

David Whittle B.Pharm, M.P.S.

12 April 2009

Ms Jacqueline Dewar, Committee Secretary  
Parliamentary Joint Committee on the Australian Crime Commission  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Ms Dewar,

**SUBMISSION TO THE “INQUIRY INTO THE LEGISLATIVE ARRANGEMENTS TO  
OUTLAW SERIOUS AND ORGANISED CRIME GROUPS”**

My submission is in response to Part D; “the impact and consequences of legislative attempts to outlaw serious and organised crime groups, and membership of and association with these groups on: 1. society; 2. criminal groups and their networks; 3. law enforcement agencies; and 4. the judicial/legal system.”

I am a proud and loyal Australian citizen who has served my country as an Officer of the Australian regular Army and I am a practicing member within the health profession. I don't condone crime or criminal activity. Further, I have been riding motorcycles since I was 16 (for more than 34 years now) yet I am not a member of any social motorcycle club; 'outlaw motor cycle gang' (OMG); political party or any 'activist' type of organisation or even sporting club. But I am an elector and until recently believed, was a citizen of a free and honourable society. I am deeply concerned at the implications of the Serious and Organised Crime (Control) Act (SOCCA) <sup>1</sup>.

As a resident of Victoria I am grateful that our state has a “Charter of Human Rights” <sup>2</sup>; which enables residents the right of freedom of movement within the state and the right of freedom to associate etc. However, if I resided in say Adelaide then by virtue of 'SOCCA' I could be classified as associating with people 'ear marked' by that legislation, who as patients of mine, have a criminal record or may associate with or are members of an OMG or other proscribed organisation. That potential situation could jeopardize the treatment of my patients if I chose not to treat them because of their criminal record or associations. However, because of my profession and ethics I have a 'duty of care' to treat all citizens; who present to my practice regardless of their race; religion; sexual orientation; political affiliation; trade union membership; club membership; appearance; opinions etc, and hence I will treat anyone!

I fully concur with the Law Council of Australia's views <sup>3</sup>, that legislation to outlaw specific groups known to undertake criminal activities, and to criminalise membership of and association with those groups is both unnecessary and undesirable.

1 Serious and Organised Crime (Control) Act 2008, South Australia (SOCCA).

2 Charter of Human Rights and Responsibilities Act 2006, Victoria.

3 Law Council of Australia Submission to the “Parliamentary Joint Committee on the Australian Crime Commission dated June 2008

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Further, my concerns are the same as the Law Council of Australia, in that the South Australian legislation subverts the presumption of innocence as well as deeming a person guilty of association by virtue of meeting or contact with a 'designated person' (even by email, phone or electronic means) despite that contact being innocuous. As your expert witness Dr Schloenhardt said at your Brisbane hearing of 9 March 2009<sup>4</sup>; "I think a basic model that we find in a number of jurisdictions—I think it stands as part of the heart of the South Australian legislation and can also be found in New South Wales, New Zealand and elsewhere—is simply that being a member of a criminal organisation, associating with a criminal organisation or, as others call it, supporting a criminal organization casts such an extremely wide net that we would have to criminalise the person that sells a member of a bikie gang a Snickers bar or a sandwich."

So where does that leave me in my health profession? Maybe the person that sells a 'designated person' petrol; groceries; or teaches their children at school etc will be deemed an associate? This is because the South Australian legislation (SOCCA) is open to such a broad interpretation (misinterpretation and abuse), that the powers of the police could be utilised inappropriately and clearly in contravention of basic human rights. What has happened to the basic right of 'innocent until proven guilty beyond reasonable doubt'?

Australia may well be a member of the United Nations but has not adopted the 'Universal Declaration of Human Rights'<sup>5</sup>. Our Australian Government purportedly prides itself on its stance on human rights and equal opportunity. I concur with the Law Council of Australia's view that essentially 'the South Australian legislation erodes fundamental social and political rights of all groups, organisations, clubs and individuals'.

This is where the 'Joint Statutory Committee on the Australian Crime Commission' should be giving due consideration to the contravention of such basic human rights as portrayed by the South Australian and New South Wales legislation; and acknowledge the professional advice submitted by the Law Council of Australia; which represents the legal profession from all our states and territories.

Dealing with organised crime groups and criminal activity is not an easy process for any law enforcement agency. However eroding Australian citizen's basic human rights to undertake that process is unjust and prejudicial to the freedom of residing in our democratic nation.

Yours sincerely,

David Whittle B.Pharm, M.P.S.

4. Proof Committee Hansard, "Joint Committee on the Australian Crime Commission", Wednesday 4 March 2009.

5. United Nations "Universal Declaration of Human Rights