CRIMINAL LAW (UNLAWFUL CONSORTING AND PROHIBITED INSIGNIA) BILL 2021

Second Reading

Resumed from an earlier stage of the sitting.

HON NICK GOIRAN (South Metropolitan) [7.40 pm]: We are considering the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. Prior to the interruption for the dinner adjournment and the introduction of a couple of further bills that the government would like to have passed in the remaining three sitting weeks before the long adjournment for the summer, we were considering this bill. This bill is another of the bills that the government would like to have passed before the end of the year.

As I mentioned earlier, this bill has some substantial elements that are similar to those in a bill that was presented in the fortieth Parliament. That bill was known as the Criminal Law (Unlawful Consorting) Bill 2020. Members may be aware that Western Australia currently has unlawful consorting laws; that is, laws that seek to restrict some Western Australians from being able to associate with one another. One of the things that this bill seeks to do is substitute the existing unlawful consorting scheme with a new scheme. There are some issues about that that we will unpack momentarily. In addition, this bill seeks to introduce two new schemes: the prohibited insignia scheme and the dispersal notice scheme.

I said prior to the break that the opposition is pleased to support any effort by the government that seeks to genuinely and authentically tackle heinous crime in our state. Therefore, we are minded to support those elements of this bill that could be described as novel attempts to, in particular, tackle outlaw motorcycle gangs. In coming to this determination, the opposition has placed some weight on a document that was tabled in this place on 19 October this year. It is entitled *Report by way of justification of the provisions of part 3 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021*. The report was authored by WA Police Force on 15 October 2021—15 October of each year being a momentous day, even if I do say so myself! This particular report helps to provide some justification for these part 3 powers. It is important for members to be aware that this bill essentially is separated into two parts: part 2, the unlawful consorting regime, and part 3, which seeks to tackle the prohibited insignia and dispersal notice scheme. Part 3 of the bill contains the new provisions if we are to compare and contrast this bill with the bill from the fortieth Parliament. This document has been put together by WA police to justify these new provisions. I note that at page 15 of this tabled paper, WA police says —

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

Western Australia Police Force has been advocating for not only this prohibited insignia scheme, but also the dispersal notice scheme. I have explained to a few constituents that the dispersal notice scheme is a little bit like a move-on notice on steroids. What is meant by that is that at the moment, a Western Australian police officer has the capacity to issue a move-on notice to direct a person to move from their current location and that order is applicable for, as I understand it, a 24-hour period. The dispersal notice scheme will act in a different way. Rather than relating to location, it will be more directed at persons. A person will be asked to move on from associating with one or more other persons, which, as I understand it, will be for a seven-day period under this scheme. WA Police Force has provided some justification for this in the same tabled paper. At page 18, it states —

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

As I say, I indicate the opposition's support for part 3 of the bill, which we describe as a novel scheme. But we do have several concerns about elements of not only this scheme, but also, as I will explain in a moment, the unlawful consorting provisions. I think it is important for the government to pause and reflect on the harsh reality that if it is going to try to up the ante against outlaw motorcycle gangs, it needs to expect its laws to be challenged. The opposition simply hopes that the government has done its homework. It needs to be said that this is a government that has form in not doing so. We very much hope that this is not another example of that. It is trite to say that these laws will be challenged. I am sure that the Attorney General is well aware of that. Indeed, in 2014 there was a case in the High Court, albeit that case was an unsuccessful challenge to the New South Wales Crimes Act 1900, in particular the provisions on consorting. Nevertheless, it demonstrates that these particular individuals will not hesitate to challenge these laws in the court. The question is: is the government confident that these particular laws will survive a similar challenge?

I note also that in 2019, a challenge was made in Queensland. The Queensland Attorney General asked the Court of Appeal to assess the validity of warning notices under its legislation, the Criminal Code Act 1899, after a gang member

had successfully defended consorting charges. It would be of some assistance for the passage of this bill, as members seek to scrutinise it, if the parliamentary secretary, on behalf of the Attorney General, could provide an indication of the extent to which the government has considered those particular cases and the issues that arose in them and provide us with some assurance that we can be confident that this will not happen with the bill currently before us.

Although this approach being taken by the government, whether it be the prohibited insignia scheme or the dispersal notice scheme, could be described as novel, particularly the dispersal notice scheme, the other concern apart from the probability of the laws being challenged is whether they will be effective. There have been some comments already made and reported in the media questioning whether these laws will be as effective as the Attorney General has boasted. I note that a very experienced Queen's Counsel, Tom Percy, was quoted as saying this only a month ago in *The West Australian* in an article entitled "Nice try but bikies won't care and will still flout law". He said —

> There is no reason to believe that any new law prohibiting a member of an OMCG from displaying their colours or insignia in public will have any meaningful effect on their activities.
>
> Why would it?
>
> Similar measures in Queensland have had almost no effect.

I note also in Queensland that last year the *Brisbane Times* ran an article entitled "No bikies convicted under toughest laws in the country", which opened by saying —

> Not one bikie has been convicted in the past few years under Queensland's "tougher" consorting laws aimed at cracking down on gangs involved in drugs, guns, child exploitation and fraud.

I understand that at the time a two-year period had passed. It has almost been another two years since then, so, again, I ask the parliamentary secretary to provide an indication of the extent to which the Department of Justice here in Western Australia has consulted with its counterparts in Queensland and ascertained the effectiveness of those Queensland laws. The article I just quoted was from 16 January 2020. One would hope that maybe there has been some progress on these matters and that the predictions by the likes of Tom Percy and others could ultimately be proved to be unfounded. We ask the government to provide some clarification and indication on that.

I move to the dispersal notice scheme. As I mentioned earlier, there is currently a power under WA law for a police officer to move a person on. Section 27 of the Criminal Investigation Act 2006, under part 4, "Miscellaneous official powers and duties", states —

> (1) A police officer may order a person who is in a public place, or in a vehicle used for public transport, to leave it, or a part of it specified by the officer, if the officer reasonably suspects that the person —
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> (a) is doing an act —
>
> (i) that involves the use of violence against a person; or
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> (ii) that will cause a person to use violence against another person; or
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> (iii) that will cause a person to fear violence will be used by a person against another person;
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> or
>
> (b) is just about to do an act that is likely to —
>
> (i) involve the use of violence against a person; or
>
> (ii) cause a person to use violence against another person; or
>
> (iii) cause a person to fear violence will be used by a person against another person;
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> or
>
> (c) is committing any other breach of the peace; or
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> (d) is hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person; or
>
> (e) intends to commit an offence; or
>
> (f) has just committed or is committing an offence.

If any of those circumstances exist, the police officer can give an order under that provision that the person go beyond a reasonable distance from the place, or the part of the place, set by the officer, and order the person to obey the order or orders for a reasonable period set by the officer, but the period must not be longer than 24 hours.

Currently, under section 27 of the Criminal Investigation Act 2006, a police officer has the power to issue a move-on notice; in contrast, clause 36 in the bill before us will allow them to issue a dispersal notice. This provision will remain in effect for seven days beginning on the day on which it takes effect. I have been advised in the briefings

that have been provided to the opposition that a police officer will be able to give a dispersal notice to an adult member of an identified organisation who is consorting with an adult member of an identified organisation in a public place. Members may be aware that at the end of this bill, at pages 55 and 56, 46 identified organisations are listed. If a person is an identified member of one of those organisations, the police will have the opportunity in certain circumstances to issue a dispersal notice. It needs to be said—I hope that members appreciate this—that this is indeed a novel approach. I recall asking during the briefings that were provided to the opposition whether this dispersal notice scheme exists in other jurisdictions, and we were told that it does not. I further asked whether there were any such schemes internationally and we were told that that was not the case, either. Although we applaud the novelty of this approach, once again, we ask the government: is it braced and ready for the inevitable challenge that will be coming?

When the parliamentary secretary is representing the Attorney General in this place, we do not want all the bluster and bravado that we inevitably see from the Attorney General in the other place, who beats his chest and tells everybody how much he is looking forward to tackling the bikies, how he would like them to bring on a challenge, and so on and so forth. We do not want that. We want the calm and considered approach that has been consistently demonstrated by his parliamentary secretary. We want a methodical and competent approach to this serious issue. We heard today from the President of the Legislative Council that the Attorney General has been spectacularly unsuccessful in trying to sue the Legislative Council. We do not want any more of that. Enough taxpayers' money has already been set aside by this Attorney General for his bluster and bravado. No more of that! We want the calm Swinbourn approach—not the maniacal Quigley approach. I hope that the government is braced for those inevitable challenges.

That said, I take this opportunity to foreshadow to members that at the conclusion of my remarks, I will be seeking members' support for a referral of this legislation to the Standing Committee on Legislation. One reason for that is that we are now at 30 November and we have a mere two and a half scheduled sitting weeks left. I note that Parliament is then scheduled to return on 15 February. That would give the Standing Committee on Legislation a good opportunity to peruse and consider this 68-clause, six-part bill. Over the summer recess, for the people of Western Australia, the Standing Committee on Legislation could make sure that our Attorney General has drafted these laws in a fashion that will sustain the inevitable challenges that will be brought to it by outlaw motorcycle gangs. We will have a good opportunity for that to occur over the next about two and a half months, thus ensuring that we will not have another fiasco like the very expensive Supreme Court matter that the Attorney General has just lost.

Members may be interested to note that clause 2 of this bill provides that, in effect, the whole act, with the exception of section 67 and part 1, will commence on a day fixed by proclamation. Perhaps the parliamentary secretary can indicate in reply whether it is the case that the bill is currently not ready to commence. If it was, we would see a more traditional or alternative commencement clause whereby the main operative provisions would commence the day after assent. The government has indicated that that is not the case. That is not a criticism; it is often the case that bills require some other work to be done, whether it be regulations and so forth. Those things will take some time. When the government is ready, it will proclaim those particular provisions. Therefore, there is no problem with this bill being considered by the Standing Committee on Legislation over the summer recess. If the Attorney General has an alternative view and says it is very important—it is essential—that this bill pass before Christmas, and it cannot possibly be considered by the legislation committee over the summer recess, firstly, the opposition would ask for an assurance that these laws will withstand the inevitable challenge in court that will come; and, secondly, that these so-called toughest laws against bikies will be in place before 15 February. If they will not be in place between now and 15 February, there is no good reason for us not to take the prudent and careful approach of having the Standing Committee on Legislation review these laws to make sure that they can withstand the challenge. I look forward to the government's response on that matter.

There is an even greater reason why this bill ought to be considered by the Standing Committee on Legislation over the summer recess. That relates to the very significant difference that will be made with the unlawful consorting scheme. This matter has caused the Attorney General some degree of consternation. One only needs to consider his unruly remarks on this issue in the other place when it was pointed out by the opposition. It appears to the reader that the Attorney General introduced this bill, through the cabinet process, to the Legislative Assembly, but was regrettably unaware of the consequences of the change to the unlawful consorting scheme. Perhaps in typical modus operandi, rather than listening to the concerns raised by the opposition in the Assembly, what transpired can be described only as abuse. I look forward to us getting to the bottom of this. Although I do not expect it in the parliamentary secretary's reply, I foreshadow that in the event that the government is not inclined to refer this matter to the legislation committee over the summer recess, we will need to tackle this issue in the Committee of the Whole House so that we can compare and contrast what the consorting scheme looks like at the moment with what it will look like once this bill passes. Evidently there will be a difference. I am led to believe that it will take three years for police to undertake the assessment process, particularly with our current cohort of child sex offenders who are captured by the existing scheme, to determine which of those will be eligible and captured by the new scheme. If it is the case that the schemes are identical and will capture the same cohort, there will be no need for a prolonged three-year assessment process.

It was particularly troubling to the opposition to be told that approximately only five per cent of those in the current scheme will be captured by the new scheme. I understand that 800 child sex offenders are captured by the current scheme, and that only five per cent of them will be captured in the scheme moving forward, so 95 per cent will no longer be captured by the scheme. This has been described as the watering down of these laws against child sex offenders. The Attorney General repeatedly says that that is a scare campaign by the opposition. Rather than calling it a scare campaign, he should just carefully, methodically, coolly and calmly explain what proportion of child sex offenders are being captured by the current scheme and the mechanism by which they are being captured, and the proportion who will be captured moving forward and the mechanism by which they will be captured.

I have said a few times to members that the best thing to do in this job is to read. If they do that, they will find that one thing that is happening here is that section 557K of the Criminal Code is being used presently with respect to unlawful consorting. In particular, members ought to be aware that section 557K(4) reads —

> A person who is a child sex offender and who, having been warned by a police officer —
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> (a) that another person is also a child sex offender; and
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> (b) that consorting with the other person may lead to the person being charged with an offence under this section,
>
> habitually consorts with the other person is guilty of an offence and is liable to imprisonment for 2 years and a fine of $24 000.

I have a copy of the blue bill and it is very interesting that in the blue bill, section 557K(4) is struck out completely. Section 557K(4) is struck out and so is subsection (5). There are track changes that strike through particular provisions in the statute of Western Australia—they are struck out. Yet, in the Assembly, on 9 November, *Hansard*—not in the uncorrected proof, mind you, but in the finalised version—records these words attributed to Mr J.R. Quigley —

> We have not repealed section 557K(4); that is the still the law …

Someone has made a mistake there! I do not know whether that is how he spoke on the day; he had the opportunity to correct the uncorrected proof. Nevertheless, quite apart from the grammar, Mr J.R. Quigley is recorded on Tuesday, 9 November 2021, as saying, "We have not repealed section 557K(4)". There was a bit of interjecting from the Leader of the Liberal Party, the member for Cottesloe, at this point, but rather than conceding that he had made an error, the Attorney General doubled down. He said —

> Section 557K(4) is the law this evening —

That is evidently the case, because the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021 has not yet passed through both houses of Parliament —

> and when this bill passes the Council, and is signed by Executive Council and the act is proclaimed, section 557K(4) of the Criminal Code will exist as it exists now.

Yet the blue bill strikes out these provisions. The Attorney General is certainly a very intelligent fellow, but he is also known for playing a lot of games. In fact, there would probably be very few politicians in Western Australian history who have played more games than the Attorney General. One can only assume that the silly game the Attorney General was playing at the time was to say, "Yes, section 557K is the law at the moment. Once the bill passes the Council it will still be the law." That is all true, until such time as he reads clause 2 of his own bill. Incidentally, members, clause 67 will strike through section 557K of the Criminal Code. Clause 2(c) states —

> section 67 — on the day after the period of 3 years beginning on the day fixed under paragraph (b).

It is a sure thing that these provisions will be repealed; that is the whole point of clause 67. For the Attorney General to suggest otherwise would seem to indicate that the person with carriage of the bill has not read his own bill. We would not want to ascribe negative motivations to the Attorney General about trying to deliberately mislead the Parliament, or anything like that. I cannot imagine that being the case, so the explanation that seems far more plausible is that a very intelligent fellow has not read his own bill.

We will have to tackle that, parliamentary secretary, because that is the existing provision for consorting notices. For members who are not aware, that is what gives any police officer in Western Australia the capacity to walk up to a child sex offender and give them a warning; section 557K enables them to do that. It will no longer be the case that every police officer in Western Australia will be able to do that once the Attorney General's bill becomes law. There will be a new scheme in place under clause 9. Members who are particularly interested in whether child sex offenders should be able to consort, and the extent to which they can consort with one another, ought to take a moment and compare section 557K of the Criminal Code as it is at the moment with what it will be when the Attorney General strikes it through with clause 9 of this bill.

Clause 9 sets out how a new unlawful consorting notice will be issued. Incidentally, only an authorised officer will be able to issue one of these consorting notices—not any police officer; only an authorised officer. An "authorised officer" is defined at clause 3 of the bill as —

> ***authorised officer*** means a police officer who is, or is acting as, a Commander or an officer of a rank more senior than a Commander;

I ask the parliamentary secretary to indicate to members in his reply to the second reading debate, if he has the information available to him, how many ranks of police officer there are below commander. At the moment, any police officer can issue a warning to a child sex offender and say to them, "Be warned. If you consort with that other child sex offender, you're liable to be prosecuted under 557K(4)." That is the current law. Any police officer can do that. But under the new bill proposed by the Attorney General, they will have to reach the rank of commander. How many police officers are there in Western Australia at the moment who can issue a consorting warning, and how many will be able to do so after this bill is enacted? Whatever the number is, it will be a darn sight less than what it is at the moment. I will be keen to know how many ranks there are below commander, because we will be saying to them, once this bill passes, "You're not able to issue one of these consorting warnings anymore."

It is plainly the case that an additional burden will be placed on police once this new scheme of consorting notices under clause 9 comes into effect. They will need to ascertain that a person is a relevant offender who has consorted, or is consorting, with another relevant offender or suspect on reasonable grounds that the person is likely to consort with another relevant offender. That is not the case at the moment, so the new scheme will give police officers a new thing to consider. In addition to that, an officer will have to consider that it is appropriate to issue the notice in order to disrupt or restrict the capacity of relevant offenders to engage in conduct constituting an indictable offence. I can imagine that the Attorney General may well have thought, "In order to tackle the bikies, I'm going to have to restrict these consorting notices, these particular provisions that restrict the ability of Western Australians to associate with one another. I'm going to have to make sure that I really narrow them down because if I don't, I'm going to be subjected to the type of challenges that we have seen in New South Wales and Queensland." I can understand why he might want to do that, but why will the government then allow so many child sex offenders the freedom to be released from the existing anti-consorting laws?

These are the types of things that ought to concern members and, once again, justify why the bill should be considered by the Standing Committee on Legislation over the summer recess. Members should remember that it will take the government and our hardworking police officers three years to do the assessment process with regard to all these individuals. While they are busy undertaking that process, perhaps we should take two months over the summer recess to make sure that we get this right, that we have the laws in such a state that the bikies will not be able to successfully challenge them in the courts and, in the meantime, we will not be allowing child sex offenders to run around without the threat of a warning from a police officer, a threat that currently exists.

I draw to members' attention some other curious elements of this bill. This goes to the amendments on the supplementary notice paper standing in my name on behalf of the opposition and they attend to two points. The first is what is described as a defence for union officials, and the second is who will be the overseer of these laws. With regard to the provision for union officials, the explanatory memorandum states that clause 18(2)(a) sets out an acceptable range of most day-to-day, law-abiding activities during which it may be necessary to consort. Those circumstances are engaging in a lawful occupation, trade or profession; attendance at an educational institution to take part in specified courses; and receiving a health service or social welfare service or obtaining such a service for a dependant.

I pause there and note that the list of things being suggested by the government are what it is saying child sex offenders ought to be able to do. They ought to be able to consort with another child sex offender in certain circumstances, such as engaging in a lawful occupation and attending an education course. The list includes the provision of legal advice, lawful custody, complying with a written law or an order made by a court or tribunal, or any other order, direction or requirement made under written law, and then the government has snuck in official union activities. The list goes on to state fulfilling a cultural practice or obligation of the customary laws or traditions of the person's community if the person is an Aboriginal or Torres Strait Islander person. This is all set out in the explanatory memorandum.

The opposition's question is: Why has the government snuck in the provision for union activities? Why do we need to have child sex offenders consorting with one another with their defence being, "I've got my union hat on. We're engaging in official union activities"? The point on which I would welcome a response from the government is this: the government says it is very important that people undertake this official union activity and consort. It is crucial; they have not given up their rights the moment they abuse a child in this space; we will allow them back onto the official union activity playing field. We will allow them back in there because it is crucial; it is absolutely essential. It is in the same league as the provision of legal advice, lawful custody, receiving a health or social welfare service, or engaging in a lawful occupation. It is in that same league. If that is the case, I seek a response from the government for why we have excluded a whole range of other activities when people ordinarily associate. Why are only these things attracting such special treatment? We will tackle that in due course. This is by way of giving notice to members

for why the opposition has an amendment on the supplementary notice paper to delete this special treatment for official union activities from those who otherwise would not be able to consort with one another.

Interestingly, clause 43 sets out the same defence provisions to a charge of consorting contrary to a dispersal notice. If a police officer issues one of these dispersal notices and says to these individuals, "I don't want you to associate with one another for seven days", the individuals can give the defence of, "We need to because we have official union activities to engage in." The government needs to provide a response for why it deems it is very necessary to provide this type of defence for union activities.

In the previous Parliament, my predecessor, Hon Michael Mischin, had this to say on this matter. I quote from *Hansard* of 11 November 2020 —

> It is all very well to limit association —

I can just hear him saying this.

Hon Sue Ellery interjected.

Hon NICK GOIRAN: He continues —

> to "the purposes of the business of the organisation", but as we have learnt to our cost over the last decade or so, some unions, unfortunately, have criminals as members and some misuse the authority that they have within those organisations for the purposes of extortion and other criminal conduct that perverts the proper purpose of those organisations, and they use the power that those organisations may be able to wield for undesirable and criminal activities. However, in this legislation we are contemplating making a specific exception for those criminals. Apparently, criminals consorting with each other can be too great a risk unless, of course, they happen to be members of a union. There seems to be no good reason that that exception should be in the legislation. If it is thought that that is important—that somehow they should be allowed to consort for the purpose of the business of the organisation—and it is to be taken on trust somehow that that is all they will be doing and that the risk, however great, they may consort for criminal purposes ought to be allowed, then it also ought to be permitted for other relationships. One wonders why there is any limitation at all.

I look forward to the government's explanation for why that provision is not only appropriate, but also necessary.

The final area in the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill I want to tackle is: who should be the monitor of these police powers? My concern—this is a longstanding concern—is that too often governments can lazily try to send these types of monitoring activities to the Ombudsman or, as they are more officially known, the Parliamentary Commissioner for Administrative Investigations. That is what this government is doing with this particular bill. Members will see on the supplementary notice paper that the opposition will seek to remove the Ombudsman as the overseer and instead insert the Corruption and Crime Commission.

Page 38 of the explanatory memorandum confirms that this bill will give the Ombudsman power to enter police premises, inspect police records, direct police officers to produce information and recommend the variation or revocation of unlawful consorting notices. These are all the types of jobs that normally fall in the remit of the Corruption and Crime Commission. This is not something new. I draw members' attention to the work of the Standing Committee on Uniform Legislation and Statutes Review from as far back as March 2012. It will soon be nearly 10 years since the chair of that committee, the exceptionally talented and hardworking Hon Adele Farina, authored the sixty-ninth report, which dealt with the Criminal Investigation (Covert Powers) Bill 2011. We had a very similar situation in the era of the Barnett government when there was an attempt to make the Ombudsman the overseer of these criminal investigation covert powers. The Joint Standing Committee on the Corruption and Crime Commission made a submission to the Standing Committee on Uniform Legislation and Statutes Review and basically said, "Hang about; while you are reviewing the Criminal Investigation (Covert Powers) Bill, please give some consideration to who should be the overseer of these powers." I have in my possession a copy of that submission from 18 November 2011, so it is now 10 years old. It is a public document, and at page 3 it reads —

> … it is the Committee's submission that the oversight and monitoring powers in the Bill would be better entrusted to the Corruption and Crime Commission … than to the Parliamentary Commissioner for Administrative Investigations …
>
> The reasons for this submission are as follows: …

Members can obtain a copy of this submission to read the full reasons. The two that I particularly want to draw to members' attention for consideration are —

- A principal concern with controlled operations, because of their very nature, is the possibility of corruption. A controlled operation involves the committing of actions that would otherwise be criminal by law enforcement officials or persons authorised by law enforcement officials. The community is

> naturally concerned that the power to commit such acts with legal immunity is not misused. The Commission's main purpose —

That is, the Corruption and Crime Commission's —

> is to "*to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector*" … In exercising the oversight and monitoring powers provided by the Bill the Commission, by its nature, is more likely to pay close attention to, take note of and respond appropriately to possible misuses of the controlled operations powers of law enforcement agencies;

If you like, by way of a comparison, having just identified the role of the Corruption and Crime Commission, the committee goes on to say —

- The Ombudsman's mission is to "*improve the standard of public administration*". The focus of the Ombudsman is more likely to be on record keeping and efficient administration than on possible misconduct;
- The Ombudsman already has a very broad range of responsibilities across the whole range of public administration, as well as some very important specific functions such as reviewing certain child deaths. With limited resources the Ombudsman necessarily needs to decide how to deploy these resources most effectively. It may be difficult for the Ombudsman to give sufficient attention and resources to the new tasks of oversight and monitoring that the Bill would impose.

All of which is to say that this particular episode ended with the government of the day conceding the point. Of course, the Corruption and Crime Commission oversees these powers, not the Ombudsman. The same principles apply here. The Corruption and Crime Commission ought to oversee this work that will be undertaken by police. It is one of the main roles of the Corruption and Crime Commission and it is one of the main reasons that it was established in the first place. Why are we now asking the Ombudsman to delve into this area? It would plainly be a matter of duplication for them to do so. There is a simple solution to this. This extraordinary role that will be performed by police will still be monitored. Remember that this will be police directing and telling people whether they can or cannot associate. One of our fundamental freedoms is the freedom of association, and this bill will give police the power to restrict that freedom of association—for good reasons when it comes to child sex offenders, drug traffickers and outlaw motorcycle gang members; nevertheless, it is a serious power. If we are to entrust the police with this very serious power to restrict which people can associate with one another, someone needs to be watching them. The person who should be watching them is the person who is always watching police, which is the Corruption and Crime Commissioner. Why would we invest in another body to come along and do that same work?

In conclusion, I indicate that the opposition does support the government's novel efforts to try to tackle outlaw motorcycle gangs, particularly its prohibited insignia scheme and also its new dispersal notices scheme. We do, however, have concerns about whether the government is match fit for any court challenge that may occur. That is why we would like the bill to be considered by the Standing Committee on Legislation over the summer recess. Even more importantly, we want to be satisfied that we are not going to end up with 95 per cent of child sex offenders who are currently captured by our consorting laws no longer captured after this three-year assessment process. If that is going to be the case, we want some clear and cogent reasons why that ought to be allowed by this Parliament before we wave through these laws.

Before I move the motion to refer, by way of indication to members, as is perhaps becoming customary with the government, there has not been a great deal of consultation on this matter. In fact, ordinarily the Law Society of Western Australia is pretty forthcoming with its feedback to me on bills proposed by this government, but in this instance, it said it had not even been consulted by government. That might be another task for the Standing Committee on Legislation. That said, I ask members to give serious consideration to supporting the referral motion.

Discharge of Order and Referral to Standing Committee on Legislation — Motion

HON NICK GOIRAN (South Metropolitan) [8.33 pm] — without notice: I move —

> That the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021 be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 15 February 2022.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [8.34 pm]: I rise to give the government's position on the referral motion moved by Hon Nick Goiran. From the outset, I indicate that the government will not be supporting the referral of this bill to the Standing Committee on Legislation. There are a few reasons for that, but I shall keep my contribution as brief as I can.

This bill has been developed in close consultation with key stakeholders, including subject matter and legal experts, and the bill is ready to be proclaimed as soon as it is passed. Hon Nick Goiran spoke of the time imperative. We could kick the can down the road until February, but then we would have to find a spot in the legislative program to deal

with this, and on and on it would go. We are here today and we want to deal with the bill today and during this week. We do not support further delay of the progress of the bill. It is noted that a substantially similar bill to this bill was introduced in the last term of Parliament but that it did not progress through the Legislative Council. The idea that further delays are justified on the basis that we will get a better outcome if we refer it to the Standing Committee on Legislation—not that it was referred, I believe—was not borne out.

The proclamation clause that I think has been referred to is not included for the purposes of delaying the proclamation of the bill; it is simply a matter of drafting that has been adopted in this bill. It is true, I suppose, in one sense that if we kick the can down the road to February next year and get a report from the legislation committee, we could then get on with it and get the bill done, but we would miss out on the opportunities that arose as a consequence in the meantime. We have an opportunity to get this bill started and will benefit from delivering this bill to the community through the actions of the police whose dealings with outlaw motorcycle gangs and their activities are ongoing. The outlaw motorcycle gangs will not hold in abeyance what they do. Summer is an active period for outlaw motorcycle gangs. It is good riding weather and good weather to cause disturbances, so I do not think we should allow the progress of this bill to be delayed and give them a bit more time to get up to what they get up to. We will not support the referral of the bill to the legislation committee. It is an excellent committee and does excellent work while it is formed. I have sat on it, so I am not suggesting that it does not do valuable work.

It is also worth noting that the WA Police Force has been very closely involved in development of the bill and that it supports the bill. There was an idea that the police would just deliver this bill and would have to deal with the consequences. The police have been intimately involved with it from the outset. The police very much support it and want the provisions in it. In fact, the police asked for them. The police are working to prepare the necessary internal policies, training, information system improvements and information sharing protocols with the Ombudsman for when that arises. From that point of view, I think the best thing this chamber can do is to start to get this bill underway. That will give the police the tools they are asking for to deal with outlaw motorcycle gangs, amongst other things, such as child sex offenders and drug traffickers—those who choose to live a life outside the norms of society and who choose to live a life that often puts ordinary people's health, wellbeing and safety at risk. In the second reading speech, we gave the example of a man in Armadale who was wearing a Sons of Anarchy outfit while working on his car in his front garden. An outlaw motorcycle gang member stopped and beat the living daylights out of that poor man because he was wearing an outfit that the outlaw motorcycle gang member said he had not earned and told him that he had to earn his, so he delivered him a hiding to teach him a lesson. If we delay the passage of this bill —

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: I think it will have some benefit. I am trying to paint a picture of the kinds of people this bill is aimed at and the mischief they are engaged in in the hope that it will help them move away from their errant behaviour. That is the type of person this bill will deal with. There is no justification for delaying it. The committee stage of this bill will no doubt be exhaustive as we go through the process. I have already been warned by Hon Nick Goiran about the level of interrogation he intends to put me under during the course of this bill, which he is entitled to do.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: The member did not use the word "interrogation", but he certainly pointed to a number of areas that he would like to debate. I am not suggesting any improper motives on the member's part. The government does not support the bill's referral to the Standing Committee on Legislation and will vote against the motion.

HON PETER COLLIER (North Metropolitan) [8.40 pm]: I indicated to the parliamentary secretary that I would not comment on this referral motion, but he inspired me to raise a couple of points in response. I have a couple of comments. First of all, with regard to the referral, quite frankly, Hon Nick Goiran has given a very comprehensive and forensic assessment of the legislation, particularly from his perspective on the watering down of anti-consorting laws as they relate to child protection. That is something that he feels particularly strongly about and is very relevant. Some areas of this bill need scrutiny, and that cannot be met in the Committee of the Whole process. The first point I want to raise is that the parliamentary secretary said this bill was part of the previous Parliament.

Hon Matthew Swinbourn interjected.

Hon PETER COLLIER: I am aware that the insignia component is now part of the bill. The original bill could have been passed in the previous Parliament; the government could have easily included some amendments. The fact that that bill was not passed in the previous Parliament had nothing to do with the opposition. I want to make that perfectly clear. The opposition supports this bill, particularly the part that deals with insignia and, shortly, when I contribute to the second reading debate, I will reiterate that. To suggest that the provisions in this bill will somehow happen automatically within the next couple of weeks and over Christmas and that the police will be able to deal with motorcycle gangs when they go on their runs to Margaret River, Kalgoorlie or wherever they go over the January break is naive in the extreme. These laws will not take effect by then. I do not think the parliamentary secretary's argument about the timing component is valid.

My second point relates to the Standing Committee on Legislation. The parliamentary secretary said with a straight face that the legislation committee does really good work. I am not sure that any bills have been referred to the legislation committee in this Parliament.

Hon Matthew Swinbourn interjected.

Hon PETER COLLIER: Has any bill been referred to the committee during this Parliament?

Hon Matthew Swinbourn interjected.

Hon PETER COLLIER: Why not ask the Standing Committee on Legislation to do some work and we will know? Like the parliamentary secretary, I have no doubt it will do a good job. The committee system in this place is magnificent. The Standing Committee on Estimates and Financial Operations is outstanding! I really think that the government should give the legislation committee a go, particularly on a bill like this. While the government continues to assume that all its legislation is perfect, and then gets really cranky when we spend an inordinate amount of time in Committee of the Whole, its criticism is without foundation.

I can count. It is evident we are not going to win this one and the bill will not be referred to the Standing Committee on Legislation, but I say to the government that if there are a couple of bills that are not time imperative and could do with some decent scrutiny, it should give the legislation committee some work. The government cannot say that the legislation committee in this Parliament is doing a good job, because they have not met—rather, they have met but they have not considered any legislation.

Hon Dr Steve Thomas: They are probably at a Christmas function.

Hon PETER COLLIER: I am sure they might be.

Yes, I agree that the police have been consulted extensively. I have been in quite comprehensive consultation with the police, and, in my contribution, I will talk extensively about the report that the government tabled from the police. But the police are not the only facet, organisation or stakeholder involved here. I think the Standing Committee on Legislation would definitely give an opportunity for those other parties to have a say. Having said that, I do not want to hold up the progress of this bill. I had not intended to speak, but the parliamentary secretary really inspired me. I will most definitely support the referral.

Division

Question put and a division taken, the Acting President (Hon Steve Martin) casting his vote with the ayes, with the following result —

Ayes (6)

Hon Peter Collier	Hon Steve Martin	Hon Neil Thomson
Hon Nick Goiran	Hon Dr Steve Thomas	Hon Tjorn Sibma *(Teller)*

Noes (20)

Hon Klara Andric	Hon Peter Foster	Hon Sophia Moermond	Hon Matthew Swinbourn
Hon Dan Caddy	Hon Lorna Harper	Hon Shelley Payne	Hon Wilson Tucker
Hon Stephen Dawson	Hon Jackie Jarvis	Hon Dr Brad Pettitt	Hon Dr Brian Walker
Hon Kate Doust	Hon Ayor Makur Chuot	Hon Stephen Pratt	Hon Darren West
Hon Sue Ellery	Hon Kyle McGinn	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*

Pairs

Hon Colin de Grussa	Hon Samantha Rowe
Hon James Hayward	Hon Rosie Sahanna

Question thus negatived.

Second Reading Resumed

HON PETER COLLIER (North Metropolitan) [8.49 pm]: I stand to make some comments on the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021, specifically about part 3 of the legislation with regard to outlaw motorcycle gangs and the use of insignia. As I said in my brief contribution to the referral motion, this component of the bill was not a part of the bill from the last Parliament. I totally support this part of the bill.

Hon Nick Goiran: Other than the union defence clause.

Hon PETER COLLIER: I apologise. The union defence clause is also an addition. I would be interested to hear the comments from the parliamentary secretary with regard to that.

It would take a very brave person to not support anything that will enable us to come down hard on outlaw motorcycle gangs. It can be quite intimidating to have a group of outlaw motorcyclists, for want of a better term, passing us on the freeway or on a country road, or sitting next to us when we are at a hotel. Long gone are the days when I have gone to a hotel that has been inundated with outlaw motorcycle gangs—in fact, never—but they have a propensity to be attracted to certain hotels or areas, particularly country areas, when they go on their runs et cetera. As I said, there is something quite intimidating about that. It is not just that. People can go for a run with their mates on their motorcycle. Nothing is wrong with that. The issue is the outlaw component and the associated crime. Ideally, this legislation will assist in helping to overcome that issue.

The bill seeks to make three main reforms. The first is the unlawful consorting scheme, which is aimed at disrupting and restricting the capacity of offenders to engage in criminal activity by criminalising association and communication between offenders. This scheme will apply broadly to anyone who is deemed a relevant offender—namely, a declared drug trafficker, or a person who has been convicted of a range of listed offences, including an indictable offence, a child sex offence or an offence under the bill, and who is displaying an insignia in a public place or is in breach of a dispersal notice. The second component is the prohibited insignia scheme. That will specifically target criminal organisations such as outlaw motorcycle gangs, or OMCGs, OMCG affiliate gangs and street gangs. It seeks to prohibit the display of insignia by 46 identified organisations that are listed in schedule 2 of the bill. These identified organisations are based on state and commonwealth police intelligence as contained in a report tabled in the Legislative Assembly by the WA Police Force on 19 October 2021. I will refer to that report quite extensively in a moment. That scheme can be amended only by Parliament including a regulation-making power.

Finally, the bill seeks to implement a dispersal notice scheme, which will also specifically target criminal organisations. It will empower the police to issue and enforce dispersal notices aimed at disrupting consorting in public places. A dispersal notice can be issued to suspected members of different identified organisations and will apply for a period of up to seven days. I understand that we are the only jurisdiction in the nation that will have that scheme. A person who fails to comply with a direction for unlawful consorting issued by a police officer, and a person who displays prohibited insignia or breaches a dispersal notice, will commit an offence punishable by imprisonment for 12 months and a fine of $12 000. Corporations will attract a fine of $60 000 for displaying prohibited insignia.

That is very general. The shooting at Perth Motorplex at Kwinana Beach probably prompted this legislation more than anything. That identified the fact that although these gangs like to feel that they are above the law, they simply are not. In that instance, one man—the past president of a gang—lost his life, a young boy was grazed by a bullet, and another man was shot.

We are not talking about Gandhi here. These guys have form. I intend to go through the report of the Western Australia Police Force quite extensively, because even though it was tabled, it is important for people to hear what the police have written. This comes from the coalface; it comes from the officers who have to deal with these outlaw gang members. I have spoken to the WA Police Union and a number of police about this, and they are all supportive of this particular component of the legislation, so I have no problems going through elements of the report just to emphasise why this component of the bill is necessary.

As I said, I certainly will not go through the whole report; I will read selectively from it. But I recommend that members have a read; it is quite compelling. I know that the parliamentary secretary mentioned a couple of cases earlier, but I will go through them a little more extensively. There is a pretty good definition of the term "outlaw motorcycle gangs" in the report. It captures pretty much what they are related to. The report states —

> The Australian Institute of Criminology published a paper in March 2021 which provided a comprehensive literature review of the organisational structure, social networks and criminal activities of Outlaw Motorcycle Gangs (**OMCGs**) …
>
> OMCGs encompass characteristics that facilitate violent crime, including their size, paramilitary hierarchical structures, criminally inclined membership, reputations for violence and hostility to outsiders. In Western Australia (**WA**), OMCG members have been increasingly implicated in a variety of high-level criminal enterprises including drug and weapons trafficking and distribution, extortion, fraud and money laundering.

They have their little enclaves and their little castles and they use them as their fiefdoms for their drug use and illegal activity. As I said, they feel that they are above the law. It continues —

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

It goes on to say —

> Since 1984 there have been multiple OMCG murders, shootings, fire-bombings and violent assaults that have occurred in public places throughout Australia. This includes the recent Western Australian incident where Rebels OMCG President, Nickolas Martin, was fatally shot from long range while attending an event at the Kwinana Motorplex in 2020.

I might add that that was while he was surrounded by hundreds of other people. The report lists a litany of cases in which OMCGs have been directly involved in violence or crime, and I will go through just a few of those. It states —

> **26 August 2021** **Grievous Bodily Harm**
>
> Violent assault allegedly committed by a member of the Mongols OMCG in the carpark of a Geraldton licensed premises. Victim was allegedly stabbed seven times in the arms and torso whilst trying to defend himself.
>
> …
>
> **22 June 2021** **Armed Robbery/Arson**
>
> Tattooist and customer at Ellenbrook Tattoo business allegedly robbed at gunpoint. Business and offenders allegedly linked to the Rebels OMCG.
>
> …
>
> **17 June 2021** **Kidnapping/Serious Assault**
>
> Rebels OMCG members and associates allegedly abducted a female over a perceived debt. Also alleged that victim seriously assaulted, including having her hair cut off.

Another one is —

> **29 April 2021** **Shooting Incident**
>
> Two members of the Comanchero OMCG allegedly fired several shots into a house in Bennett Springs.

There are always instances of this, but there was one instance just recently when they got the wrong house. It goes on —

> **12 December 2020** **Murder**
>
> Rebels OMCG President fatally shot at the Kwinana Motorplex during a motorsport event attended by members of the public.

I have mentioned that one —

> **5 November 2020** **Cash Seizure**
>
> 2 x Trucks stopped
>
> 1 x truck stopped in Coolgardie, locating $13.2 million in cash allegedly concealed in compartments in trailer being driven by one member of the Lone Wolf OMCG.
>
> 1 x truck stopped in Meckering, locating $2.94 million in cash concealed in compartments in trailer being driven by one member of Lone Wolf OMCG
>
> …
>
> **11 September 2020** **Deprivation of Liberty/Threats to Kill**
>
> Mongols OMCG member allegedly lured his ex-partner to a service station in Bertram where he allegedly assaulted her, and held a gun to her before firing the weapon in her direction.
>
> Inquiries over matter led police to execute a search warrant in Shoalwater, locating 4 x rifles, 1 x shotgun, 2 x silencer. Mongols member charged

It goes on and on. As I said, there are dozens and dozens of instances of this. It has got to the point at which they feel they are above the law.

I turn to prosecutions and imprisonment in Western Australia. The report states —

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

> During the 2020/2021 financial year, the WA Police Gang Crime Squad charged 355 persons with a total of 1,045 offences. Of the persons charged, 132 were verified OMCG members and 161 were identified as close associates of OMCGs. Since December 2020 to August 2021 Gang Crime Squad has executed 286 Search Warrants and charged 271 persons for 798 offences. As a result of this work, 92 firearms have been seized from OMCG members and associates.
>
> In addition to prosecutions, the Gang Crime Squad seized $15.4 million dollars in cash, 28 kilograms of methylamphetamine, five kilograms of cocaine and three kilograms of MDMA as part of ongoing operations relating to OMCG members. This included the seizure of $13.2 million which, to date, is the largest single cash seizure by an Australian law enforcement agency.

The report identifies dozens upon dozens of instances of multitudes of members of OMCGs who have been sentenced for offences relating to drugs, assault, burglary, arson, robbery, kidnapping, cannabis, sexual assault, kidnapping, kidnapping—gee, they are big on kidnapping!—assault, burglary, threats, burglary, drugs, firearms and assaults. There are dozens and dozens of them.

These gangs have been listed and they are named in the bill. The report states —

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

I am going to go through those organisations so they can lay claim to the fact that they were all named in *Hansard*. I know the Leader of the House is fascinated by this! The gangs are Comanchero, Hells Angels, Bandidos, Mongols, Rebels, Finks, Lone Wolf, Outlaws, Nomads, Gypsy Joker, Gods Garbage, Club Deroes, Coffin Cheaters, Diablos, Highway 61, Rock Machine, Satudarah, Black Uhlans, Bros, Descendants, Devil's Henchmen, Foolish Few, Fourth Reich, Gladiators, Highwaymen, Huns, Immortals, Iron Horsemen, Life and Death, Mobshitters, Odin's Warriors, Outcasts, Phoenix, Red Devils, Renegades, Satan's Riders, Vigilantes, Vikings, 77 Crew, 7/10 Crew, Raiders, Connected Crew, City Crew, Southern Independence, Black Power and Mongrel Mob. There you are, guys.

The fact that there are these 46 gangs is bad enough, but the problem is they are not only gratified by their illegal activity. The rivalry amongst themselves is equally problematic, because again, more often than not, it causes more associated problems. That is when we get a lot of the instances of crimes being committed that I have just referred to.

On rivalry, the report states —

> On 3 October 2010 members from the Finks OMCG and the Coffin Cheaters OMCG attended a street drag event at the Motorplex complex, Anketell Road, Kwinana Beach. The Coffin Cheaters were located near the 'Snap on' sponsors tent within the complex. At some stage, the two groups have come together where the Coffin Cheaters outnumbering the Finks have engaged in an altercation using steel bars, knives and a hand gun. During the altercation, a member of the Coffin Cheaters OMCG approached a member of the Finks OMCG with a pistol with a silencer, and shot the Finks OMCG member in the knee. The offender is believed to have dismantled the pistol and silencer and secreted it under the seat of his motorcycle. Other offenders used steel bars and knives to inflict multiple injuries on the victims. Throughout the ordeal, Coffin Cheater members were wearing their colours, whilst participating in the violence and committing the offences.
>
> In a recent example (July 2021) a male victim was assaulted, receiving stab wounds to his arm and a jaw injury sustained from a knuckle duster–type weapon. Reporting on the incident indicates that at least five members of the Bandidos OMCG were assaulting a similar number of Lone Wolf OMCG members over a debt.
>
> The display of insignia of an identified organisation by a member or members of one identified organisation can provoke or incite a breach of the peace or an act of violence by a member or members of another identified organisation.

That is what we have to remember: it is often the insignia that is inciting these issues. That is all it takes—someone wearing different insignia—to incite this issue. Ideally, we live in a lawful society, but the law means nothing to the people wearing these insignia. They are above the law and that is the problem with these insignia.

The report refers to the purpose of the prohibitions and gives a very succinct explanation of them. It states —

> A prohibition on the display of insignia of an identified organisation will lessen the likelihood of such breaches of the peace or acts of violence since, in most cases, absent the display of such insignia, a member or members of one identified organisation would not be able to identify a member or members of another identified organisation. More generally, the prohibition on the display or insignia of an identified

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

The report refers to the prohibition on consorting contrary to a dispersal notice, which is another component of the reform. It states —

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

A little later, the report refers to the purpose of the prohibitions with regard to dispersal notices. It states —

> The issue of a dispersal notice to a member of an identified organisation to prohibit that member from consorting with another member of an identified organisation will mean that members of the public can go about their lawful business in public places without experiencing intimidation, threat or fear.
>
> Members of identified organisations have been known to commit criminal offences with other members, as shown. This has been outlined by several examples in this report.
>
> The issue of dispersal notices to members of identified organisations will reduce the number of offences committed by members of identified organisations in concert since the members cannot get together to commit such offences.
>
> As outlined, there is often rivalry, animosity and open warfare between members of different identified organisations. Members of identified organisations who consort with each other in public places may provoke or incite a breach of the peace or an act of violence by members of another identified organisation. This violence has occurred in a range of public places including residential streets, dining venues, petrol stations, parks and the casino. For example, in September 2018 members of the Rebels OMCG and the Comanchero OMCG participated in a violent feud on a grassed area within the Crown Casino Perth complex. The violence was filmed by a member of the Rebels and involved assaults on several members of the Comanchero, including stomping on their heads.
>
> Innocent members of the public can be inadvertently caught in the crossfire and their health or safety may be put at risk, as occurred with the Perth Motorplex shooting where a child was injured as a result of the shooting of a Rebels OMCG member.
>
> The issue of dispersal notices to members of identified organisations will lessen the likelihood of such breaches of the peace or acts of violence since the members cannot get together in public to plan or engage in such behaviour.

That last paragraph is the crux of it. I could not have said it better myself. I went through this with the police and the union. The police are very comfortable with this component of the bill. That is why we are very comfortable and supportive of that component of the bill.

Hon Nick Goiran raised a number of issues—I am sure the parliamentary secretary will talk about them—concerning the watering down of the anti-consorting laws in relation to child sex offenders and also the specific defence of trade union members. I will be interested to hear the parliamentary secretary's response to those issues. The only other issue—this was raised by some police, not WAPOL, who spoke to me—relates to the oversight of the Ombudsman. Like Hon Nick Goiran, I cannot quite work out why the Ombudsman is the oversight body for this piece of legislation. As far as I am aware, both the Criminal Investigation (Covert Powers) Act 2012 and the Corruption, Crime and Misconduct Act 2003 are overseen by the Corruption and Crime Commission. Is that correct?

Hon Nick Goiran: Yes.

Hon PETER COLLIER: That is correct. I cannot work out why this is a "Nigel no friends" in that space. When we have crime and corruption at the highest level, why would the CCC not be the preferred oversight body for this piece of legislation? I know that Hon Nick Goiran raised that issue quite comprehensively. I really would like the parliamentary secretary to provide some explanation about that in his response.

As shadow Minister for Police, I listened to the group within the community that I represent. I was at the union conference yesterday. I spoke to a number of officers et cetera, and explained how we will be supporting both the compensation legislation and this particular aspect of this bill, and they were very pleased to hear that.

With that, I conclude my comments by saying that we will not be opposing the bill at this stage but will certainly be supporting this particular aspect of the bill.

HON DR BRIAN WALKER (East Metropolitan) [9.13 pm]: I rise as the lead speaker for the Legalise Cannabis Western Australia Party on the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. From the outset, in general, we can say that we support this bill. As members would expect, we have some issues with the legislation. It is difficult for me to accept that I will be speaking against a bill that deals with some of the most unsavoury people in this fair state. Anything that makes it easier for them to commit crimes is something that I would reject.

On the other hand, I also would like to ensure that the laws we create will not unfairly disadvantage people. Therefore, it is somewhat reluctantly that I have to say I am unable to support the government on all aspects of the bill. Most of the bill I thoroughly support—I can see what the government is trying to do with it, and we will come to that in a moment—but the question I have is: can I be convinced that it will be effective and desirable in the form in which it is presented today? If the government really wishes to take advantage of laws to target hardened serious criminals, to prosecute them and take them off the street, to my way of thinking, it should be relatively simple. We charge them. We take them off the street. We charge them and lock them up for their crimes. I would be very welcoming of that. I think any sensible person would accept that. Governments like to shout out, "Law and order." We saw that with the Barnett government when it reversed the very sensible Gallop laws and returned cannabis into the hands of criminals. It increased criminals' revenue and gave them more power to cause more havoc on our streets, all in the name of law and order. We need to be careful with this. We have tools. Let us get to the heart of the matter rather than nibbling on the outside.

I listened with great interest to Hon Nick Goiran's extensive review of the laws and the areas that merit a closer look. We need to be aware of how we look. We are looking as though we are hard on crime, but we are actually watering things down. We are also watering down the right to freedom of association. It might be the bikies today, but who knows who is going to fall foul of this law in the future. A precedent is being set here, and I would be very careful about setting a precedent in which other groups could be caught under a future government. I would be very careful of going down that path. I expressed that earlier today at the briefing. Thank you very much for the briefing, by the way; it was much appreciated.

I agree wholeheartedly with the intent of this bill, but if I do have a criticism—one major overarching criticism—it is that the bill started out in 2020, in the previous Parliament, with the first part on consorting. Cobbling the other aspects into the bill, I think, has resulted in well-meaning mixtures, mixed messages and confusion. We could call it a cobbled together mishmash. It does not quite have a cohesive feel of sensible legislation, and that causes me concern. That is why I welcomed the proposal to take this bill to the Standing Committee on Legislation. I have to admit to an ulterior motive: I sit on that committee and we have not sat yet. I would actually like very much to do my job.

Hon Nick Goiran: I tried.

Hon Dr BRIAN WALKER: We really have here two bills rolled into one. They are very different beasts. I do like the intent, but we have to make sure it is going to be appropriate. I am sure great effort has gone into it; I do like that.

Unlawful consorting legislation was before the last Parliament, but it ran out of time. That is not going to happen this time around; we are not going to run out of time now because we are sitting another week. We are certainly going to get through this.

Hon Stephen Dawson: I wish I had your confidence, honourable member.

Hon Dr BRIAN WALKER: I will not speak nearly as long as Hon Nick Goiran—the minister can be assured of that.

The first part of the bill—unlawful consorting—certainly has my complete and unhesitating support. After all, it deals with criminals; it deals with people who have already been convicted of a crime. If the passion of the people who have been convicted is to continue to cause havoc and act in a criminal manner, I see no point in making life easier for them. Although I might like to say that we should have personal liberties, there is a group of people who really do not care about our opinions and do not wish to abide by our norms. We should have no mercy there. I make

no bones about that. We need to have a society that is safe for everybody. Allowing criminals on the street who could not care about my liberties is not something that I enjoy, so I very much support that approach.

In respect of criminal consorting, the aim is to ensure that juveniles are not attracted to joining outlaw motorbike gangs. That is a very, very sensible thing to do, because once they are in there, they are encouraged; it is demanded of them to engage in criminal activities to prove themselves worthy of bearing the name of the gang. Of course, young people who have their own traumas to deal with are going to be very easily led astray into the hardened arms of those for whom crime is a way of life. We could talk about the traumas they have experienced and excuse that, but it does not actually answer the question: how do we stop it happening? We have to deal with that in a different manner. Anything that keeps young people away from them would be welcomed. That would actually be very, very helpful.

What we have bolted onto this legislation through the new provisions with regard to outlaw motorcycle groups is a whole different beast. Part 1 is very different from part 3. We could look at the prohibition of insignia; that is different. That applies to non-convicted people. We are talking here about the psychology of attracting people to crime, but it also will affect others to whom this might reasonably be extended. It might be stretching the point, but, for example, what if I were to walk down the street wearing a great big cannabis leaf on my jacket? It would look very fetching on me, I have to admit, but the principle is there.

I ask the house to indulge me in a little history. We have to learn from history; if we do not learn from history, we will repeat what has gone wrong and we are doomed to repeat the mistakes of the past. We might ask who said that first. Edmund Burke had a version, as did George Santayana and Winston Churchill, although I am not going to imitate Churchill's voice! It does not really matter who said it first; the point is that it is true. We need to learn from history, or we will invariably repeat its mistakes. If members want to fight over that now, it is Brian Walker on St Andrew's Day 2021, in the Legislative Council of Western Australia, saying: we must learn from history!

Why do I mention St Andrew's Day? It is not because tomorrow I might be found rather the worse for wear because of St Andrew's Day celebrations this evening, which I can no longer attend because I am standing here now.

Hon Tjorn Sibma: Will you be wearing a kilt?

Hon Dr BRIAN WALKER: If you demand it!

Hon Tjorn Sibma: I demand it!

Hon Dr BRIAN WALKER: I will have to make it next year! It no longer fits me due to certain excesses!

I can almost hear Hon Lorna Harper groaning in anticipation. Yes, she knows: I am going to show my Jacobite credentials! Not really, but she knows where I am coming from. I am not going to show my tartan knickers!

Hon Tjorn Sibma: We can all be relieved!

Hon Dr BRIAN WALKER: That may well happen in due course, but not today!

Part 3 of this bill reminds me, in no small part, of the act proscribing Highland dress passed by the British Parliament in 1746.

Hon Tjorn Sibma interjected.

Hon Dr BRIAN WALKER: The member knew, did he not?

What happened was that there were various Jacobite risings—I will not go into the issues around that; it is not that kind of history lesson—in 1689, 1715, 1719 and 1745. Persistent bunch, are we not? It ended, of course, on the bloody field of Drumossie Moor at Culloden. I am not going into that today—the 70 years of bitter infighting in Jacobite history—but here was a group that was cast out from polite society. Their insignia were clan tartans and the little glasses that showed who they were. These were outlawed, at times punishable by death. Society at that time said, "We want no more of this. You will conform to our norms."

Are we not doing that today? What happened then? I have mentioned this history because it is not really what we remember—an insecure, frightened English majority that really wanted to do down the nasty, dour Highland Scots. They did not want to deal with them; they wanted them demonised and ostracised. Do members know what? It did not work; it just did not work. Members can see for themselves. If they visit Scotland post-COVID and walk down the Royal Mile in Edinburgh, they will see every sign of their past. Members may have gone to the Armadale Highland Gathering a few weeks ago. It drove the clans underground. Indeed, one can argue that it made them more popular. It served to add to the romanticism—the lost cause, the defeated bonny prince, the buried weapons and the banned kilts, apart from when Hon Tjorn Sibma sees me in mine in the not-too-distant future. It is a colourful and mystic association with the exiled court. It attracted people to what had been banned. Are we not running that risk here? It was interesting because one of the Western Australia Police Force advisers who briefed me this morning—again, I thank them for that and all who took the time—specifically said that the aim of this legislation is to ensure that youngsters do not grow up thinking that it is cool and somehow romantic to join this outlawed group. We have

been there before but it did not work. Will it work now? I would like to think it will but I have my doubts. It is the one area that perhaps we ought to have a closer look at.

The government stated that the police were heavily involved in drafting the legislation. That is fine. Back in 2003, the police were also heavily involved in legislation to permit cannabis to be grown. They said that it would help them because it meant that officers who were following the useless and failed law against cannabis could focus their attention elsewhere. They supported that law, but apparently not anymore. Tides have changed. We need to be careful about these things.

I worry that we will do something similar to the prohibition acts, which is what they were known as. They created a shortbread-tin image of the highlanders, of the Jacobites, and I feel that we run the risk of doing the same thing yet again—driving groups underground. I am not a Jacobite, despite what Hon Lorna Harper might think. I have been a bikie in the sense that I rode a motorbike. My wife would be desperately unhappy if I did that. Members may have noticed that at times I walk with a limp due to a certain contretemps we had with a car and a motorbike. I am not actually a bikie but I have ridden a motorbike.

Hon Dan Caddy: A biker.

Hon Dr BRIAN WALKER: Yes; a limping ex-biker!

Ben Harvey mentioned my name in the same breath as Troy Mercanti and Nick Martin with the issue we had a few weeks ago. He took more poetic licence with me than Sir Walter Scott would have dared. I do not have any association with them. I do not fall under the auspices of the bill. I support entirely the approach to eradicate outlaw motorbike gangs in this state, but I do respect the balance of freedom and association and the ability of the police to arrest someone for an identifiable crime. We are admitting that there is no identifiable crime and we are creating one. Our Attorneys General have always claimed that their laws are the toughest, the harshest, the best options: "Law and order. We're going to be tough on crime. We'll bring down these outlaw motorcycle gangs." Hon Jim McGinty and Hon Michael Mischin said that. Hon John Quigley has said it. I fully expect that in 10 or 20 years, I will be hearing the same refrain again. Members, history has shown us that McGinty and Mischin were not right. I do not know what it will show with the current Attorney General, but I suspect nothing will change. We will have to leave that to our students in the future. Those Attorneys General nibbled around the edges, as has the current Attorney General. It is lost to me why they have not grabbed the bull by the horns and tackled the core issue. Let us call things what they are. There is an old British television advertisement that is perhaps known here, the slogan of which was "It does exactly what it says on the tin." Our actions should live up to our expectations.

Let us look at what is going on here: outlawed motorcycle gangs. What is difficult to grasp about "outlawed"? It is outlawed. I speak a number of languages; perhaps English is not my most popular language, so what does outlawed mean? It means being outside the law. If we already have an outlawed organisation, in this instance a group of specific motorcycle groups, the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill lists 46 other groups. I really applaud the government's decision to identify these organisations. I also applaud the decision that additions or maybe subtractions can be made with Parliament's consent, not someone else's. That is great. But, surely, it follows that being a member of a proscribed organisation is in and of itself an illegal act and it should be bloody well known that an illegal act should be taken to law. If the Attorney General really wants to put an end to bikie gangs, he, or she in the future, needs to introduce a law that reinforces that. Membership of an organisation itself could become a crime, much like the Mafia or perhaps the Yakuza in Japan—maybe it is not a crime there—with a suitable prison sentence attached. People who join one of these gangs are criminals; they will be punished for it. Have we got the courage of our convictions? If a gang is outlawed and someone joins it, surely they become an outlaw and should be punished for it, should they not, or are we being too soft? Are we perhaps being a little bit, "Oh, I don't know, maybe they're good guys at heart. We shouldn't punish them just because they're wearing a patch and are on their motorbikes." They are criminals; they are outlaws. We should treat them as such. Then the Director of Public Prosecutions can stand up in court and demand that this young tyke, who has committed some minor offence as a member of a motorcycle gang, would be given a harsher sentence. I would not object to that. But no, that is not a provision in this bill at all. I wonder how tough we are prepared to get—really tough on crime.

We should also look more at managing the causes of crime because a lot of what is happening is due to previous troubles people have experienced in life. We are criminalising stuff when we should be medicalising it. An example of this is how we have criminalised taking drugs, which people take because they are having a hard time or being driven into the arms of criminals because that is where they get their drugs from. That is where they make their money. We are actually fuelling the crime by prohibiting drugs, driving them into the arms of criminals who do not care a wit about our health but they are happy to make money off the backs of our misery. We should address this as well as looking at the criminals we are seeking to put away, who cost us money when they are in prison. We really ought to be thinking hard about what brings people into the arms of criminals.

Portugal has decriminalised all drugs and the result has been a fall in crime and a fall in the costs to community. That surely also ought to be looked at in reference to this. Let us look at things as they really are. One of the things that

I have a particular passion about—members know my attitude to cannabis and indeed the psychedelics—and one of my major problems and major focuses of the outlaw motorcycle gangs is methamphetamine: the creation, transporting and selling of it; the huge profits criminals can make from it; the disaster it causes in our society; and the destruction of society. We need to focus on this. But I have personal experience of the police leaving methamphetamine addicts on the street—criminals who are left to roam freely, stealing, breaking in and doing all kinds of minor to moderate or sometimes severe crime because these people then lead the police to other criminals. They are left there as bait and the society in which they live is at risk because no house is safe. They are low-hanging fruit. We allow this low-hanging fruit to carry on at our expense, as citizens and residents, and I find no reasonable excuse for that. It has been reported to me that Hon Jim McGinty sat on a motorcycle outside this very building—I am told it was quite a sight—and declared that he was going to bring in the toughest laws we had ever seen. He boasted that bikies could look forward to having their bikes seized and destroyed under confiscation laws. I think Hon Wayne Martin would not have thought that was the best thing to do, because he was asked. I was really interested to see that no action has yet been taken in the bowels of government with someone, somewhere, working hard at this. I have full confidence that that is the case, because there is a huge injustice in our community with the confiscation laws.

So here we are again with a new Attorney General—well, not new anymore—and a new set of the toughest laws ever to strip the patches off the back of our bikies. We are not going to seize the drugs, we are not going to seize the guns and we are not even going to take away the Harley–Davidson motorbikes. I wish we would! They are loud; they annoy me. We are not going to send people to jail for a long stretch because they are members of a prescribed or outlawed organisation; we are going to tell them what they can or cannot wear and hope that they are not going to follow the same pattern as the Highlands oppression, which actually made things even more attractive to that section of society.

It will placate the media; it will placate the public. The perception is there—of course, that is more important than the truth—that we are now tough on crime and they are going to suffer. It is not enough. It is recycling old, worn-out dogma. It does not really matter, and I suspect that the bikie gangs are going to ride roughshod over this. I hope not, but what I want to hear in the Committee of the Whole House stage is how we are going to make this work. We have lost the war on drugs and the bikies are a major factor in the war on drugs. They are winning. We need to address this and take away their income. We need to take away their drug income and make that work for us. That is the core of the problem. We should not be focusing on the periphery. The showpiece of bringing legislation into Parliament is not sufficient.

In conclusion, I very much like the motive for the legislation. I think the government has done an excellent job in preparing the bill, but there are gaps. I wish we could look at this in more detail and get more refinement to achieve what the police really want to achieve in supporting us and freeing our society of these very nasty individuals. We could do better. The government can do better. I trust the government will do better. If the government wants my support in all manners, and the population at large, I would like it to please to reconsider how we can make this happen.

HON SOPHIA MOERMOND (South West) [9.37 pm]: Like my colleague, Hon Dr Brian Walker, I understand the reason for the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. My concerns relate to identification, public safety and overreach by this government. If a person is not wearing their colours, it is simply much more difficult to identify them. If a group of people are wearing their colours, I, as a member of the public, would be happy to take a detour, as I imagine other members of the public would be. I am not saying that all those wearing patches are a danger, but I feel safer not engaging with them. When a venue like a pub is placed in a position of ensuring that no-one is consorting, how are they to do so when they will have no direct avenue for identification? On top of that, there are also social motorcycle groups who have no affiliation with outlaw motorcycle gangs and who ride happily, generally, on Sundays. These people may be unfairly targeted by these laws.

My concern is also around overreach of this government, especially now that a precedent will be established. Telling people what to wear is another slippery slope. I understand there are rules governing clothing in regard to decency, and that different rules can be employed for different venues; however, when people are on their motorbike or at a social event, if there is no indecent exposure, what they wear is their business. I might not agree with some people's fashion choices, and I frequently do not, but it is not my business and I do not think it is the government's business either. My main concern, to reiterate, is around identification. If a crime is committed, it may well be caught on surveillance cameras, and having their patches would make it much easier to identify them. That just seems logical to me.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [9.40 pm] — in reply: There are only a few short minutes remaining before we move on to members' statements, so, unfortunately, I will not be able to get through my reply speech in that short amount of time. I would like to thank the members who made a contribution to the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill in the second reading stage: Hon Nick Goiran, Hon Peter Collier, Hon Dr Brian Walker and Hon Sophia Moermond. They each raised issues in the bill that are important to them. I will try to address as many of those issues as I can in my reply. I will not

be able to go down the same passage as Hon Dr Brian Walker about the Jacobite revolution. Being part English and part Scottish, it is a hard journey for me to take personally, for obvious reasons. I am not sure that what we are doing here is one and the same with what the English did in that revolution. In any event, it was an interesting detour down the path of history.

Members raised a number of issues. From the outset, I would like to take issue with Hon Nick Goiran saying that the government is making it easier for child sex offenders to consort. This is absolutely not the case and I will set out in quite a lot of detail why we say it is not the case. Hopefully I will be able to persuade him that that is not what is happening here and it is certainly not our intention. I appreciated Hon Peter Collier going through the report that was tabled with the second reading speech. I am glad that he was able to take something from that report and that providing it to the house helped to illuminate the mischief that we are trying to deal with. I think it is fair to say that no-one pretends that this will be a magic bullet that will fix all issues with outlaw motorcycle gangs.

Members may be aware that another bill was introduced in the other place to deal with the Firearms Act. A lot of that is to address some of the mischief that comes from outlaw motorcycle gangs and others who seek to engage in criminal activities and things of that kind. We absolutely hope that we are taking steps towards narrowing the opportunities for people who are inclined to engage in the kind of behaviours that we find abhorrent—not just abhorrent, but also completely despicable—whether they are outlaw motorcycle gang members, child sex offenders or organised drug traffickers. Whoever they are, we are on a path to try to narrow their opportunities and make it more difficult for them to engage in those behaviours and intimidate members of our community. What we would dearly like is for members of outlaw motorcycle gangs and others to stop those activities that are so abhorrent and outside of society's norms, to come back into the fold and to be part of the 99 per cent rather than the one per cent. That is what we want to see. We have many activities that are aimed at getting people to come down that particular path, and for many reasons we want to do that. This is a tool for the Western Australia Police Force to be able to step towards that goal of making their lives a little bit more difficult when they want to sit outside of what society deems acceptable and normal behaviour.

I will start with some detail about the suggestion that the new provisions will somehow weaken the current laws that apply to child sex offenders. The new scheme introduced by this bill will in fact significantly improve the ability for police to disrupt and restrict the capacity of child sex offenders to offend, much more than is currently available. I will explain in some detail why these provisions will create a superior scheme to the existing one. The operational difficulties and ineffectiveness of the existing consorting scheme are key reasons for the introduction of the new scheme contained in this bill. It is obviously a very deliberate act to not just focus the bill on the activities of outlaw motorcycle gangs and bikies. The unlawful consorting in particular extends to anybody who is convicted of an indictable offence and, most notably, child sex offenders. The approach to issuing consorting notices has been inconsistent, resulting in the notices being of variable utility under the current scheme. Under section 557K of the Criminal Code, a police officer of any rank may warn a child sex offender that consorting with another offender may lead to an offence. As is evidenced by the provisions of section 557K, it is not the case that child sex offenders are not allowed to consort with other child sex offenders. I make that clear: the current regime does not outright prohibit the consorting of child sex offenders with each other. Rather, a more accurate summary of the current law is that a child sex offender who is issued with a warning under section 557K to not consort with another specific child sex offender is subsequently prohibited from habitually consorting with that specific child sex offender. The current regime is very much about two individuals; it is not a much more at-large system. It has the term "habitually consort" included in it. If the consorting is not of a habitual nature, it is not barred under the current regime. As I say, the term "habitually" is not defined in the current act, and this has resulted in significant difficulties in prosecuting the existing offences. The stringent nature of the current scheme has meant that since 2015, only 20 prosecutions have been commenced under section 557K(4) and only eight convictions have been recorded. Of those eight convictions, most sentences were for a fine ranging from—listen—only $10 to $4 000.

Debate adjourned, pursuant to standing orders.