

Stage 2 Australian and international politics

Investigative Essay

*Do the SA legislation laws (bike laws) breach on an individual's basic human rights? Furthermore, are the acts hindering our social cohesion?*

Word Count: 1629

Do the SA legislation laws (bike laws) breach on an individual's basic human rights?  
Furthermore, are the acts hindering our social cohesion?

The 2008 Serious Organized Crime (control) act spurred a frenzy of controversy. The purpose of the Act is to disrupt the activities of organisations involved in serious crime. To penalize the members and associates of such organisations and to protect members of the public from violence. There is no intention to use the powers to diminish the freedom of people or participate in advocacy, protest, dissent or industrial action. However, despite the laws' intent, it has been proven quite contradictive to the written bill of fundamental human rights.

When analysing the specifics of the law, several major human rights were in fact in danger of being undermined.

- 1) The right to be considered innocent until proven guilty
- 2) The right to a fair trial, before an impartial judge
- 3) The right to confront ones' accusers
- 4) The right to free association

The provisions of the legislation, while publicly directed towards organised criminal activity, set a dangerous precedent. Potentially allowing a future parliament to ban lawful protest movements or industrial action (such as strikes). It sets up a system of 'guilt by association' (i.e. your friend is a criminal and, by remaining his friend, you are a criminal as well). Finally, it breaches the 'separation of powers', allowing the 'executive' (i.e. the Government) to dictate to the courts how they should operate. This makes it, not only an affront to human rights, but unconstitutional.

The S.C.C act also proved detrimental to Australia's legal systems in regards to the sentencing of one's guilt before being proven innocent. A 'fair go' means that a person should be considered innocent until proven guilty. This means three things: first, that unless a person has been found *guilty* of an offence they are – and should be considered – innocent of the offence for the purposes of law enforcement. Second, a person should not be punished – and denied their liberty – without first being found guilty of an offence. Finally, a person should only be found guilty of a crime if the state proves the offence *beyond a reasonable doubt*.

Under the Act, these three principles are undermined. First, the Act allows the Attorney General to declare an organisation an outlawed organisation or 'declared organisation' on the basis of confidential police information or anonymous tips none of which has been tested in court and may be baseless or malicious. It is certainly hearsay evidence (a weak form of evidence not usually allowed in any trial).

It is not a decision based on sound evidence, but on whether the Attorney General is satisfied 'the organisation represents a risk to public safety and order' and that 'members' 'associate for the purpose of organising, planning, facilitating, supporting

or engaging in serious criminal activity'. You might think that requiring the Attorney General to be 'satisfied' is a good safeguard – after all, it suggests they can't make the decision without considering all the evidence fairly. If that is the case, then why does the government seek to shield itself from inquiry by denying the courts *any right* to investigate whether the Attorney-General's decision was justified, reasonable or even lawful?

And yet, once the organisation has been outlawed (even illegally) it becomes an offence – punishable by 5 years imprisonment – to remain or become a member of the organisation.

Once an organisation has been made unlawful, the police commissioner can apply for a control order: which restricts where a person can go; who a person can associate with or speak with; and even what that person owns or uses (need a computer for your assignment? Sorry, you may use it to associate with criminals, it's prohibited). A control order constitutes a deprivation of liberty – a punishment – and punishment should only be imposed by an independent 'Trier of fact' (i.e. a judge). In order to lift a control order a person must prove their innocence. Worse still, an application to set aside a control order has to respond to the allegations made against the person, which will likely be 'criminal intelligence' and therefore can't be disclosed to the individual! You have to refute allegations to prove your innocence – but you can't know what those allegations are<sup>ii</sup>.

If you have ever associated with a member of an outlawed organisation (or were once a member) then you can have a control order slapped on you too. An associate may include a partner, spouse, child, family member or a classmate<sup>iii</sup>. Even if you have never committed a crime in your life you can have a control order slapped on you based on your relationship with a member of an unlawful association. This is guilt by association – except without the bothersome requirement for the state to prove that anyone is actually guilty of anything.

Social cohesion requires a balance between the expectation of the community and expectation of a government. The government will keep its citizens safe, and ensure that laws are designed to minimise the impact and infringement on fundamental human rights and liberties. Too often that balance is tipped in favour of the police and we move towards a police-state: where police have wide, discretionary powers which they can use with little oversight. Where the cry "if you've done nothing wrong you've got nothing to hide" is used to breach privacy and liberty. When everyone is a suspect; when secret evidence can be used against you; when the police do not need to justify their actions in court social cohesion is likely to break down. Unfortunately the fundamental elements of the Serious Organized Crime Act encourage this deterioration of civil rights, and the manifestation of our democratic state into one controlled by our corrupt authorities.

In a complex but finely argued judgement, the SA Supreme Court ruled by 2-1 majority that s14 (1) of the *Serious and Organised Crime (Control) Act 2008 (SA)* is invalid.

In simple terms, the court ruled that:

- the legislation involves secret intelligence and secret administrative decision-making on questions which should be judicially decided – on appeal to a superior court, at the very least;
- a person accused has a right to know that he/she has been accused, and what he/she is accused of; and
- Courts have the right to question whether 'criminal intelligence' is in fact criminal, intelligent or, most importantly, factual.

Though the strict bkie laws were deemed invalid by the High Court of South Australia, members of our community and well known politicians still support the Serious Crime Organization act.

He supports the new laws; if anything, he feels they don't go far enough. Having years of experience dealing with issues regarding organized crime, brutality and gang mentality his opinion should weigh heavy on the hearts of those opposed to the laws. firstly expressed the difficulty on relying on our current justice systems in regards to bikies. The courts demand a civilian witness in order for an offender to be prosecuted however, victims of bkie attacks are also subjected to the fear of what might happen if they were to expose a member of a gang. The threat extends to their family also, jeopardizing them further.

also states *"Bikies control a full range of criminal activity, principally violence, drugs, manufacturing and distribution, intimidation, including assaults and murders"*

It can be argued that not all motorcycle gangs are involved in this extend of illegal activity, yet not only nationally but internationally there are certain motorcycle gangs that pride themselves on their vast criminal activity and actually trade on it in the sense that they use that reputation as part of the threat to people to get them to comply with whatever it is they're asking them to do. In summary the laws will held eradicate the seedy underground crime scene, by forcing all leads to the 'head bkie gangs' to be exposed. The fact that this may done on the grounds of 'suspicion' is what inspired the loud protest, then again, how seriously do we want to stop this problem?

Premier Mike Rann during an interview (2008, May the 6<sup>th</sup>) conveyed his anger and 'ask questions later' attitude towards the South Australian bkie gangs. He states:

*"We're allowing similar legislation to that that applies to terrorists because these people are terrorists within our community"*<sup>iv</sup>

With this attitude being expressed by those more aware of the situation, what do the general public perceive 'invalid' or 'justifiable' in consideration of the proposed law. A survey was taken by a variety of Adelaide citizens, varying in age and provinces.

The majority of opinions were a contradiction of both the proposition of the law, and the opinions on those against it. One survey participant stated

*"Bikies are big kids with big bikes, so what do kids do when you tell them they can't have something? They get angry; the new laws are just making them angry"*

Another stood on similar grounds:

*"It needs to stop, there is no one out there thinking it should go on but these laws are crazy. Bikies are feared, who is going to support these crazy laws against bikies...?"*

Overall the opinions expressed a dislike for bikies and the law made to penalize them. I think it can be agreed that laws specifically designed to hinder organized crime will benefit our society. It will allow citizens to feel safer and promote a feeling of general well being. However laws to such extremity will only serve as being counterproductive.

<sup>1</sup> Email exchange with [REDACTED]

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<http://www.austlii.edu.au/au/cases/cth/HCA/2007/33.html>

<sup>1</sup> <http://www.abc.net.au/news/2009-09-03/un-report-slams-extreme-bikie-laws/1>

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<sup>1</sup> Email exchange with [REDACTED]

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<http://www.austlii.edu.au/au/cases/cth/HCA/2007/33.html>

iii <http://netk.net.au/SA/SA66.asp>

iv <http://www.abc.net.au/news/2009-09-03/un-report-slams-extreme-bikie-laws/1416624>

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### Assessment Comments

This response is a C grade.

- RCAE1 The evidence demonstrates competent and some in-depth research into secondary sources. This may be seen in the first page where the implications of the serious organised crime act are discussed. The overall use of primary sources is competent and a range of secondary sources is used.
- RCAE2 There is ample evidence of competent analysis which at times is very impressive, this balances the description that is apparent from time to time.
- RCAE3 There was considered evaluation of some ideas and a reasonable cover of structures and procedures. On a few occasions this was descriptive, but overall evaluation was considered.

### Engagement and Reflection

- ER1 The evidence was 'mostly organised' with some reflection; however, the limited use of primary sources restricted the quality of the response in the considered reflection on political concepts and ideas.
- ER2 There were considerations of the relationships between politics, power and decision making.

### Communication

- C1 The evidence contained a great deal of information but this was not consistently linked with a reasoned connected argument.
- C2 There was evidence of appropriate use of political terms; however, the acknowledgment of sources was not as strong.



## Performance Standards for Stage 2 Australian and International Politics

	Knowledge and Understanding	Research, Critical Analysis, and Evaluation	Engagement and Reflection	Communication
<b>A</b>	<p>Comprehensive knowledge and understanding of political concepts, ideas, and practices.</p> <p>Insightful and well-informed understanding of participation, power, and government in a variety of national and international contexts.</p>	<p>Astute and in-depth research into and use of a variety of highly relevant primary and secondary sources.</p> <p>Highly proficient critical analysis of different views on complex issues.</p> <p>Concise and clear evaluation of ideas, structures, and procedures associated with various systems of government.</p>	<p>Constructive engagement in and perceptive reflection on political concepts, ideas, and issues, using primary sources.</p> <p>Insightful reflection on the relationship between politics, power, and decision-making.</p>	<p>Astute and coherent communication of political ideas and information through reasoned, connected arguments.</p> <p>Accurate and incisive use of political terms and appropriate acknowledgment of sources.</p>
<b>B</b>	<p>Well-considered knowledge and understanding of political concepts, ideas, and practices.</p> <p>Well-informed understanding of participation, power, and government in a variety of national and international contexts.</p>	<p>Some in-depth research into and use of a range of relevant primary and secondary sources.</p> <p>Proficient critical analysis of different views on complex issues.</p> <p>Convincing evaluation of ideas, structures, and procedures associated with various systems of government.</p>	<p>Well-organised engagement in and thoughtful reflection on political concepts, ideas, and issues, using primary sources.</p> <p>Well-informed reflection on the relationship between politics, power, and decision-making.</p>	<p>Thoughtful and clear communication of political ideas and information through reasoned, connected arguments.</p> <p>Mostly accurate and considered use of political terms and appropriate acknowledgment of sources.</p>
<b>C</b>	<p>Considered knowledge and understanding of political concepts, ideas, and practices.</p> <p>Informed understanding of participation, power, and government in different national and international contexts.</p>	<p>Competent research into and use of different primary and secondary sources.</p> <p>Competent critical analysis of different views on complex issues.</p> <p>Considered evaluation of ideas, structures, and procedures associated with various systems of government.</p>	<p>Mostly organised engagement in and considered reflection on political concepts, ideas, and issues, using primary sources.</p> <p>Informed reflection on the relationship between politics, power, and decision-making.</p>	<p>Considered and generally clear communication of political ideas and information through reasoned, connected arguments.</p> <p>Generally accurate use of political terms and appropriate acknowledgment of sources.</p>
<b>D</b>	<p>Recognition and some basic understanding of political concepts, ideas, and practices.</p> <p>Some basic understanding of participation, power, and government in different national or international contexts.</p>	<p>Narrow research into and use of primary and secondary sources.</p> <p>Superficial consideration of different views on issues, tending towards description.</p> <p>Some description of ideas, structures, and/or procedures associated with various systems of government.</p>	<p>Some engagement in and superficial consideration of aspects of political concepts, ideas, and issues, using primary sources.</p> <p>Consideration and description of an aspect or aspects of the relationship between politics, power, and decision-making.</p>	<p>Some communication of political ideas or information through description rather than argument.</p> <p>Inconsistent use of a narrow range of political terms, with some attempted acknowledgment of sources.</p>
<b>E</b>	<p>Identification and some awareness of political concepts, ideas, and practices.</p> <p>Some awareness of participation, power, and government in a national or international context.</p>	<p>Limited use of sources.</p> <p>Description of one or more views on an issue.</p> <p>Recognition of one or more ideas, structures, and/or procedures of government.</p>	<p>Attempted description of an aspect or aspects of political concepts, ideas, or issues, using one or more sources.</p> <p>Some awareness and attempted description of an aspect or aspects of the relationship between politics, power, and decision-making.</p>	<p>Limited communication of political information.</p> <p>Some attempted use of a very limited range of political terms.</p>