies (as per just the three examples I have supplied) have been unchallenged for so long? Simple: by Outlaw Bikers refusing to speak with the media and refusing to give evidence against the police in a court of law, we have been convicted by our own ‘code-of-silence’. Not the mythical “code of silence”, of which the media speaks, when Bikers “exercise their right to remain silent”, when facing criminal charges, but rather, it has been by our refusal to speak to the media and rebut these lies, by saying nothing in our own defense, we have arrived at this very situation: where the lies told about us have gained currency.

Having stereotyped us, secure in the knowledge we will not rebut their lies, a convenient bigotry has been generated against all bikers, outlaw or otherwise. As happened with ‘gooks’, ‘niggers’, and ‘terrorists’, once you de-humanized them, you can justify policies abhorrent except in a state of war. By rendering Bikers all alike, a homogeneous species, not unlike the Cro-Magnon Man you can create enough fear to justify removing every Australian’s right to freedom of speech and freedom of association. For Bikers have no special rights: our rights are your rights and your children’s rights for generations to come.

But we Bikers are not homogeneous, we are heterogeneous. Like yourselves, we have differences within ourselves, as well as between ourselves. If you are beguiled into thinking for one minute that men such as myself, having been imprisoned for crimes which not only cost me a decade behind bars, but have branded me with shame and stigma for a life-time, would get younger men and egg them on to emulate my actions, then you are wrong: manifestly wrong.

We are not driven by drug wars or any of the fanciful creative writings of the media or the ‘secret police’. We are so fiercely individualistic and independent that as the aforesaid NCA Reports state, therein ‘lays the propensity for violence’. This is the hub of ‘the wheel of causality’, which crushes the lies about what motivates outlaw bikers. We actually pride ourselves on ‘not’ knowing what our brothers are doing so as to not be contaminated by another individual’s actions. To quote Nietzsche: “between the thought and the deed the wheel of causality does not necessarily turn”. Thus, Bikers may commit violence, but not for the lies propagated by the police and media, who try to ‘fit that violence within their frame’, to suit their own agenda.

The Dangers of Stereotyping and Profiling

The following chapter is not my original writing but supplied to me by another contributor: I include it at that person's request of anonymity, but I feel it sums up the precise dangers associated with the stereotyping and profiling raised by myself in the previous section: **Currency Generated from the mythical "Bikie Code of Silence"**

"It is unfortunate that the public at large and I suspect the majority of Senators and Members have no real understanding of the advances made in data collection and retrieval, data matching and profiling. I accept that modern government requires that information to perform its job efficiently, but the increasing use of profiling to determine who and who does not present an existing or potential threat is drawing a very wide bow indeed. Yet, the increased powers requested rely on conclusions that are at best 'probabilistic' in nature. If profiling were definitive, marketing and political advertising campaigns would be a lot more successful.

The proposals put by others seek to criminalize activities that have hitherto been lawful. If accepted, the proposition seeks to ban the free association of people. If a broad brush approach like this is undertaken on hearsay or profiling evidence alone, many innocent people may be caught within the net. There has been an increasing use of the 'reverse onus of proof' requirement to establish innocence. This combination has the potential to be a lethal cocktail to the ordinary citizen.

It would be interesting to see how such banning orders could be put into practice. Freemasonry was banned in Nazi Germany, as were many other types of organisation including sports clubs and some groups with affiliation to religious groups. Are we to establish the list according to the South African model in place during the Apartheid era? Do we look to our neighbours in Asia – are China, Malaysia and Singapore such models of democratic best practice that we should emulate their records on human rights?

I do not intend to make a comparison between the supposedly, intended targets of the suggested legislation and internationally renowned icons, but the dangers of profiling and stereotyping are there before us. If we look at just one specific example, Nelson Mandela was branded a terrorist. He has just celebrated his 90th birthday and only in this last week was his name removed from the US terrorism list."

Criminal Misuse of existing “Special Powers” by Vested Interests

What is the ‘Agenda’ which underlies false reports and the drive for even more unfettered power? Crime is big business. Not crime prevention, but the exploitation of crime by vested interests, which includes the police and the media.

The first example of misuse of power by vested interests is so obvious it hardly needs more than a by-line: that is inter-departmental exploitation. Take the issue of the Tax Department and its ability to get around controls imposed upon it. Parliament has not seen fit to deny the tax office certain powers. To overcome these difficulties the tax office, in line with the practices of other government agencies, has co-opted the ACC to utilize their powers of investigation and coercive examination. Powers that if parliament had intended to give them, would have already given them. This legislation and every form of legislation are immediately grabbed by every other department and utilized for their own ends. And these are departments parliament never saw fit to give those powers to in the first place.

Another example of ‘vested interests’, exposed by Judge Hammond of the CCC, here in WA (See theaustraliannews.com.au June 26th 2008, *“Some Like it Rotten”*), relates to Laurie Marquet, the man who drafted the Seizure of Asset Laws so it was aimed squarely at ‘Bikies’, exempting police and politicians, whilst peddling his drugs up and down these corridors, with his ‘friend’ Moira Rayner, a Member of the CCC, standing “cockatoo” for him. I bet Laurie and Moira’s ‘friends’ have ‘friends’ who will ensure these new laws don’t affect them. It is ‘vested interest’ to have the conceit to believe these laws will not affect all Australians.

When The Seizure of Assets Law was propagated in parliament the politicians bragged how “they would take everything from anyone convicted under this act, even strip the wedding rings from their wives fingers and turn them out into the street with nothing except the clothes on their backs we choose to give them”.

This law was necessary, they claimed “not for the kid with a \$100,000 in his bank account and a \$80,000 sports car, but for the Mr Biggs who have not millions of dollars, but hundreds of millions of dollars”.

No such Mr Biggs exist. If they do exist they don't live here, they run their Organized Crime Syndicates in some untouchable foreign country where such unimaginable sums might exist. But what does exist here, in the moral vacuum they created, where children are held accountable for their parents actions, is a whole new under-class identical to that of the dispossessed aboriginals. Now you have children who have been stripped of their heritage, dispossessed and alienated from society, and as happened with the aboriginals, they too rain anarchy in the streets: to quote Janis Joplin, "when you got nothing, you've got nothing to lose".

And, by the way, once they introduced the Seizure of Assets Law, they began with the Bikies and criminals, but now they use it on everyone: the 'Kind of Mr Biggs', 'the Miss Little' whose grandmother left her an inheritance, 'the Decorated WW2 War Veteran, whose son used their house to store drugs, ad nauseam. Once the elected Executive surrender their 'watch-dog' position for that of 'lap-dog' to convenience the very fabric of law begins to deteriorate.

Another example, stemming from the Seizure of Assets Law, is the recent comment by a Brisbane Judge. That armed with Seizure of Asset Laws, politicians and police do not want the criminals to get busted too early: they want them to grow plump so that the revenue scoop at the end is bigger. A different interpretation of the '*want and need of special powers*', has developed than when they were first sought: the police don't 'want' to make their bust *until they have used all their "special powers"* and got the bust they 'need' to justify them.

Now the deterioration has set in: you have lost the moral high ground. Now our Attorney Generals are becoming to drug dealers, as a pimp is to a prostitute: they have become corrupted (in the sense of contaminated) by the lust for drug money, sitting back, letting the police have unfettered rein, whilst kids everywhere are getting addicted, homes are being burgled and ice-fuelled violence is what is driving the anarchy on our streets. Why solve the crimes and wipe out all this, when it creates just so much 'big business'.

These laws and the proposed laws are designed for men of convenience: policemen, politicians, and public servants who avoid doing the work today they can put off until tomorrow, about 'fattening up the kill', about getting a promotion, more staff, a bigger desk allowance , a pay rise, and creating more work for their junior colleagues further down the line.

The true depth of political willingness to allow serious crime to run unchecked, thus their criminal and corrupt conduct, will only be known when organizations such as the Australian Crime Commission take on these “Untouchables”.

Empirical Evidence from Other Jurisdictions as Inherently False Reasoning

When it came to giving the Commonwealth Government the “exceptional power” for confiscation of assets in 2002 the Senate Legal and Constitutional Committee took evidence from a number of people. (It is necessary for you to read the entire evidence: : LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE., Reference: Proceeds of Crime Bill 2002 and the Proceeds of Crime - Consequential Amendments and Transitional Provisions - Bill 2002 WEDNESDAY, 27 MARCH 2002., SYDNEY)see Attached pages). They are putting forward a fallacious argument based upon empirical evidence derived from other jurisdictions. Senator Harris is concerned why this draconian legislation is being passed when in other jurisdictions such legislation is being rolled back (e.g. Colorado US)

*QUOTE : Senator HARRIS—On Wednesday, 20 March the assembly in Colorado was actually bringing in tougher laws in relation to forfeiture, and I will just quote a section of it: **The forfeiture laws, passed in the 1980s and fine tuned in the 1990s, were intended to fight drug traffic by taking their proceeds, from cash to trophy homes and jewelery. Local cops, sheriffs and district attorneys often sell off the items to buy police gear or attend conferences. But abuse has crept in because the civil court standard for forfeiture was ‘on a preponderance of evidence’ rather than ‘beyond a reasonable doubt’.** The proposed bill would increase the standard for forfeiture to clear and convincing evidence, shifting the burden of proof onto the government.”*

Here we have an American state actually doing the reverse of what we are proposing to do here in Australia, and one of the reasons given was because of the illegal activities within the police force abusing those civil forfeiture processes. How would your department ensure under its duty of care that this does not happen in Australia?

Senator Cooney then identifies risks

Senator COONEY—I just want to take up a theme that has been put forward by other senators. It is summed up in a piece of poetry, if you do not mind me quoting some poetry at you, by Robert John Clark— and I got this out of a dictionary of Australian material. It sums up what has been said. It says:

“Once in, there seemed no mousehole out.
The cause of righteousness became
a juggernaut as frightful as
The monster he’d set out to tame.”

What it is saying is that we go after the right purpose but, in using certain processes, those processes become quite as arbitrary and quite as oppressive as the sorts of things we are trying to stop. I think that you have been explaining that to the senators this morning. I just thought I would explain to you in terms of what I might say in the report. Do you want to further comment on that or do you think that you have dealt with the issue already? END QUOTE

There is nothing original in the submissions made by the law enforcement agencies regarding "Bikies" and other organized crime targets, as it is all borrowed from the United States of America (as per the fictions of Hunter S Thompson). But America is a different jurisdiction, with different population demographics, laws and protections under their Bill of Rights (something we don't have). Senator Cooney identifies the risks involved in passing this sort of legislation. The act was passed anyway and it is unfortunate that time has proven her concerns to be correct

What we are being asked to do is to take on board the proposition that the law enforcement agencies will always act as model litigants. But history shows us that when acting for what they perceive to be the public interest, all checks and balances and restraints are thrown out the window. But further, it becomes a question of ontology and perception: are they acting in the public's interest or are they driven by their own vested interest and over-riding the boundaries between the Separation of Powers (by falsifying information to suit their perception whether that falsification is conscious or not).

The High Court and the Separation of Powers

But how is this winning the fight against organized criminals? It isn't. That could have been done years ago with the powers the police already had (see The West Australian "Anti-gang laws under fire" P14, April 29 2002)

By opting to seek and use 'special powers', the Government, Police and DPP run the risk of usurping proper police investigative techniques (as I have said herein above, with regard to 'vested interests' becoming tainted), and then, moving on from that, risking criminal cases by using civil laws to pursue criminal objectives. This was a telling point in a recent High Court Appeal.

"KIRBY J: On the other hand, if the statute is not entirely clear and if the Court reads into the statute or from other applicable statutes an obligation to give the undertaking, it would have the beneficial effect of making prosecutors (a) move more quickly than appears to have been the case in this case and (b) propose and shape orders that are less likely to get them into trouble on that undertaking at a later stage, because what has happened in this case, at least as I understand the facts at this stage, *does not seem to be a model of a proper prosecutorial progression of a case* and does seem to impose extremely burdensome obligations on the appellant." *(My emphasis added)* (No P53 of 2005 : B e t w e e n - NIGEL CUNNINGHAM MANSFIELD Appellant., and THE DIRECTOR OF PUBLIC PROSECUTIONS FOR WESTERN AUSTRALIA Respondent., GLEESON CJ ; GUMMOW J ; KIRBY J ; HAYNE J ; HEYDON J ; CRENNAN J. TRANSCRIPT OF PROCEEDINGS AT CANBERRA ON THURSDAY, 6 APRIL 2006, AT 10.22 AM Copyright in the High Court of Australia)

The truly organized criminals simply take their fight to the High Court; a place where hundreds of years ago Judges learnt to stand up to men of convenience. At that place inequitable laws are over-turned. High Court Judges guard their 'turf' jealously under "The Separation of Powers", boldly challenging : "who is to say those who make a law make a just law?" Must you now leave this room and dismantle the High Court?

Conclusion

It is my submission that this Parliamentary Joint Committee on the Australian Crime Commission should be vigilant and mindful of its obligations to the Australian People and should scrutinize the Terms of Reference for this Inquiry with a view not to remove further rights and freedoms from their constituents, but rather, use the information obtained from submissions by the Executive and Police, to have the Australian Crime Commission critically examine the misuse of Executive and Police powers in the administration and conduct of the 'special powers' on which they based those submissions.

Put simply, I would like to see the 'gun backfire' on those vested interests who have lied to gain special powers, then upon gaining them, used those powers to manufacture further propaganda and profit, creating crime (thus 'organised crime') at an administrative level and at every greater cost to the public in terms of public spending, health, welfare, and political instability. This abuse of power is the greatest crime against the people and the biggest destabilizing influence in Australia today. Not only is it creating crime, it is wasting valuable police resources and is undermining public confidence in the democratic process and accountability, precisely at a time in history when all Australians must be united with their government.

The people tasked with the oversight of "exceptional powers" are under-resourced in terms of time and money. The committee with responsibility for overseeing the law enforcement agencies doesn't meet often enough and the ACLEI's total annual budget doesn't equal the amount of just one ACC operation. These difficulties are compounded because none of the organizations charged with oversight has access to operational information. It is very hard for anyone to 'drill down' and see what is really going on. I do not deny the right of parliament to pass any law that they deem necessary to protect their citizens from either external or internal dangers. What I do ask for is, that the committee tasked with overseeing the operation of these laws is given the resources and access to information it needs to do its job effectively: as the guardians of the public interest, guaranteed under the Westminster System and its Separation of Powers.