## CRIMINAL LAW (UNLAWFUL CONSORTING AND PROHIBITED INSIGNIA) BILL 2021

*Committee*

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Martin Aldridge**)** in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

**Clause 6: Terms used —**

Committee was interrupted after the clause had been partly considered.

**Hon NICK GOIRAN**: Prior to the interruption for the taking of questions without notice, we were discussing the capacity for WA police to identify relevant offenders, as they are defined in clause 6 at page 6 starting at line 19 across to line 8 on page 7. One of the categories of relevant offender is somebody who has been convicted of an offence under clause 25(2) and clause 42(1) of this very bill that we are dealing with. The parliamentary secretary indicated that WA police will have information about who has committed an offence by virtue of what is known as the incident management system. That is the very same system on which some preliminary interrogation work was undertaken to obtain information about how many declared drug traffickers there are in Western Australia. That, ultimately, I gather, was abandoned as a mini project and instead information was obtained by the Department of Justice through the courts to let us know that there have been 2 819 declared drug traffickers since 1990, which is as far back as electronic records are able to inform us.

The parliamentary secretary indicated that, as far as the government is concerned, the incident management system might be functioning well and there does not seem to be any problem with it. He explained that part of the reason a different approach was taken to ascertain the number of declared drug traffickers was that the incident management system information is sensitive and, understandably, not routinely provided to external parties. We do not want or need to know at this time the names or any sensitive information from the incident management system, but we need to know how many declared drug traffickers there are in Western Australia. Why can the system not be interrogated to find out the raw total number of declared drug traffickers without revealing any other sensitive operational information?

**Hon MATTHEW SWINBOURN**: The reason that we do not have the data is not that the system cannot be interrogated and a figure produced at the end, but that the release of the information has to be cleared through the internal hierarchies, if I can use that term. Rather than go through that process, the government has decided that it will go to the courts, which is what we have done through the Department of Justice and the courts, and we have obtained a figure for the member. I do not think the figure from the incident management system will show anything that is any different from the fact that we have 2 819 declared drug traffickers—off the top of my head. That is why we do not have information from there. I do not think there is any great controversy in that. It is about how we use the government's resources, and that is how we have given the answer the member sought last week.

**Hon NICK GOIRAN**: I want to test and make sure that WA police has the tools at its disposal to enforce these laws, and a good test would be to see what the IMS says about the number of declared drug traffickers. If the figure comes back as 2 819, it would provide great confidence. If it says that its records indicate that there are 1 000, we have a problem. That is what I want to identify at this time. If a member asked the same type of question as a question without notice of which some notice has been given—I respect and understand that there is this internal hierarchy that requires approval and permissions to be given—could that information be provided during that space of time or, again, will it require a much more arduous permissions and authorisations process?

**Hon MATTHEW SWINBOURN**: As the member knows, I do not represent police, so I could not answer that with any certainty. I will say that from when the member asked the question on Thursday to us being here on Tuesday, the best way we could obtain that information for him was through the Department of Justice and the court system. As I say, I do not speculate on that. My guess is that if it did do it—I just said I did not want to speculate and now I am guessing, so I will not guess. I will just leave it at that.

**Hon NICK GOIRAN**: Perhaps I can give advance notice to WA police, who have a keen interest in this bill, that there may well be a question without notice of which some notice has been given about how declared drug traffickers are recorded in the incident management system, and we will see what response comes back. Just to round this out, has any modelling been done to identify how many relevant offenders there are in Western Australia?

**Hon MATTHEW SWINBOURN**: No—not the total number.

**Clause put and passed.**

**Clause 7 put and passed.**

**Clause 8: Objects of Part —**

**Hon NICK GOIRAN**: This is the objects clause. It refers to the capacity of relevant offenders. Was consideration given to also making reference to named and restricted offenders?

**Hon MATTHEW SWINBOURN**: The short answer to the question is no and the reason for that is that we are looking at disrupting those relevant offenders. If a named offender is somebody we would also wish to disrupt, we would make them a relevant offender by giving them an anti-consorting notice and therefore they would fall within that particular category.

**The CHAIR**: Hon Nick Goiran.

**Hon Matthew Swinbourn**: Sorry, a restricted offender.

**Hon NICK GOIRAN**: A restricted offender is somebody who meets the criteria in clause 9(1), which is basically a person who receives or is served with an unlawful consorting notice. A named offender is somebody who meets the criteria in clause 10(b)—that is to say, a person whom the restricted offender must not consort with. By definition, are we not seeking to disrupt and restrict their capacity to organise, plan or encourage the carrying out of criminal activity—that being both named offenders and restricted offenders?

**Hon MATTHEW SWINBOURN**: Just to clarify what I said before, which may have caused the member some confusion, the term "relevant offenders" in clause 8, "Objects of Part", is taken to mean both a restricted and a named offender; therefore, the object is to disrupt and restrict the capacity of both restricted and named offenders to organise, plan, support or encourage the carrying out of criminal activity.

**Clause put and passed.**

**Clause 9: Issue of unlawful consorting notice —**

**Hon NICK GOIRAN**: Clause 9 establishes and inserts the substitute scheme; that is to say, we already have an unlawful consorting scheme in Western Australia but it will be replaced by that outlined in division 2, "Unlawful consorting notices", which begins at clause 9. I indicated at the end of our discussion on clause 1 that I would be taking up a little further the issue of comparing the threshold that currently exists for any police officer in Western Australia to issue a police warning under section 557K of the Criminal Code with the threshold for an authorised officer to issue an unlawful consorting notice under clause 9. What are the requirements for a police officer to be able to issue a police warning under section 557K and how does that differ from the requirements for an authorised officer to issue an unlawful consorting notice under clause 9?

**Hon MATTHEW SWINBOURN**: Thank you, chair, for indulging me with a bit of time to get this correct for the member.

I think we are mostly talking about child sex offenders, because we have already indicated that we do not have a system in place for drug traffickers, so we cannot talk about what is, essentially, the difference here. In relation to section 557K and the current requirements, WA police have to have some intelligence upon which to make a decision to issue a warning to a child sex offender who is consorting with another child sex offender. This is currently done within the sex offender management squad I am told. They need to then work out whether it is appropriate to issue such a warning. If a decision is then made that it is appropriate to do so, it is up to an officer to go out and issue the warning. We have already talked about what that looks like in terms of showing the actual information. The information that the warning had been issued is recorded in the incident management system.

With the new regime, the same internal process would occur that happens within police: in these circumstances, is there a justification for issuing an anti-consorting notice on a child sex offender, not someone who is consorting with another child sex offender? As we know it can be any person convicted of an indictable offence within the definition to whom it applies.

They would then need to go to the commander—the authorised officer—and make the case that it was appropriate to issue the notice. In those circumstances, if the commander, or above, was of the view that it was appropriate to issue the notice, the notice would be issued. The provisions for the arrangements for it to be served on the person are dealt with later in the bill. If I recall correctly, the notice can be served either orally and later provided in written form, or immediately in written form. The physical provision of the notice, as set out in the bill, is more detailed. Essentially, they are the differences between the two things. It is important to re-emphasise that the starting point is making a decision and having the evidence that justifies taking action in the first place.

I am advised that under section 557K of the Criminal Code, if a police officer happened to see two child sex offenders talking to each other on the street, the police officer would not simply go up to them and issue a warning. The police would need a basis for deciding internally that it was appropriate to issue a warning. They would go back, make a decision and do those sorts of things.

**Hon NICK GOIRAN**: When we discussed this matter under clause 1, the parliamentary secretary said that the police have information that approximately five per cent of child sex offenders are known to police to have been consorting, and that is why the police have some confidence that those five per cent will qualify for the new notice provisions moving forward, but that they do not have any information about consorting for the other 95 per cent and that is why the police need to spend the next three years working through that system. I question the first criteria that has been

suggested for issuing the 557K notices, which is that the police must have information and intelligence that consorting has occurred between child sex offenders in order for the police to issue a warning. Can the parliamentary secretary confirm which is correct: is it the version that was provided when we discussed clause 1 that that is not necessarily the case, or is it the version that has been provided now under clause 9 that the police need some intelligence and information that child sex offenders have been consorting?

**Hon MATTHEW SWINBOURN**: The member asked me a question about the operation of those two provisions and I gave him a description about how they would work, effectively, and what the differences are. The member is now asking me specifically about the five per cent figure that has come out. Five per cent of offenders who are subject to the current warnings have consorted—this is what the police know—with persons against whom they have been warned. That is the number of child sex offenders the police already know are consorting with other known child sex offenders. That is the cohort the police want to deal with because they present the highest risk at this point. That is the information the police are acting on when we talk about those five per cent. It is not that the police do not know what the other 95 per cent of child sex offenders are doing. We have identified an issue with the global figure, which is that because the 557K notice is issued for a lifetime, some people will no longer be on the register and will need to be removed from the system. However, the five per cent that the member referred to currently present a risk that the police have direct intelligence on at this point in time, so when the bill comes into effect, the police will want to directly engage with those five per cent, as opposed to the other 95 per cent to which the member referred.

**Hon NICK GOIRAN**: Is it the case that the information and intelligence that starts the warning process under section 557K is the same information and intelligence that will start the new notice provisions?

**Hon MATTHEW SWINBOURN**: Yes, member.

**Hon NICK GOIRAN**: Therefore, if the two systems are the same, all 800 of the child sex offenders who currently have a warning should receive a notice moving forward?

**Hon MATTHEW SWINBOURN**: No, because the current ones are historical; they go back over a long time. That is why the police have to manage it. They are still subject to the section 557K anti-consorting warning. As the member knows, if police have intelligence immediately, subject to the commencement of this act, they could still convict under section 557K during the three-year transitional period.

**Hon NICK GOIRAN**: At the end of that three-year period, section 557K will no longer exist. At the end of that three-year period, police will have undertaken a comprehensive assessment of the approximately 800 offenders and will have worked out whether they are going to issue a notice. What I am saying is that if the standard, the threshold, the scheme and the requirements are the same, it would follow that the 800 who currently have a warning will eventually, at the end of that three-year period, so long as they are still alive, find themselves receiving a notice. The government is saying that is not the case; to the contrary, that would be the case for five per cent of them, but work needs to be done with regard to the other 95 per cent. The very fact that work needs to be done suggests that some other kind of threshold, hurdle or requirement will need to be considered in order for someone to determine—in this case, a police commander—whether a notice will be issued. The only difference between the two schemes is that at the moment, a police officer can issue a warning, but moving forward only a police commander will be able to issue a notice. One is called a warning; the other is called a notice. That evidently is not what is going on here. Something else is going on here; otherwise, it would not require the police to take three years to establish that. What I am trying to find out from the parliamentary secretary is: What are the extra requirements for a notice to be issued that are not required for a warning to be issued? What will the police have to consider over the next three years that would determine whether a warning would be transferred into a notice?

**Hon MATTHEW SWINBOURN**: The five per cent are the people who are high risk, if I can describe them as that; that is my term. These are the ones who are problematic for the police. The police know who they are. They have issued them with warnings. They know that it is difficult to obtain a prosecution, because these people habitually consort if they go to court. The police want to transition them into the new system immediately because—I do not know whether the member or somebody else acknowledged it—the prosecution threshold, if we want to use that term, will be lower under the new regime than it is under the existing arrangements. That is the imperative with the five per cent. The police have to manage the remaining 95 per cent because, under section 557K, there is a lifetime ban for a child sex offender.

I have said this before; we can contemplate that some of them have died and they need to be removed from the system. Some of them are now so infirm or disabled that they do not present a risk as a child sex offender and, therefore, it is not appropriate to have them in the system to be managing them. Some of them are rehabilitated, believe it or not, and no longer present a continuing measurable risk. I know that is hard to imagine with child sex offenders and I cannot imagine that there is a large number of them on the list. There is also the issue of workload and transitioning them. There is the need to take it to the commander, and we have talked about flattening that workload over three years. The previous bill, as the member highlighted to me, provided for 12 months. The police have had

the opportunity to come back and say they would like three years to transition, and that is what they are trying to achieve. If a child sex offender out there is presenting a risk of continuing to offend through their consorting and the police feel that they are in a position to issue them with a notice under the new system, they will be able to do that. The five per cent, of course, is an estimate and the police want to get on and cracking with that particular matter, but they want to manage the overall thing. As I said to the member before, when we get to the end of the three years, the goal is that every child sex offender who should be subject to a consorting notice under this act will be subject to such a notice.

**Hon NICK GOIRAN**: On that point, I do not doubt for a moment that that is the intention. The question is whether all those who are subjected to a warning will also be captured by a notice. It sounds like they will not be for the reasons that somebody might have died, somebody might be infirm and somebody might be rehabilitated. Can a section 557K warning be issued to someone aged under the age of 18 at the moment?

**Hon MATTHEW SWINBOURN**: Yes, it can.

**Hon NICK GOIRAN**: Here we go then. Here is a criterion that is not the same. At the moment, any police officer in Western Australia can issue a 557K warning to a child sex offender in Western Australia even if they are under the age of 18, but from now on we will limit the number of such people who can receive a notice to those who are above the age of 18. On whose recommendation was that based or was it based on a particular model? Whose advice was it that it should begin at the age of 18 when the current scheme allows for people under the age of 18?

**Hon MATTHEW SWINBOURN**: Our position was informed by the New South Wales Ombudsman's recommendations in his report on the consorting laws of New South Wales. I do not have the recommendation number, but the recommendation by the Ombudsman was essentially —

> The Attorney General propose, for the consideration of Parliament, an amendment to the consorting law to remove children and young people aged 17 years or less from the application of the consorting law.

Obviously, in our case, we have made it 18 years of age. That is what informed our position on age.

**Hon NICK GOIRAN**: It is certainly within the scope of government to make those decisions. However, what is outrageous is when the Attorney General then goes and abuses anyone who suggests that there will be a watering down of the existing laws. Plainly, there will be, because at the moment a young offender who is subject to a warning from police is not able to consort; and, if they do, they may be prosecuted. Under the new, shall I say, Quigley law, that will not be the case for a young offender. They will be free to consort. They will not be captured by one of these consorting notices. There may well be fair, reasonable or rational explanations for these things, but that is what should be provided by the Attorney General. If he wants to rely on the New South Wales Ombudsman's report to make a case that we should not restrict young people from consorting with one another, he should stand up and say so. What he should not do is abuse the likes of the member for Cottesloe for pointing out that the Attorney General had not read his own bill. Here we go; on page 7, line 27 it states —

> the person has reached 18 years of age …

Obviously, that line was skipped over by my learned friend. Can a section 557K police warning be issued only if the police officer suspects, on reasonable grounds, that it is likely that the person will consort with another child sex offender?

**Hon MATTHEW SWINBOURN**: Section 557K does not provide for a reasonable grounds test in the language of the act, which the member probably has before him, as opposed to what we are talking about now, both from a practical point of view in terms of having some grounds to issue it and from the test that a court would apply as to whether there was any reasonable evidence for that to happen in the first place. I do not have access to the decisions of magistrates or District Court judges to say whether they have read into that a reasonable grounds test, but we both know that it could not just be on the whim of a police officer; it could not be without any grounds at all. I do not know whether that would be elevated to reasonable grounds, but from a practical point of view, if police have in mind that a prosecution might occur if someone contravened the warning and subsequently habitually consorted, they would need to have some basis upon which to present a case.

**Hon NICK GOIRAN**: That is not what the Criminal Code says at section 557K(4). It states —

> A person who is a child sex offender and who, having been warned by a police officer —
>
> (a) that another person is also a child sex offender; and
>
> (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.

There is no mention there whatsoever of a reasonable grounds test.

**Hon Matthew Swinbourn**: I did acknowledge that, member.

**Hon NICK GOIRAN**: The parliamentary secretary did—exactly. We are in furious agreement that section 557K(4) makes no mention of it. If that is the case, we are now inserting a requirement for a reasonable grounds test. That said, I am mindful of the fact that, despite what section 557K says in the statute, a police process is being implemented and has resulted in approximately 800 of these warnings being issued. As a matter of practice rather than of law, are police presently implementing a reasonable grounds test before they issue a warning?

**Hon MATTHEW SWINBOURN**: I cannot confirm that police use a reasonable grounds test as we have described it here, but my advice is that, basically, on confirmation there has been actual contact, police would issue the warning.

**Hon NICK GOIRAN**: We are saying "contact", so it is if police have some intelligence or information to say that child sex offender A has had some kind of contact with child sex offender B and that is the extent to which the reasonable grounds exists at the moment.

**Hon MATTHEW SWINBOURN**: Yes. They have to have some evidence of sex offender A being with sex offender B, but they consider all the material that they have and whether that presents a risk or whether it is appropriate to issue a warning and all those other kinds of things. As I said previously, it is not just a flippant decision that a police officer makes and says, "I'm going to warn you under section 557K." They want these things to be taken seriously by child sex offenders. Police want them to understand what they are trying to get them to stop doing and police want to have some grounds on which to commence prosecutions if they continue with that behaviour. There are robust processes around it. The member has not made this comparison, but it is not like someone has been pulled over because they did not indicate early enough. The police might issue a warning to say they did not indicate or they did not quite come to a stop. It is not that level of seeing something and then doing something about it. It is within the sex offender management squad. These people are well known to police and have reporting requirements under the Community Protection (Offender Reporting) Act as well. They are certainly in a position in which there is a robustness before the warnings are issued.

**Hon NICK GOIRAN**: Let us put to one side the wording in section 557K(4); that is the law at the moment. I am talking about the practice. Is it fair to describe the existing practice as that set out at clause 9(1)(b)(i)?

**Hon MATTHEW SWINBOURN**: I am advised, yes.

**Hon NICK GOIRAN**: That is helpful. Again, that is an argument for the government to say that, notwithstanding what section 557K(4) says as a matter of law, as a matter of practice this is how the police are issuing these warnings, and we could argue that clause 9(1)(b)(i) is a reflection of the existing practice. We are, if you like, codifying and enshrining the existing practice. That said, after clause 9(1)(b), it states —

> and
>
> (c) the officer considers 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.

Therefore, I take it that that will add a new test that does not exist at the moment, or is the parliamentary secretary saying that subclause (1)(c) is also a codification of existing practice?

**Hon MATTHEW SWINBOURN**: The first thing to note about paragraph (c) is that when it refers to an "officer", it is an authorised officer. The member asked whether it was a new test or codification. It is obviously new, because previously the authorised officer would have been a commander or above. Clause (9) reads —

> (1) An authorised officer may issue a notice … in respect of a person … if —
>
> …
>
> (c) the officer considers that it is appropriate …

But after that, we think the member's description of it as a codification of existing practice is fair in terms of its appropriateness. Currently, the warning is aimed at stopping a person engaging in behaviour that under the current regime would constitute offence, so the answer is yes.

**Hon NICK GOIRAN**: Can the parliamentary secretary confirm that the approximately 800 police warnings issued so far have only ever been issued to child sex offenders who have been consorting with another child sex offender, and that police have said this is appropriate in order to disrupt or restrict that person from engaging in conduct constituting an indictable offence? Is the parliamentary secretary saying that all 800 warnings have met that test and that not one of the approximately 800 warnings that have been issued at the moment would fail the two tests that are set out at subclause (1)(b) and subclause (1)(c)?

**Hon MATTHEW SWINBOURN**: I cannot say that with absolute certainty about the 800 warnings that have been issued over a period, but it is an accurate description of the current practice that police employ under section 557K.

**Hon NICK GOIRAN**: Have any of the 800 warnings been issued to a person under the age of 18?

**Hon MATTHEW SWINBOURN**: My advice is yes, but we do not know how many. We are aware that a number of under-18s have been issued with a notice, but we do not know how many.

**Hon NICK GOIRAN**: Is there a mechanism to obtain that information or is that again an inquiry via the incident management system?

**Hon MATTHEW SWINBOURN**: A figure can be obtained, but we cannot get it to the member tonight as 800 warnings is a large number and would require interrogation of matters going back to the start of the scheme. We could obtain that figure, but the police manage those figures, so the question should be directed to them.

**Hon NICK GOIRAN**: Let us give police a little advance notice to another question without notice: how many section 557K warnings have been issued to a person under 18 years of age? Whoever is representing the Minister for Police might be busy over the next day or two. The parliamentary secretary has said that this is a codification of an existing practice, albeit the authorised officer will obviously be more senior to the officer who considers these things at the moment. What evidence will the officer need in order to be satisfied that it would be appropriate to issue the notice under clause 9(1)(c)?

**Hon MATTHEW SWINBOURN**: I am conscious of the time, member, so just bear with me as I push my way through this. First, I will not get into specific brass tacks of this for operational reasons. Obviously, I am not going to talk about what the bare minimum might be, but the issuing of a notice will occur through the development of an application package that will involve examination of data sources, including criminal histories and whether they had been co-offenders or offences involving consorting; address checks; prison periods; intelligent databases; prosecution notices; and national child sex offender databases. That is the kind of evidence that they will be looking at to determine whether it is appropriate to issue a notice.

**Hon NICK GOIRAN**: Will that be the same information or evidence that they are relying on at the moment?

**Hon MATTHEW SWINBOURN**: In spirit, yes, but we have to note that in this particular case, it was child sex offender and child sex offender, but now it will be child sex offender and an offender under that broader definition. As I say, in spirit, yes, but obviously there is some practical expansion here that will be beneficial for the reasons that we talked about before.

*Sitting suspended from 6.00 to 7.00 pm*

**Hon NICK GOIRAN**: We are considering clause 9 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. Prior to the dinner adjournment, we were considering this clause and the distinction between the current police warning system, with particular reference to child sex offenders under section 557K of the Criminal Code, and the newly proposed replacement regime that is set out in clause 9, which will allow a very senior police officer at the level of commander or higher to issue a consorting notice, and some of the information that has been extracted from the government includes the fact that some of the existing warnings have been issued to what I have described as young offenders—a person under the age of 18—and that will no longer be applicable when this new replacement regime comes into place.

Clause 17 of the bill is titled "Offence of consorting contrary to unlawful consorting notice"—in other words, an offence contrary to a notice that has been issued under clause 9, which we are considering now. Clause 17(3) provides that the prosecution does not need to prove that the consorting occurred for a particular purpose or that the consorting would have led to the commission of an offence. However, under clause 9(1)(c), an authorised officer cannot issue a consorting notice unless the officer considers it appropriate to issue the notice in order to disrupt or restrict the capacity of the offenders to engage in conduct constituting an indictable offence. Is there an inconsistency between the policies in clause 9(1)(c) and clause 17(3)?

**Hon MATTHEW SWINBOURN**: We do not think so, member.

**Hon NICK GOIRAN**: Clause 17(3) says —

> Nothing in subsection (1) requires the prosecution to prove —
>
> (a) that the consorting occurred for a particular purpose; or
>
> (b) that the consorting would have led to engaging in conduct constituting an indictable offence.

Yet before the dinner break, the parliamentary secretary indicated that it is the case that police already apply some form of internal test of appropriateness; that is, they need to consider whether it is appropriate to issue the notice to disrupt or restrict the capacity of relevant offenders to engage in conduct constituting an indictable offence. How can it be that the officer will need to consider the conduct constituting an indictable offence, yet later the legislation says that whether or not the consorting would have led to an indictable offence is irrelevant?

**Hon MATTHEW SWINBOURN**: The whole purpose of the provision at clause 9 is essentially to disrupt the behaviour. It is appropriate to issue the notice in order to disrupt or restrict the capacity of the offender to engage

in that behaviour. Once the notice has been issued, it creates a new set of obligations on the person subject to the notice, and if they breach those obligations, the provisions of clause 17(1) and (2), I suppose, will come into effect, but clause 17(3) is simply there to avoid any doubt about the elements of the offence. It is not that the prosecution will have to prove a particular purpose or that the consorting would have led to the person engaging in conduct constituting an indictable offence. Effectively, the obligations become strict once the notice is issued.

**Clause put and passed.**

**Clause 10: Content of unlawful consorting notice —**

**The DEPUTY CHAIR (Hon Dr Sally Talbot)**: Member, I wonder whether you can assist the chair. I recognise that you have amendments on the supplementary notice paper for about a dozen clauses. Are you in a position to give an indication of which clauses you propose to speak on?

**Hon NICK GOIRAN**: As part of my consideration of clause 10, can I indicate to you, deputy chair, and also to the parliamentary secretary, that the next amendment on the supplementary notice paper standing in my name is under clause 18. Unlike some other amendments, which are consequential on the failed amendment at clause 3, clause 18 most definitely will need to be addressed by the opposition.

**The DEPUTY CHAIR**: Member, I am sorry; can I interrupt you. We will keep this formal. I will put the question that clause 10 do stand as printed; then I will give you the call and perhaps you will respond to my previous question as part of that and then at least we will have a question before the chamber.

**Hon NICK GOIRAN**: I am delighted at clause 10 to identify for members that the next amendment standing in my name on the supplementary notice paper will come under clause 18. I quickly indicate that we definitely will be pursuing that, as we will at clause 43. But there are a number of other amendments on the supplementary notice paper, starting at 5/48, that will fall away because they were consequential upon the, regrettably, defeated amendment earlier at clause 3. I hope that assists members.

In terms of other clauses between now and clause 18, can I indicate that apart from the clause we are on now—clause 10—I also have questions on clauses 11, 13, 14, 15, 16, and 17, so we will be able to fly through clause 12.

Clause 10(c) details the content of an unlawful consorting notice. It stipulates that the notice must specify that consorting on two further occasions with any offenders referred to in paragraph (b), irrespective of whether the consorting occurred with the same offender on each occasion or with a different offender on each occasion, may lead to the commission of a crime of unlawful consorting. Does the consorting between the person to whom the notice is issued—which I think we agreed earlier will be known as a restricted offender—and two other different offenders have to be for the purpose of engaging in conduct that constitutes an indictable offence referred to in clause 9(1)(c)?

**Hon MATTHEW SWINBOURN**: No.

**Hon NICK GOIRAN**: I think it was confirmed in our earlier discussion that the bill goes further than the New South Wales consorting law—that is, under the current bill the person must be found to have breached a consorting notice on two or more occasions but the breaches may relate to separate breaches against separate named individuals in those consorting notices. I understand the New South Wales laws restrict a person, or apply to a person, who commits the offence if the person consorts with at least two other convicted offenders, whether on the same or separate occasion, and if a person consorts with each of those convicted offenders on at least two occasions. In other words, I think we identified earlier that our laws under this legislation, as proposed, will require consorting only with one other person on the notice, not two other people. The defence will apply if the person who is subject to a notice consorts with any other person on the notice on two occasions. The New South Wales law effectively requires four strikes. Either in his reply to the second reading debate or during consideration of clause 1, the parliamentary secretary touched on the fact that the New South Wales laws were subject to a High Court challenge that was unsuccessful. What was the outcome of our state's consultation with New South Wales as to the operation and effectiveness of its scheme?

**Hon MATTHEW SWINBOURN**: Consultation with the New South Wales prosecutor did not really go to these particular provisions. The member might recall that in my second reading speech I talked about the in-depth consultation that was conducted with the visiting prosecutor; that mostly related to the defences. It provided insight into the defence provisions and how, in general, the NSW scheme had impacted on individuals involved with outlaw motorcycle gangs. That was not specifically in relation to this part, so I will not be able to illuminate that for the member.

**Hon NICK GOIRAN**: Other than the consultation with the visiting New South Wales prosecutor, has there been any communication between WA and New South Wales with regard to the New South Wales scheme?

**Hon MATTHEW SWINBOURN**: Outside of that, no.

**Hon NICK GOIRAN**: It is difficult to comprehend the government's confidence in these proposed laws surviving any legal challenges when there has been so little consultation with the one jurisdiction that has been effective in surviving such a challenge. A quick cup of coffee with the visiting New South Wales prosecutor to discuss the defence provisions is not full and adequate consultation when we are talking about a scheme through which we are trying to tackle the

financial might of outlaw motorcycle gangs who, inevitably, will take these matters to the High Court. It seems that the McGowan government is content to run consultation over a cup of coffee. That is highly inadequate and only goes to further re-emphasise the opposition's concern that the government has not done all its homework on this matter.

With regard to the content of an unlawful consorting notice, at clause 10 there is a curious addition at the seventh item, paragraph (g). Why has the government deemed it necessary to include that particular paragraph; that is to say, beyond the other six items already listed in clause 10, what else might be required to be included in an unlawful consorting notice?

**Hon MATTHEW SWINBOURN**: Nothing particular is contemplated specifically at this point. An example that has been given to me—but there is no plan for this—might be the inclusion of a photograph on the notice, if that was something that they wanted to do. We could of course have drafted it to say, "Any other matters considered appropriate by police", but we obviously wanted the protection of any further matters that become prescribed by way of regulation, which will be disallowable and subject to review by the Joint Standing Committee on Delegated Legislation.

**Hon NICK GOIRAN**: Has the WA Police Force given any advice to the government that it would be beneficial to include a photograph in an unlawful consorting notice?

**Hon MATTHEW SWINBOURN**: No, member; that is not what has happened. We were just trying to illuminate what might possibly happen. Aliases might happen in the future as well, so it is really about whether the operational experience of this over time dictates that further matters are appropriate. That paragraph makes provision for that and also makes provision for it to be by way of regulation and, therefore, to be disallowable if Parliament does not agree with it.

**Clause put and passed.**

**Clause 11: Service of unlawful consorting notice —**

**Hon NICK GOIRAN**: The eleventh clause of this bill deals with the issue of serving one of these unlawful consorting notices, which must have all the information set out in clause 10 and can be issued under the power of clause 9. What purpose is served by including clause 11(2), in that a police officer must explain to the person, in language likely to be understood by the person, both the person's obligations under the notice and the consequences that may follow if the person fails to comply with those obligations, if clause 11(3) provides that failure of the police officer to fulfil clause 11(2) does not invalidate an unlawful consorting notice?

**Hon MATTHEW SWINBOURN**: The purpose of what we are doing is to make sure that the person receiving it understands what is happening to them. I believe the issue about language comes from some of the advice from the New South Wales Ombudsman's report that was about making sure people understood, and that being reflected in those sorts of things. Aboriginal people who are child sex offenders, for example, who live in remote or regional areas and whose first language is not English might be subject to these notices. There have been a number of inquiries into police interactions with Aboriginal people and how these sorts of matters are communicated. That creates that obligation. I am advised that clause 11(3) is comparable to a police order served and explained under section 30E(5) of the Restraining Orders Act 1997. It is not a provision that I am familiar with, but I am advised there is some similarity between those things.

**Hon NICK GOIRAN**: The parliamentary secretary referred to what is set out here in clause 11(2) as an obligation to a police officer, yet at clause 11(3), a few words later, the obligation is in effect taken away. The obligation is a fake one. Once this bill passes, it will be there in words on the statute, but it has no force at law if a police officer fails to comply with it for any reason. It could just be carelessness, negligence or reckless indifference. Whatever the reason, such failure to comply with this subclause will not invalidate the unlawful consorting notice. It seems that the government is either serious about the New South Wales Ombudsman's recommendation about people understanding the notices or it is not. This seems like a bit of a halfway house. The government is saying it would like to pretend it is interested in the New South Wales Ombudsman's recommendations about people understanding these very serious notices, but whether they understand or not, it does not the care. That seems to be the attitude of the McGowan Labor government. It seems quite peculiar to keep the two clauses together. Might an amendment to the seventeenth and eighteenth lines on page 9 be appropriate?

**Hon MATTHEW SWINBOURN**: We do not support deleting that. I take the member's point about the conflicting nature of subclauses (2) and (3). Subclause (2) will still create a legislative imperative because it uses the word "must", and we would hope and expect that police officers would comply with the law as it is provided there. It will not abrogate their duty to explain the notice. It might become relevant not at the point of prosecution, but on sentencing. It could be a matter of mitigation if a defendant was able to establish that the obligations in what is now clause 11(2) were not met by the police officer and it would be a mitigating factor in sentencing. It is not completely without relevance on that point.

**Hon NICK GOIRAN**: Would failure by a police officer to comply with clause 11(2) be police misconduct?

**Hon MATTHEW SWINBOURN**: Yes, member, it is within the realm of possibilities that it could constitute misconduct, depending on the circumstances and the motivations of the police officer.

**Hon NICK GOIRAN**: This is a matter under part 2 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. Does that mean it will fall under the jurisdiction of the Ombudsman to monitor this matter?

**Hon MATTHEW SWINBOURN**: Yes, it will fall within the ambit of the Ombudsman, but it will also fall within the ambit of the Corruption and Crime Commission, if it involves misconduct. We have already pointed to the fact that the Ombudsman is obligated to refer any matters of misconduct that come to his attention to the CCC, so if something did amount to misconduct, the CCC and the Ombudsman could both have a role.

**Hon NICK GOIRAN**: That reconfirms the duplication that has been created here by the government, something that would have been completely avoidable had we not decided to give the job of monitoring to the generalist Ombudsman instead of the specialist CCC, which has sole jurisdiction when it comes to matters of police misconduct. Nevertheless, that is the government's decision. It obviously does not feel that the Corruption and Crime Commission and the Ombudsman have enough work to do, so it has decided to duplicate their efforts by giving them dual jurisdiction under clause 11(2) of this bill. Why was the period of two months in subclause (4) chosen? In what circumstances will it take an officer who has issued a notice up to two months to serve it?

**Hon MATTHEW SWINBOURN**: The two-month period was decided on in consultation with the police. It is obviously the maximum period in which we would expect a notice to be served in that situation. Western Australia is a very large state and there might be circumstances of natural disasters or events that make it difficult to physically serve the notice—for example, runways in the north west might flood during the wet season and those sorts of things—so that is why we have arrived at two months.

**Hon NICK GOIRAN**: Is the two-month time frame for police to serve notices on an offender consistent with other notices that police issue to offenders around the state or is it consistent with other models?

**Hon MATTHEW SWINBOURN**: I cannot give the member an answer about other things with any particularity. The advice from police is that most notices are not restricted in this way; this is a change in practice in that regard. I do not have specific advice about what happens across other notices. As the member can imagine, there are requirements to serve under many acts and processes, such as court processes and all those sorts of things.

**Hon NICK GOIRAN**: That begs the question: why have any period of time at all?

**Hon MATTHEW SWINBOURN**: Clause 11(1) states —

> An authorised officer must, as soon as practicable after issuing an unlawful consorting notice, ensure that a police officer serves the notice on the restricted offender …

We have created an imperative that it be done as soon as practicable. Subclause (4) states that that is the maximum time in which it can be done. It is a policy decision. We have decided that we want the notices to be issued and served physically, not just orally, so we are putting in a regime to ensure that that imperative is placed on the police and that there is a limit. Of course, if after the expiry of two months, there are still circumstances that justify the issuing of the notice, a new notice could be issued and served on the person.

**Hon NICK GOIRAN**: The notice will have the information of another person, who is a relevant offender. Is there any requirement on the part of the restricted offender—that is, the recipient of the notice—to keep the information in the notice confidential?

**Hon MATTHEW SWINBOURN**: Not under this bill—there are no confidentiality requirements. There might be other obligations on offenders such as child sex offenders, under the Criminal Procedure Act and those sorts of things, which might mean they are effectively to be kept confidential. We do not have advice at the table about that. It is not under this bill.

**Clause put and passed.**

**Clause 12 put and passed.**

**Clause 13: Duration of unlawful consorting notice —**

**Hon NICK GOIRAN**: To what extent will the period for service we just discussed under clause 11 have an impact on the time for the validity of the notice under clause 13?

**Hon MATTHEW SWINBOURN**: The clock will not start ticking for the three years until service is effected, whether it is orally or in writing.

**Hon NICK GOIRAN**: When the notice has been issued, under clause 12, will there not be an obligation to still issue a notice under clause 11 subsequently—in fact, within a 72-hour period? Will the time begin to run from the first notice or the second notice?

**Hon MATTHEW SWINBOURN**: Clause 12 has no bearing on the time. Once it is orally given, the clock will start ticking. If it is orally given, the obligations under clause 12 will kick in and it will have to be served within 72 hours.

**Clause put and passed.**

**Clause 14: Correcting mistakes in unlawful consorting notice —**

**Hon NICK GOIRAN**: My question to the parliamentary inspector is whether the omission of a —

**The DEPUTY CHAIR (Hon Dr Sally Talbot)**: Parliamentary secretary.

**Hon NICK GOIRAN**: Did I say inspector again?

**The DEPUTY CHAIR**: Yes.

**Hon Matthew Swinbourn**: You keep promoting me!

**Hon NICK GOIRAN**: The parliamentary secretary —

A member: Overdue promotion, I must say!

**Hon NICK GOIRAN**: It is only a part-time job, though!

**The DEPUTY CHAIR**: I would not have pointed it out if I had realised it was going to lead to this discussion.

**Hon NICK GOIRAN**: Thank you, deputy chair.

Parliamentary secretary, would the omission of the name of an offender with whom the restricted person must not consort—that is, a person defined as a "named offender"—be considered a mistake for the purposes of clause 14(1)?

**Hon MATTHEW SWINBOURN**: I think the answer is that if the name of the named offender was omitted, that would effectively invalidate the notice because the notice could not possibly be given effect. I think the member's question is whether a clerical mistake, an accidental slip or omission or mistake in the description of any person would be sufficient to come under that term. It is a fundamental requirement of the notice to have the name of the named person, as opposed to the misspelling of the name of that person. If the offender's name was Neil and it was spelt N-E-A-L rather than N-E-I-L, that would be an issue, but if the name were completely omitted, we would not have the subject matter of the notice, which is that the named person not consort with another person. That element of doubt would probably invalidate the notice and it would need to be reissued.

**Hon NICK GOIRAN**: When I try to compare clause 14(1)(c) with the content of an unlawful consorting notice at clause 10, it is not readily apparent what otherwise might be applicable in this situation. Clause 14(1)(c) says that it captures a material mistake in the description of any person. However, clause 10 states —

> (a) the name and residential address of the restricted offender;
>
> (b) the name of each relevant offender … with whom the restricted offender must not consort;
>
> (c) that consorting on 2 further occasions with any named offender … may lead to the commission of a crime …
>
> (d) the date of issue of the notice;
>
> (e) the name, rank and identifying reference of the authorised officer who issued the notice;
>
> (f) that the notice remains in effect for a period of 3 years …

When I look at that list and turn to clause 14(1)(c), I see —

> a material mistake in the description of any person …

If we are not saying that it is the name of the relevant offender, it follows that it is not the name of the restricted offender either. We are saying that if the name of the relevant offender is omitted, the notice will be invalid and cannot be corrected under clause 14(1) and the process will have to start all over again. Following that logic, the same would apply at clause 10(a). If an unlawful consorting notice did not have the name of a restricted offender, it would be invalid and the process would have to start all over again. What other names are captured under what is described at clause 14(1)(c) as a material mistake in the description of any person? The only thing that immediately jumps out at me is the name, rank and identifying reference of the authorised officer who issued the notice. Is the advice from the government that clause 14(1)(c) should be interpreted as being restricted only to a mistake at clause 10(e)?

**Hon MATTHEW SWINBOURN**: It is not restricted to clause 10(e), but I think the member has made a number of points. It is most likely to occur under clause 10(e), but it could also occur under clause 10(g), because "any other prescribed matters" would include any of those things that fall within clause 14(1)(c). It is a bit of a catch-all in that regard.

**Hon NICK GOIRAN**: For the purpose of interpretation, is the government saying to the chamber that it wants the people with responsibility for managing this legislation and, ultimately, those responsible in any dispute, to interpret the legislation to mean that the omission of the name of one of the named offenders, or indeed the restricted offender, should be a consideration for invalidating a notice?

**Hon MATTHEW SWINBOURN**: If there was only one named offender on the notice, that would probably be correct. If there were multiple names and a name had been omitted from that list, that would not invalidate the notice with respect to all those other named persons, and a new notice would have to be issued to include a new person,

because that person had not been included. It would occur in a circumstance in which the police had identified a new person whom they did not know about and wanted to name that person.

**Hon NICK GOIRAN**: If a notice has been corrected under clause 14, what impact would that have on the three-year time frame within which the unlawful consorting notice was in place?

**Hon MATTHEW SWINBOURN**: It would have no impact.

**Hon NICK GOIRAN**: In other words, if it would have no impact and the three-year time frame would still exist, would the person still be responsible and liable under the incorrect notice until such time as the corrected notice had been issued?

**Hon MATTHEW SWINBOURN**: I think generally yes, but it would ultimately be a question for a court if someone had been prosecuted on this matter.

**Hon NICK GOIRAN**: It would require testing. Why would we not want to be clear on that? Why would we leave it to the courts? The police and the prosecution have expended a whole heap of money. These people will potentially be legally aided. We will be asking the courts to interpret all these things. What is the government's position? How does the government want this to be interpreted? Is it the case that if an unlawful consorting notice has been issued with one or more mistakes, the person would still be liable to comply under the unlawful consorting notice, or would the liability for the unlawful consorting begin to run only from the time that the person had received the corrected notice?

**Hon MATTHEW SWINBOURN**: It will be from the time that it was issued. This clause will allow for a later error to be corrected without interfering with the running of that time. If the error was so fundamental that it made the notice completely defective, the wise thing would be for the police to reissue the notice and therefore remove all doubt. It is our expectation that this will be a rare occurrence. The member knows the spelling of my name, for example, but it is persistently misspelt. Hon Tjorn Sibma smiles, because he has exactly the same problem that I have with people spelling my name. We do not want a person who has got to the stage of being prosecuted to be able to defeat a notice on the simple basis that there was some kind of error, whether that was a clerical mistake, a mistake arising from an accidental slip or omission, or a material mistake in the description of any person, thing or matter referred to in the notice. It is available for the prosecution to argue any of those matters to excuse the error if they got to that particular stage and were prosecuting on that kind of notice.

**Hon NICK GOIRAN**: At least the record will reflect that it will be possible for an inaccurate unlawful consorting notice to be issued and served to a person liable under that notice for a period of three years. It might not be until the time of prosecution that a notice was corrected. Notwithstanding the fact that potentially two or more years might have passed, under clause 14, the police could quickly issue a corrected notice and there would be no problem. What would happen if there has not been a corrected notice? Clause 14(3) states —

> An unlawful consorting notice corrected under this section has the same validity and effect as if the mistake had not been made.

Is it fundamental that the incorrect notice must have been corrected in order for it to be valid?

**Hon MATTHEW SWINBOURN**: That is a hard question to answer because it depends on the nature of the error. It could be something like the "O" and the "U" in "Swinbourn" were the wrong way around. The member has experienced these sorts of things and knows that courts tend to take a strict approach on them. For example, warrants and such things that incorrectly, through a typo, name the wrong address can sometimes be invalidated, but it is really a question that the courts will decide on a case-by-case basis depending on whether the change is substantive or immaterial.

**Hon NICK GOIRAN**: This is my last question on this clause. The New South Wales laws were challenged, but unsuccessfully. Does New South Wales have a "correcting mistakes" provision like clause 14?

**Hon MATTHEW SWINBOURN**: I am sorry, member; we do not know off the top of our head and we do not have it right before us at the moment.

**Clause put and passed.**

**Clause 15: Revocation of unlawful consorting notice —**

**Hon NICK GOIRAN**: Clause 15(4) says it is the Commissioner of Police who will revoke the notice. Now we are getting very serious. We have moved quite some way from the existing section 557K provision, which as a matter of law any police officer in Western Australia can issue. There are more than 7 000 of them. Under clause 9, we moved to an authorised officer, which is commander or higher, but now we are bringing in the big guns because under clause 15(4) it will be the Commissioner of Police. Apparently, he must —

> … revoke an unlawful consorting notice if the Commissioner is, on an application under subsection (1) or on the Commissioner's own initiative, satisfied that —

(a) the unlawful consorting notice was invalidly issued because the requirements under section 9(1) for issuing the unlawful consorting notice were not met; or

(b) the unlawful consorting notice was validly issued but the requirements under section 9(1) for issuing the unlawful consorting notice are no longer met due to a change in the circumstances.

Clause 15(6) does not require the Commissioner of Police to specify the reason for which the notice has been revoked under this clause. Even if the commissioner does not reveal details of their reasons for revoking a notice, would it not be more prudent to require the commissioner to record either clause 15(4)(a) or (b) as the general ground on which the notice is being revoked under clause 15(6)?

**Hon MATTHEW SWINBOURN**: It is not in the bill, but we were advised by police that as a matter of practice the commissioner would record whether it is being revoked under clause 15(4)(a) or (b).

**Hon NICK GOIRAN**: The parliamentary secretary said that it is a matter of practice, but this provision does not exist at the moment, so are we basing this on some other practice that the commissioner tends to follow for other revocations that the commissioner undertakes?

**Hon MATTHEW SWINBOURN**: We are basing it on advice from police that we are receiving at the table.

**Clause put and passed.**

**Clause 16: Variation of unlawful consorting notice —**

**Hon NICK GOIRAN**: I think that clause 16 did not exist in the original 2020 bill, and it was included by the government through an amendment in the other place last year, but what prompted its inclusion?

**Hon MATTHEW SWINBOURN**: I think we contemplated that this clause might apply when multiple offenders are named. There might be a change of circumstances for one of those offenders; for example, they might have a conviction overturned, so they would no longer fall under the ambit of the act because they would not be a relevant offender anymore, and they would be removed from the notice. The concern was that we did not want an entire notice to be invalidated as a consequence of that, as we want to preserve any occasions of consorting that had arisen under that notice.

**Clause put and passed.**

**Clause 17: Offence of consorting contrary to unlawful consorting notice —**

**Hon NICK GOIRAN**: The New South Wales Ombudsman's report from 2016 notes that consorting offences in South Australia, Western Australia and Tasmania are all summary offences, and that police are therefore restricted by time limits between an alleged offence of consorting and a charge. It says that the period in South Australia is two years pursuant to the Summary Procedure Act 1921, in Tasmania it is six months pursuant to the Justices Act 1959, and in Western Australia it is one year under the Criminal Procedure Act 2004. Will the one-year time limit still apply to the time that may elapse between an alleged offence of consorting and a charge of unlawful consorting under clause 17?

**Hon MATTHEW SWINBOURN**: The 12 months under the Criminal Procedure Act will no longer apply. Making the offence an indictable offence will also have the effect of removing the time frame specified in the Criminal Procedure Act within which a prosecution must be commenced. Simple offences must be commenced within 12 months of the date on which the offence was allegedly committed, whereas no such limitation exists for indictable offences unless a written law specifies otherwise, which this bill does not.

**Clause put and passed.**

**Clause 18: Defences to charge of consorting contrary to unlawful consorting notice —**

**Hon NICK GOIRAN**: Members are going to get some exercise in a moment, because I will shortly move an amendment that seeks to remove a defence that is applicable to a charge of a crime under clause 17(1). It remains a concern for the opposition that the government has seen fit to give special treatment to activities undertaken by members of an organisation of employees registered under division 4 of part II of the Industrial Relations Act 1979 or the commonwealth's Fair Work (Registered Organisations) Act 2009 for the purposes of the business of the organisation. This is the union defence clause that we discussed earlier. I know that the parliamentary secretary and I do not share a common view on the appropriateness of this clause. That said, does this particular special provision that is being provided to union members exist in the other jurisdictions?

**Hon MATTHEW SWINBOURN**: The member's question was whether any other jurisdiction provides a similar defence to that set out at clause 18(2)(a)(viii) of the bill. The consorting scheme is different in all Australian jurisdictions. In Victoria, consorting offences are contained in its organised control order scheme. In most other jurisdictions, consorting offences are contained in crime legislation or criminal codes. There is not a consistent approach to the offence provisions or defences across Australian jurisdictions. The scheme introduced by the bill will be the most comprehensive of all Australian jurisdictions, including the range of safeguards, such as targeted defences. In the other jurisdictions with defences comparable with clause 18(2)(a)(viii), the Victorian consorting scheme provides it is a defence for the accused to prove that they did not associate with a person named in the notice

for an ulterior purpose and the association occurred for the purpose of industrial action. The Northern Territory consorting scheme provides it is a defence for the defendant to prove they had a reasonable excuse. Whether this defence is available to a defendant who consorted while engaged in industrial action will turn on its facts.

**Hon NICK GOIRAN**: Earlier in the debate, did the parliamentary secretary indicate that the government modelled its bill in any way on the New South Wales or Queensland legislation?

**Hon MATTHEW SWINBOURN**: I did say it was modelled on the New South Wales legislation.

**Hon NICK GOIRAN**: Does the New South Wales legislation have a special defence for unionists like this one here?

**Hon MATTHEW SWINBOURN**: No.

**Hon NICK GOIRAN**: Without any further ado, I move —

Page 14, line 30 to page 15, line 3 — To delete the lines.

I strongly encourage members to support the amendment to this outrageous provision in the bill. The government cannot have it both ways. It cannot say, "We're modelling our law on the New South Wales provisions. Don't worry about it because New South Wales has had its laws challenged by the bikies in the High Court. We're very confident that we've done all the work that's necessary" and then, at the eleventh hour, slip in this special defence for unionists. If a unionist is a declared drug trafficker, I am sorry, but they have lost the right to be able to consort with a fellow drug trafficker. I do not understand why we are allowing a special defence in these circumstances. The government has decided it is very important that if a declared drug trafficker is a unionist, they should be able to continue to consort with a fellow drug trafficker who is a unionist. That is the effect of this provision. They will have a special defence, despite the fact that the New South Wales law that the government is relying and modelling on has no such provision. I encourage members to support the amendment that has been put.

**Hon MATTHEW SWINBOURN**: Members, I rise to advise that the government will be opposing this amendment. I made that clear in my second reading in reply speech. I have said that these consorting provisions are modelled on the New South Wales provisions, but we are not copying the New South Wales act, so that is an important distinction. In any event, this amendment seeks to remove the defence to a charge of a crime under clause 17(1) of the bill to prove that the consorting occurred in the course of activities undertaken by members of an organisation of employees registered under the Industrial Relations Act 1979 or the Fair Work (Registered Organisations) Act 2009 for the purposes of the business of the organisation.

The defences outlined in clause 18(2) of the bill are narrow and targeted. They recognise that consorting will sometimes be necessary when a person is engaged in a particular activity, such as a lawful occupation or particular circumstance such as when a person is dependent on the accused for care and support. Consistent with the other defences, the defence set out at clause 18(2)(a)(viii) is a narrow and targeted defence. Importantly, this defence is inextricably linked to the defence at clause 18(2)(a)(i), which provides for a defence if the consorting occurred in the course of a person's lawful occupation, trade or profession. Being a member of a trade union is connected with being in a lawful occupation, trade or profession. We acknowledge that it may be necessary for a person to consort while engaged in gainful employment. It is entirely appropriate that we also recognise that it may be necessary for that person to protect their rights attached to that employment. Like all defences contained in clause 18(2), the industrial action defence is not an open invitation to relevant offenders to use that defence as a cover to avoid the operation of the unlawful consorting notice. The accused must prove, on the balance of probabilities, that the circumstances in clause 18(2)(a)(viii) apply and that the consorting was necessary in the circumstances.

Turning to the narrow nature of the industrial action defence, the accused will have to prove the following; firstly, that both the accused and the person with whom they were consorting were members of an organisation of employees, registered under the relevant state or commonwealth levels; secondly, the consorting occurred in the course of activities undertaken for the purpose of the business of the organisation; and thirdly, that the consorting was necessary in the circumstances. Therefore, it is quite a heavy burden for them to prove.

The business of an organisation could include, for example, providing information and advice about making an application to an industrial tribunal or assisting in negotiations about their employment, or it might even relate to workplace safety arrangements. The requirement that the accused prove the consorting was necessary in the circumstances imposes a threshold test, and will ensure that sham communications will not stand up as a defence to a charge. If the purpose of the communications could have been achieved without consorting with a named offender, the defence will not apply. It will depend entirely on the particular circumstances of the situation, whether the consorting that occurred was necessary, and the onus is on the accused person to prove that it was.

To conclude, without this defence, workers would be denied the opportunity to communicate with others to pursue the legitimate industrial rights to which they are entitled in connection with their employment. We want people who will be covered by this act to get on the straight and narrow, get gainful employment and be engaged in the kind of pro-social activities that being a member of a trade union provides. We do not support the removal of this defence.

*Division*

Amendment put and a division taken, the Deputy Chair (Hon Steve Martin) casting his vote with the ayes, with the following result —

Ayes (6)

| | | | |
|---|---|---|---|
| Hon Martin Aldridge | Hon Nick Goiran | Hon Dr Steve Thomas | |
| Hon Peter Collier | Hon Steve Martin | Hon Colin de Grussa *(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 Dr Sally Talbot |
| Hon Sandra Carr | Hon Jackie Jarvis | Hon Dr Brad Pettitt | Hon Dr Brian Walker |
| Hon Stephen Dawson | Hon Alannah MacTiernan | Hon Stephen Pratt | Hon Darren West |
| Hon Sue Ellery | Hon Ayor Makur Chuot | Hon Martin Pritchard | Hon Pierre Yang *(Teller)* |

Pairs

| | |
|---|---|
| Hon Donna Faragher | Hon Rosie Sahanna |
| Hon Neil Thomson | Hon Kate Doust |
| Hon Tjorn Sibma | Hon Samantha Rowe |

**Amendment thus negatived.**

**Hon NICK GOIRAN**: This is the defence clause, including the very special defence for union activity. One reasonable defence pertains to family members. I note that a family member of a person who is an Indigenous person is defined in clause 4, which we dealt with earlier. It includes a person who is regarded as a member of the extended family or kinship group of the Indigenous person under the customary law and culture of the Indigenous person's community. This defence, together with the definition of a family member, is set to safeguard against these proposed new consorting laws from unfairly affecting Aboriginal and Torres Strait Islander people. Reference was made to the New South Wales Ombudsman's 2016 report, *The consorting law*. The government has placed some reliance on this report for various elements of this bill, including this issue, on the basis that the New South Wales consorting law was "used against"—I understand is the term used in the Ombudsman's report—Aboriginal and Torres Strait Islander people and that this should be avoided. Although I consider that the expanded definition of family member to reflect extended family kinship ties between Indigenous Western Australians is appropriate, it is not readily apparent how inserting it into the law, through this bill, will address the concern raised in the New South Wales Ombudsman's report. Has any information been provided to the government by police, the Corruption and Crime Commission or any other agency that demonstrates that the current consorting laws that we will be repealing in a later clause have been used against Aboriginal or Torres Strait Islander people or have had some kind of impact upon them?

**Hon MATTHEW SWINBOURN**: As the member knows, the current consorting regime applies only to drug traffickers and people convicted of child sex offences. No drug traffickers have been issued with a consorting notice, so we can put them to one side. It is only the child sex offenders. Within that cohort of 800 are Aboriginal and Indigenous people. I will use that term; I do not know whether they are Torres Strait Islander people. We do not have the figures of what proportion they make up. They are not an insignificant number. That is that, but I think the member's question was whether these laws as they currently exist have been particularly targeted at Indigenous people. I think the issue with comparing what currently applies with what will apply is that the existing laws with respect to child sex offenders are of a narrow nature. Because the new legislation will apply to people convicted of an indictable offence and those sorts of things, the net will be cast much, much wider than it currently is. That gives rise to the concerns that the Ombudsman has talked about and that we are conscious of, which is why we have included provisions to make sure that the family defence that applies takes into account cultural circumstances and kinship for Aboriginal and Torres Strait Islander people.

**Hon NICK GOIRAN**: It appears from a reading of the New South Wales Ombudsman's report that the issue is not so much in the drafting of the legislation, but in the use of the police powers in issuing notices. At page 63 of the report, the Ombudsman says —

> There is no specific reference to the use of the new consorting law in relation to Aboriginal people in the *Consorting Standard Operating Procedures* …

Is it the intention of the WA Police Force to adopt a form of consorting standard operating procedures that makes specific reference to the vulnerability of Aboriginal and Torres Strait Islander people under these new laws?

**Hon MATTHEW SWINBOURN**: The short answer is no, not specifically, but policies already exist that deal with how police interact and deal with Aboriginal and Torres Strait Islander people, and it will obviously come into consideration in terms of commencing prosecutions.

**Hon NICK GOIRAN**: I am disappointed to hear that. The government is relying on the New South Wales Ombudsman's report for this bill. The NSW Ombudsman made an express point about this issue with respect to the New South Wales Police Force's consorting standard operating procedures and yet there is no indication from the Western Australia Police Force that it will do likewise here or has an appetite to do so. It will rely on an old generic provision, when we are implementing a brand new scheme with this legislation. It is very good for WA police to say, "Hurry up, McGowan government; get this bill through Parliament before midnight on 7 December 2021, because we're ready to go. Get it before the Governor and start proclaiming it." I commend police for that. As we discussed last week, particularly during the clause 1 debate, some of the heinous individuals who police have to deal are quite shocking, particularly when it comes to outlaw motorcycle gang members and some of their activities. But something very basic like making sure that the operating procedures have been modernised and updated to reflect new legislation appears to have been overlooked. I encourage WA police to take a further look at page 63 of the New South Wales Ombudsman's report of 2016. While they are at it, they may also like to look at page 64, which states —

> Western Region police reported that, among other strategies, they most commonly used the consorting law in relation to drug, theft, robbery, and break and enter offences … In some LACs, consorting was valued as providing an additional proactive tool that could be used to approach and engage individuals. However, others advised us that existing police powers, such as conducting bail compliance checks, search powers and move-on directions, provided more effective and less cumbersome proactive tools.

All of this goes to police discretion about which of the various tools they have at their disposal they will seek to rely on. Has there been any advice from WA police on this point, specifically on whether a procedural policy will be established so that whenever possible WA police will use these new consorting laws as a last resort, particularly in relation to Indigenous persons?

**Hon MATTHEW SWINBOURN**: My advice from police is no. Police will focus on dealing with the risk of offending and trying to minimise future offending.

**Hon NICK GOIRAN**: This again leads to the discussion about monitoring. We know not only from recent reports, but also over an extended period—more than a decade—that the Corruption and Crime Commission has consistently looked into the excessive use of force by WA police. In fact, a recent report of the Joint Standing Committee on the Corruption and Crime Commission is on exactly that point and the CCC has been tasked with constantly overseeing the Western Australia Police Force's use of force powers. WA police will now have a different type of power over an expanded group of Western Australians that will restrict the capacity of those people to consort—except, of course, if they are involved in a union and then there will be special defence provisions for them to do as they please. That aside, anyone not so fortunate to carry a union membership card with them all the time may be subject to a police consorting notice. The lived experience in New South Wales indicates that those types of consorting notices are sometimes used in a less than desirable fashion. I very much would like to reiterate to the government that I see problems emerging here. There will be a lot of duplication between the Ombudsman and the CCC, and I am concerned about that. Those organisations have enough to do without having this constant duplication. They definitely will have to work it out and there will be resource implications as a result.

Clause 18(1) contains the defence for family members—a person will have to prove that consorting between persons who are family members is reasonable in the circumstances. What type of consorting between declared drug traffickers will be considered "reasonable in the circumstances" to provide a defence against a charge of unlawful consorting?

**Hon MATTHEW SWINBOURN**: Again, I apply the rider that each circumstance will give rise to its own judgement, but one example could be a funeral. One person cannot choose to go to a funeral at a different time from another person. Another example might be when those people have caring responsibilities for elderly parents or a child, or things of that kind. I cannot give the member an exhaustive list, but the sorts of things that are contemplated include people being obliged, whether culturally or through kinship, to participate in and attend family gatherings. It is not just about two people catching up for a coffee at a coffee shop and that just because they are brothers they can get away with that kind of thing. Some people in outlaw motorcycle gangs are related or are family members and there will be broader circumstances in which it will be completely reasonable. But then there will be much narrower circumstances in which it will be used as a justification. However, defence of the activity will still be subject to what arises in clause 18(3), which provides consorting —

> is not reasonable or necessary … if a purpose of the consorting —
>
> (a) is to avoid the operation of an unlawful consorting notice; or
>
> (b) relates to criminal activity.

**Hon NICK GOIRAN**: If it is a funeral and the two declared drug traffickers are not family members, are they prohibited from attending because they will not be captured by clause 18(2)?

**Hon MATTHEW SWINBOURN**: They would not be prohibited from attending; they would be prohibited from consorting with each other. For example, if they are at the funeral and they sit next to each other and are chatting away, that would be consorting, but if they are at the funeral and one is sitting on one side of the chapel and the other is sitting on the other side and there is no consorting, that is okay. They are not prohibited from attending the occasion at the same time; they are prohibited from consorting during the occasion.

**Hon NICK GOIRAN**: They could attend the funeral but not, as the parliamentary secretary says, consort, whereas the family members of both declared drug traffickers could attend and consort because they have the extra defence, if you like. It all turns on the definition of "consort", which includes to seek or accept the company of the other person, to be in the company of the other person, or to communicate directly or indirectly with the other person. "Communication" is largely self-explanatory; they are either communicating with each other or they are not, but have "being in the company" or "accepting the company" of another person been judicially considered—the term "being in the company of another person"—either under WA law or one of the other model laws that we are relying upon?

**Hon MATTHEW SWINBOURN**: My understanding is that it has been judicially considered in relation to burglary-type matters. We do not have any particular cases to point the member to, but I have a bit of advice from the table. The scope of the expression "in company" used within the term "consort" requires more than the mere physical presence of two persons; it must be both physical presence and a common purpose.

**Hon NICK GOIRAN**: If they were attending a union rally and there were 100 people participating, just because they were one of the 100 people participating, that would not necessarily put them in contravention of being in the company of the other person. I take it there has to be some proximity with the other person. Is that —

**Hon Matthew Swinbourn**: By way of interjection, yes, some proximity.

**Hon NICK GOIRAN**: Right. Again, it goes back to the provision at clause 18(2)(a)(viii), which allows for activities undertaken by such members. To try to relate it back to the funeral example, we are not saying they cannot be at the funeral and we are not saying they cannot be at the rally; we are saying that they cannot consort. But in this provision we are actually saying that if they are unionists, not only can they attend the rally, but they can consort, and we are going to give them a special defence for it. I know the parliamentary secretary is going to say that we have already had that discussion and he has already won the argument, which is true, but I think the funeral example that the parliamentary secretary provided only illustrates further the nonsensical nature of the union defence clause. With regard to the defences in other jurisdictions, do they also rely upon a necessity—that it is necessary or reasonable in the circumstances?

**Hon Matthew Swinbourn**: Member, before you sit down, what is the example you're giving?

**Hon NICK GOIRAN**: Do the defence provisions in other jurisdictions also have the same elements of reasonableness or necessity?

**Hon MATTHEW SWINBOURN**: In New South Wales the test is reasonableness, but it does not have the necessary test. The necessary test for those contained at clause 18(2) is a higher standard than reasonableness to satisfy.

**Hon NICK GOIRAN**: At clause 18(2)(a)(iii) is a reference to receiving a health service or social welfare service. Is the bill's definition of a health service intended to be the same as that under the Health Services Act 2016?

**Hon MATTHEW SWINBOURN**: Yes. If the member refers back to clause 3, he will see the definition for health service is —

> … has the same meaning given in the *Health Services Act 2016* section 7;

**Hon NICK GOIRAN**: Will that then cover therapeutic and counselling services; rehabilitation services; alcohol and other drug support services; accessing a social worker; and counselling and accessing other support groups, such as assistance with drug rehabilitation and alcohol rehabilitation?

**Hon MATTHEW SWINBOURN**: I think in general, yes. A social welfare service is defined in clause 3, which states —

> … includes services provided by governments and charitable organisations for community welfare, financial assistance, housing and temporary accommodation;

It is quite a wide ambit.

**Hon NICK GOIRAN**: The New South Wales Ombudsman recommended the inclusion of the following additional defences to the Crimes Act 1900 at section 93Y —

> (g) consorting that occurs in the course of complying with —
>
> (i) an order granted by the Parole Authority, or
>
> (ii) a case plan, direction or recommendation by a member of staff of Corrective Services NSW,

Is a like provision included at clause 18?

**Hon MATTHEW SWINBOURN**: I am advised that clause 18(2)(a)(vii) would cover what the member just described. It states —

> complying with a written law, an order made by a court or tribunal, or any other order, direction or requirement made under a written law;

**Hon NICK GOIRAN**: The New South Wales Ombudsman also recommended the inclusion of an additional defence for consorting that occurs in the course of the provision of transitional crisis or emergency accommodation. Is that also covered?

**Hon MATTHEW SWINBOURN**: Yes, member; it would come under the definition of a social welfare service.

**Clause put and passed.**

**Clauses 19 and 20 put and passed.**

**Clause 21: Terms used —**

**Hon PETER COLLIER**: I was not going to, parliamentary secretary —

**Hon Matthew Swinbourn**: And why did you?

**Hon PETER COLLIER**: Because I have to say, "I told you so!"

I went through the definition of "insignia" in debate on clause 1, if the parliamentary secretary remembers. Insignia is clearly identified in clause 21. I will not read it out again; it is in the bill. As I mentioned in my contribution to clause 1, the report tabled by WA Police Force outlines that the colours of a bikie gang are actually more extensive than in part 3, which is what we are talking about, regarding insignia.

As I said in my contribution to the debate on clause 1, without a doubt they will try to find a way around this. It is almost as if they already have. I also mentioned this in my previous contribution: believe it or not, they are keeping an eye on what is going on in this place right now. One of them has phoned my office on several occasions. They are keeping an eye on what is going on, but I am not for a moment suggesting that they are taking advice from comments that were made on the bill. Having said that, I was sitting here with slight amusement this afternoon. If the parliamentary secretary remembers, I told him that they would find a way around this. If the insignia is not on their arm or they cannot wear their colours in a particular way or whatever, they will start using ink; they will start getting tattoos that will clearly identify them. There was an article online this afternoon. I will not table it, but I provide it for the parliamentary secretary's benefit—if the attendant could show it to him. The article is headed "Rebels bikie Samuel John Willmott shows off '500k' ink as he's jailed for $500,000 theft from Perth backyard". It says —

> At his last court appearance, baby-faced bikie Samuel Willmott proudly showed off his newly acquired gang tattoo which apparently was a sign he had cemented his association with the Rebels Motorcycle Club.
>
> On Tuesday, as the patched member was jailed for almost three years for stealing half a million dollars in a "revenge" plot against his friend's father, he flaunted another piece of face ink—500K.
>
> Willmott showed no qualms displaying the tattoo, which runs down his face next to his right ear, to District Court Judge Linda Petrusa who was tasked with both determining his role in the "grand theft" and how long he should remain behind bars.

That brings me back to the point I raised in my earlier contribution; that is, how on earth will these bikie gangs be stopped from using tattoos as their insignia? The parliamentary secretary's response to me at that time was that they would get fined. They will get fined, but they will still have a tattoo. This guy will still have one. The 500K is obviously a sign for the Rebels.

**Hon Stephen Pratt**: That is what he stole from the backyard.

**Hon PETER COLLIER**: Yes, I know what he stole, but read the article. The article said it was a revenge plot. It said "newly acquired gang tattoo", so he has a gang tattoo as well. How do we prevent that?

**Hon MATTHEW SWINBOURN**: It is not just a fine, there is up to 12 months' imprisonment as well. He could end up going to jail. If people are going to break the law, they are going to break the law, and the law is going to deal with and punish them. At this stage, the punishment is a fine—was it $12 000? I stand to be corrected on whatever the fine is—and a term of imprisonment. It is an age-old question about those who choose to obey the laws and those who do not. Thankfully, in our society people overwhelmingly obey them. We will deal with them through our criminal justice system, and if people want to flout the laws, they will end up in jail.

**Hon PETER COLLIER**: I am not going to pursue this any further. I am just making a point.

**Hon Matthew Swinbourn**: I do not know what more you can ask from me on this point about what you expect the government can do on this other than fine and jail people.

**Hon PETER COLLIER**: The government cannot do anything about it. I am not justifying it and I am not looking for an excuse; I am just saying that exactly what I said would happen will happen. The bill has not even hit the Governor's desk and exactly what I said would happen will happen. I do not want it to happen, do not get me wrong; do not get defensive. I am saying that exactly what I said would happen will happen. We support the bill. I am totally supportive of it, but I am just making a point that no matter what we do, they will flout the law—no matter what happens. Yes, I agree, 99.9 per cent of the public do not put a tattoo on their face to say they are part of the Rebels bikie gang, but we can bet that his mates will do exactly the same thing. As I said, good luck with it, and it is good that the government will curtail their actions, but I will finish on this: they will find a way around this. All I am saying is that, just by sheer coincidence, this article was online this afternoon as we were debating this bill. The parliamentary secretary does not have to respond to this. All this does is reinforce the point I have made that, unfortunately, no matter what we do, some people in the community will find their way around our laws. It is unfortunate that this mob of people will do this sort of stuff, because no matter what laws we make, they will find a way around them, and they obviously have.

**Hon NICK GOIRAN**: I apologise, parliamentary secretary; I was taken away on urgent parliamentary business. In respect of the important point that has just been made by the honourable shadow Minister for Police, in a scenario in which a person inked the insignia on their person, as I understand it from the parliamentary secretary's response, they would be subject to prosecution under part 3, which is the new part that was inserted via a bill in the last Parliament. What penalty will be applicable in that situation?

**Hon MATTHEW SWINBOURN**: I think the member was out of the chamber on urgent parliamentary business. The penalties in that situation are dealt with in clause 25(2), which states —

> A person commits an offence if the person displays insignia of an identified organisation in a public place.
>
> Penalty for this subsection:
>
> (a) in the case of an individual — imprisonment for 12 months and a fine of $12 000;
>
> (b) in the case of a body corporate — a fine of $60 000.

**Hon NICK GOIRAN**: There are two ways in which we can consider a fine of up to $12 000 for one of these outlaw motorcycle gang members. One is that a whole stack of money is available to them through various means, so maybe a fine is not that much of a severe penalty. Let us park that to one side because there is really nothing we can do about that; if they happen to have the money to pay a fine, so be it. The second is when they refuse to pay a fine issued against them under clause 25(2)(a). What is the state's capacity to deal with that unpaid fine?

**Hon MATTHEW SWINBOURN**: I am advised that it would be dealt with under the Fines, Penalties and Infringement Notices Enforcement Act 1994.

**Hon NICK GOIRAN**: Could the non-payment of a fine, which, in this case, could be up to $12 000, ultimately lead to the imprisonment of the individual?

**Hon MATTHEW SWINBOURN**: The answer is yes; at the very end of that long process, they could end up in prison by order of a magistrate.

**Hon NICK GOIRAN**: Could the period of imprisonment be longer than the 12 months set out in clause 25(2)(a)?

**Hon MATTHEW SWINBOURN**: At this stage, I do not have the advice available at the table to answer that. We are trying to find the answer for the member, but we do not know the answer at this stage.

**Hon NICK GOIRAN**: If it helps the parliamentary secretary, I indicate that my questions about part 3, if you like en bloc, are being dealt with here under "Terms used". It is not my intention to continue to go through the other provisions of part 3. That said, again, in this example that the shadow Minister for Police has brought to our attention, clause 23(2) states —

> A person commits an offence if the person displays insignia of an identified organisation in a public place.

Is that limited to one display per day or could there be multiple displays on a particular day?

**Hon MATTHEW SWINBOURN**: It could be multiple.

**Hon NICK GOIRAN**: Is that because the public place might be different or because a different hour of the day has passed?

**Hon MATTHEW SWINBOURN**: It will be on a question of fact, but both circumstances could give rise to multiple occasions. If it were six o'clock in the morning and then six o'clock at night in the same location, who would know what has gone on in between, but it would be the public display. Then, obviously, I suspect that the person, having been dealt with, would be arrested and then transported to the police for the first one. If they came back later on the same day to the same place, they would get done again.

**Hon NICK GOIRAN**: Let us test the scenario that the shadow Minister for Police brought to our attention. The person has ink—the insignia—on their person, they have been identified by WA police and they have been transported from the public place and brought to police headquarters for processing. Then they have been released until such time as their first appearance occurs. Upon release, they are out in a public place again and the person still has the insignia on their person. Would that be a second offence on that day?

**Hon MATTHEW SWINBOURN**: Yes, it would be.

**Hon NICK GOIRAN**: Is there any limit to the number of contraventions under clause 25(2) that a person could commit on a particular day? I am talking about one 24-hour period. Is there any limit to the number of contraventions? I am not talking about a person wearing an insignia on a jacket that they have put on for five minutes and have then gone to the next pub and put on the jacket once again. This is a unique set of circumstances when the insignia is permanently on the very person who is subject to the charges. Is there any limitation on the number of offences that the person can be charged with in the 24-hour period?

**Hon MATTHEW SWINBOURN**: The practical limits will apply, but there is no upper limit to the number of times they could be charged if they continued to wear their tattoo in public and continued to flout the law.

**Hon NICK GOIRAN**: Has the displaying of insignia that is inked on a person been tested in another jurisdiction?

**Hon MATTHEW SWINBOURN**: No, member; we are the first jurisdiction to introduce it.

**Hon NICK GOIRAN**: It is all an experiment. When we say that in a certain scenario, a person will be charged, and brought into the police station and charged again and so forth—no-one really knows, but in theory it could happen—the government can be absolutely sure that these guys will challenge these laws. There simply could not be a situation in which a person is charged with an offence in every second that passes. They still have the tattoo on and one second passes and they still have the tattoo on and another second passes and they have contravened the offence yet again and again and again. That is nonsensical. There will have to be some reasonable limitation on these provisions. Is there no like provision that police will have to prosecute when this kind of scenario occurs?

**Hon MATTHEW SWINBOURN**: Without getting down to the nitty-gritty of criminal law, it will be an issue of whether it is a continuing course of conduct, as opposed to a particular incident. I do not know what the member has done, but he is very popular with that bug! Speeding is probably a good example. Apposite to that is a person who speeds up and slows down in a car and is caught each time—that bug is quite distracting! That is one example. There is a practical limitation to the number of times it can be done. The difference with tattoos, as opposed to patches and insignia, is that we can confiscate and take physical things, but we cannot take tattoos off a person's skin. If the breach is not inadvertent and those people continue to choose to act in that way in direct contravention of the law, having just been charged under this provision and having had this explained to them, that is the choice they make.

**Hon PETER COLLIER**: I think this is a real problem for you guys—I really do. They cannot just go and have a shower and get rid of their tattoos. They have them for life. The parliamentary secretary can say that every time bikies go out in the public arena they will be fined for contravening the law. Yes, they will be. We are passing a law tonight that is, quite frankly, impractical. I cannot see how it can be implemented. We are assuming that the offender is not a Nigel no-friends and that he has not done this by himself. Word will get around. The bikies will say, "How are we going to get around this law? I'll tell you what we'll do, we'll have a tattoo as our insignia from now on." We are talking about 700 or so of them. They will all want to go out and get the same tattoo on their forehead, arm or wherever it might be. They will get fined and thrown into jail and when they come out, they will still have the tattoo and they will still be breaking the law.

This is so impractical. I do not care if the government does this. It is the government's decision and its bill, and the government has ownership of it, but let us think this through. These guys will have permanent ink on them. It is all well and good to say that when they go out in the public arena—assuming they will not be hermits and will go to the shopping centre, the pub, Scarborough, the Ocean Beach Hotel or on their bike runs—they will be arrested every single day. That is impractical. Imagine the police resources that will be required to chase around these bikies with tattoos. That is exactly what the parliamentary secretary said will happen. He said that if they go out, they will be breaking the law and they will suffer the consequences. If this law is passed, every single time those bikies with a tattoo insignia go out into the public, they will be breaking the law. How will the government get around that?

**Hon MATTHEW SWINBOURN**: I might be misunderstanding the member, but that is the mischief that we are trying to deal with. That is what we want to see happen. They have a choice. They can publicly display their tattoos and commit an offence and be imprisoned and fined, or they can cover them up. There are ways to cover up their tattoos. That is what will be required of them once the bill is passed. Whether that is by clothing, concealer or getting the tattoo filled in or removed, which can be done, that is the choice they will make. That is the mischief we are dealing with. We are saying that it is no longer acceptable to wear outlaw motorcycle gang–related insignia on a person's body or clothing, and that is what this bill seeks to do.

**Hon PETER COLLIER**: Fine. I will leave it at that, I promise, but —

**Hon Matthew Swinbourn**: I cannot say that there will not be issues with dealing with this group of people.

**Hon PETER COLLIER**: I would say that there will be. The government has just created a massive problem.

With that, I just want the parliamentary secretary to confirm with a yes by interjection, or whatever he wants to say, that if bikies go out in the public arena with a tattoo that is an insignia, they will be breaking the law and will suffer the consequences every single day; is that correct?

**Hon MATTHEW SWINBOURN**: Yes, member.

**Hon NICK GOIRAN**: That will, of course, be subject to any defences, parliamentary secretary.

**Hon Matthew Swinbourn**: Of course.

**Hon NICK GOIRAN**: One of those defences is what is described at clause 26(1)(a)(i) as being for "a genuine artistic" purpose. Is there any danger that one of these guys will say that the numerous tattoos on their body are for a genuine artistic purpose?

**Hon MATTHEW SWINBOURN**: Clause 26(1)(a)(i), which is what the member is talking about, refers to "a genuine artistic or educational purpose". That is subject to subclause (1)(b), which states that it is "in the circumstances, reasonable for that purpose". Therefore, although it is probably conceivable that a particular bikie in the circumstances might give it a go, I do not know that they could argue that it was reasonable for the purpose of an artistic expression.

**Hon NICK GOIRAN**: I take it that like the other matters we have discussed, this is all very novel; this is untested.

**Hon MATTHEW SWINBOURN**: Yes, we are the first. I am sure that any new laws in that regard will invariably be tested through the courts. The policy of this bill is to try to deal with these sorts of behaviours, and the opposition has indicated it is supportive of that. We could have waited for another jurisdiction to show the way, but in this instance we have decided to go first.

**Clause put and passed.**

**Clauses 22 to 35 put and passed.**

**Clause 36: Issue of dispersal notice —**

**Hon NICK GOIRAN**: Clause 36 is in division 3 of the bill, which is the third largest part of this bill. We have already dealt with the new unlawful consorting regime, which will be in substitution of the existing scheme. We have also just dealt with the new prohibited insignia scheme. This third weapon that is proposed to be created is the dispersal notice scheme. Is a dispersal notice or similar scheme in place elsewhere in Australia?

**Hon MATTHEW SWINBOURN**: No, member.

**Hon NICK GOIRAN**: Has there been any international experience in this area? We were told at the briefing that was provided to the opposition that to the best available knowledge of the government, there has not, but is there any further information that somebody else has embarked upon a similar dispersal notice regime?

**Hon MATTHEW SWINBOURN**: Not that we are aware of, member.

**Hon NICK GOIRAN**: What additional resources will be necessary to enable the police to utilise this new dispersal notice scheme?

**Hon MATTHEW SWINBOURN**: I am advised that the gang crime squad has received 16 additional advisers out of the 950 program, so that will contribute to the additional effort that will be required for the enforcement of these provisions.

**Hon NICK GOIRAN**: Why will any police officer be able to issue a dispersal notice but we will need a commander to issue a consorting notice?

**Hon MATTHEW SWINBOURN**: The consorting notices and the dispersal notices are of a species, if the member can take my point. A reasonable degree of effort, which we have already identified, has to go into a consorting notice to issue it, and it will last for three years. The dispersal notices are a more proactive, on the ground, immediate response to a particular circumstance as it arises. In that instance, it might be that a number of police officers are working with the gang crime squad to help it in relation to a particular run that it knows about and wants to disperse. As I said, it is for only seven days, rather than three years, so they have a different nature in terms of scale.

**Hon NICK GOIRAN**: Could a dispersal notice be issued to a person who is subject to an unlawful consorting notice?

**Hon MATTHEW SWINBOURN**: Yes, they can be subject to both.

**Hon NICK GOIRAN**: In what circumstances would that be considered appropriate?

**Hon MATTHEW SWINBOURN**: I will give the member some examples. For example, the consorting notice may have a list of people, so that would apply, but if they are out on a run and that group of people is much larger, we would want to capture a larger group of people than would apply on the consorting notice. The consorting notice will apply only to that group of people identified, for want of a better word, for indictable offences, whereas the dispersal notice will apply to anyone who is a member of an outlaw motorcycle gang who may not have been convicted of any other offences. It could overlap to a degree, but there will certainly be circumstances in which a dispersal notice will go beyond the people who are covered by the consorting notice.

**Hon NICK GOIRAN**: But will the dispersal notice not need to specify the persons?

**Hon Matthew Swinbourn**: Yes, but they could be persons who have not been convicted of any indictable offences.

**Hon NICK GOIRAN**: Yes; I understand that there might be an additional group of people, but I am referring to whether a dispersal notice would be issued to a restricted person for a named person when the restricted person and the named person are already subject to an unlawful consorting notice.

**Hon MATTHEW SWINBOURN**: It is possible to have a dispersal notice and a consorting notice for the same group of people. The member may recall that for it to be an offence under a consorting notice, it has to occur on two occasions. The police might have evidence of it occurring on one occasion; therefore, it would not be actionable. However, for a dispersal notice, it is only one occasion. Notices will be issued—I do not want to use these words, but I will—to move them away and on from each other, to disperse. Therefore, that is the mechanism for achieving that.

**Hon NICK GOIRAN**: I refer to a scenario in which the restricted person and the named person are both subject to an unlawful consorting notice, and a dispersal notice was issued on the first occasion that police identified the restricted person had breached the consorting notice. I use the words "breached the consorting notice" tentatively, because by that I mean that it is not yet a breach that qualifies for a prosecution, but it is a breach. If you like, it is strike 1, but we have not yet obtained strike 2. At strike 1, police say, "For the immediate, imperative situation, we will issue a dispersal notice." Of course, if the dispersal notice is then contravened, that would also mean that there has been strike 2 for the unlawful consorting notice. In those circumstances, could the person be charged and prosecuted for a double breach?

**Hon MATTHEW SWINBOURN**: They could be convicted on both the dispersal notice and the consorting notice. For the sake of completeness as to the matter of law, a person can be charged and convicted of two separate offences arising from the same act; however, section 11 of the Sentencing Act 1995 prevents a person from being punished twice for the same act. They would have the two charges—in fact, I think it would be wise to proceed with both charges because it is an and/or, or both—but then on conviction, they would be punished only once.

**Hon NICK GOIRAN**: Is the maximum penalty the same in both instances?

**Hon MATTHEW SWINBOURN**: No, the consorting notice penalty is five years' imprisonment and the dispersal notice penalty is $12 000 or 12 months' imprisonment. That is at clause 42(1)(b).

**Hon NICK GOIRAN**: What prescribed matters are we intending to include in the dispersal notice at clause 37(g)?

**Hon MATTHEW SWINBOURN**: It is essentially the same reasons that we spoke about for the prescribed matters in relation to consorting notices. If the police want to expand that list, they must form a regulation, which will then become subject to parliamentary oversight through the Joint Standing Committee on Delegated Legislation and potential disallowance.

**Hon NICK GOIRAN**: On the time period for a service, previously a two-month period was selected. This one is for 72 hours. What was the advice that led to 72 hours being chosen?

**Hon MATTHEW SWINBOURN**: The time frames in the bill on dispersal notices arose through consultation with the police. As the member will appreciate, a dispersal notice lasts for only seven days, so it must be issued within 72 hours.

**Hon NICK GOIRAN**: Is there any provision to renew these dispersal notices after the seven days?

**Hon MATTHEW SWINBOURN**: No, they cannot be renewed. A new one would have to be issued and there would have to be a new set of circumstances to issue that notice.

**Hon NICK GOIRAN**: On the set of circumstances, if I go back to clause 36, it reads —

> A police officer may issue a written notice … in respect of a person … if —
>
> (a) the person has reached 18 years of age; and
>
> (b) the police officer reasonably suspects that the person —
>
> (i) is a member of an identified organisation; …

They have already satisfied themselves of that, so unless they suddenly have some new information that suggests the person has resigned their membership of that organisation, the police officer is going to say, "I reasonably suspect it because yesterday the person was on day 7 of the dispersal notice, so I was satisfied at that time that the person was a member of an identified organisation." The clause continues —

> (ii) has consorted, or is consorting, in a public place with another person who has reached 18 years of age and is a member of an identified organisation;
>
> and
>
> (c) a dispersal notice has not already been issued in respect of the restricted person for the suspected consorting.

At the end of the seven-day period, the police officer would have to observe a new event of consorting and, at that point, that might trigger the capacity to issue a dispersal notice under clause 36.

**Hon MATTHEW SWINBOURN**: They do not have to observe it because the test at paragraph (b) is that the police officer "reasonably suspects". It could be based on police intelligence, an informant and those sorts of things. It is the standard of "reasonably suspects".

**Clause put and passed.**

**Clauses 37 to 42 put and passed.**

**Clause 43: Defences to charge of consorting contrary to dispersal notice —**

**Hon NICK GOIRAN**: Parliamentary secretary, at clause 43 there are a number of defences under the novel dispersal notice scheme. They appear, at first glance, to be identical to the defence provisions that are set out in clause 18. Clause 18 deals with defences to a charge of consorting contrary to an unlawful consorting notice. Why was it considered appropriate for the defences to be identical?

**Hon MATTHEW SWINBOURN**: At their heart, both the consorting notices and the dispersal notices deal with the subject of consorting; therefore, the view is that the defences that are available for consorting under a consorting notice and consorting under a dispersal notice deserve the same defences.

**Hon NICK GOIRAN**: Yes, but the dispersal notice is not able to be placed on the same class of persons. As I understand it, the class of persons is far smaller. The police officer must reasonably suspect that the person is a member of an identified organisation. The identified organisations are set out at the back of the bill at schedule 2, and there are some 46 identified organisations. Does the government have any information on how many persons are currently members of these 46 identified organisations?

**Hon MATTHEW SWINBOURN**: Obviously, these numbers change with the change in circumstances of the individuals. However, I refer the member to page 5 of the *Report by way of justification of the provisions of part 3 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021*, which was tabled with the explanatory memorandum. It 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.

**Hon NICK GOIRAN**: Just by comparison, we are talking about, let us say, approximately 700. That is fewer than the large number of child sex offenders currently subjected to the police warning scheme in section 557K. It is far fewer than the declared drug traffickers, which even though WA police do not know exactly who all those declared drug traffickers are, we know that there are at least 2 819 of them, and that is before we even start looking at all the indictable offences and so on and so forth. The cohort that is possibly subjected to the dispersal notices scheme is a small fraction really of those who are eligible for consideration of an unlawful consorting notice. Why was it considered not appropriate to include declared drug traffickers as part of the category of individuals who could be subjected to a dispersal notice?

**Hon MATTHEW SWINBOURN**: I think it really comes back to the nature of drug traffickers. The advice we have from WA police is that it is artificial to look at drug traffickers as a discrete or standalone group of offenders. The operational advice that I have from WA police is that once declared by a court to be a drug trafficker, persons so declared do not routinely form networks consisting of other declared drug traffickers and plan future drug offences. Therefore, it is really about the nature of what police know about drug traffickers and the fact that they do not really fall into the same category. Fifty or sixty of them do not come together and drive their mopeds down the street—I am being flippant, but I am just illustrating the point—in the same way that a group of outlaw motorcycle gang members get on their bikes and go on big runs and do those sorts of things. It is really about the nature of what a drug trafficker is and how they do and do not consort with each other in the same way.

**Hon NICK GOIRAN**: Surely, we should be concerned the moment that two drug traffickers consort again? I go back to an earlier example we discussed. The unlawful consorting notice scheme that will be implemented still requires two strikes, so the police would want some form of additional weaponry to deal with the one-strike scenario. Of course, the person who has already struck out once is on their last chance before the police haul them before the courts, but, in the interim, we do not want these two declared drug traffickers to continue to consort.

It would seem to be handy for the WA Police Force to be able to intervene at that point and say, "You're subject to a dispersal notice, so I don't want to see you two guys next to each other during the next seven days; and, if you are, you will be not only breaching one of these dispersal notices, but also on strike 2 for the unlawful consorting notice." It seems this would be a useful, additional tool for WA police. We are talking about declared drug traffickers, and not about the wider range of individuals who will be subject to the consorting notice scheme. The parliamentary secretary has indicated that the police have said that, effectively, they do not need them for declared drug traffickers. I am not surprised because WA police have done absolutely nothing about declared drug traffickers. As we know, not one single section 557 notice has been issued against one of those declared drug traffickers, despite it being as easy to issue a notice against them as it is against the 800 child sex offenders. That is because the two provisions are the same. WA police have done nothing about declared drug traffickers; therefore, it does not surprise me that they are not that interested in dealing with dispersal notices, keeping in mind that they do not know who the declared drug traffickers are. They are still trying to work out who all these people are. Has WA police made any request to include any other individuals in the dispersal notice scheme?

**Hon MATTHEW SWINBOURN**: My advice is no.

**Hon NICK GOIRAN**: This clause deals with the defence provisions, and the opposition continues to be concerned that the government has decided to provide a special defence here for individuals who are undertaking union activities. The government's explanation on the previous clause for unlawful consorting was that it was necessary for these unionists to consort with one another. Here we have a situation in which people who are part of an identified organisation have already been told that they are not to consort. So concerned is WA police about these members of this identified organisation that they have gone to the trouble of issuing a dispersal notice, and now we find slipped at the back of the bill, under clause 43(2), a special defence for union activities. Why do we need to allow two individuals from an outlaw motorcycle gang to consort so that they can engage in union activities?

**Hon MATTHEW SWINBOURN**: I covered this in an earlier clause in my response to the member.

**Hon Nick Goiran**: This time we are talking about outlaw motorcycle gang members.

**Hon MATTHEW SWINBOURN**: Yes, and they are subject to consorting notices as well. Consorting notices are issued to offenders for particular behaviours and dispersal notices are for a much narrower range of people.

But the principle remains the same for trade union activities and the types of things that I talked about. I do not think the member and I are ever going to agree on this point. I do not think I can take it any further. I think that I could argue a lot longer and a lot more forcefully—militantly, perhaps might be the case—but, member, we are never going to meet on this point. It is a matter of principle and policy for this government that we think those sorts of things ought to form the basis of a defence. Members should remember that the defence can be used only after a person has been charged, and the onus falls on the defendant to establish the elements of the defence, so it is not a get-out-of-jail-free card; there is a reasonable degree of burden on a person who tries to establish these defences.

**Hon NICK GOIRAN**: I understand why members opposite feel the need to defend unions. I absolutely understand that, and I do not and have never had a problem with the existence of unions, but that is not what we are talking about here. The opposition is not asking for an amendment to say, "Disband all unions; everybody who is a member of a union should be subjected to a dispersal notice." I am not suggesting that a union should be listed as an identifiable organisation. This discussion is not about any of those things. This discussion is about people who police have identified as the worst of the worst in Western Australia and are so bad that they need to be subjected to these part 3 extraordinary powers by police. They are so bad that we are saying that police can come along and say to them, "We want you to disperse for seven days. We're so concerned about the activities between these two members of these outlaw motorcycle gangs that for the next seven days, we don't want them anywhere near each other." That is how concerned police are—super concerned. But in the seven days, if they happen to be doing some union activity, that is okay. I do not understand why the government seeks to defend that part. I actually think it exposes a weakness in the government. I would have thought that if the government wants to maintain the integrity of union bodies and associations, the last thing it would want is for these outlaw motorcycle gang members to be able to try to weaponise this defence provision. I think the government is doing a disservice to its own cause—it is a well-known cause and respect to the members for that—that it wants to double-down on this particular provision.

It is not at all apparent to me that it is necessary for an outlaw motorcycle gang member or a declared drug trafficker or anyone else who is subjected to these various provisions to have a special defence with regard to union causes. We have asked for an explanation from the government. We have been told that these things could be argued on

another occasion, but we have not really been provided an explanation other than to say that there is a difference of opinion.

With that, I move —

Page 35, lines 4 to 9 — To delete the lines.

*Division*

Amendment put and a division taken, the Deputy Chair (Hon Jackie Jarvis) casting her vote with the noes, with the following result —

Ayes (7)

| | | | |
|---|---|---|---|
| Hon Martin Aldridge | Hon Donna Faragher | Hon Steve Martin | Hon Colin de Grussa *(Teller)* |
| Hon Peter Collier | Hon Nick Goiran | Hon Dr Steve Thomas | |

Noes (20)

| | | | |
|---|---|---|---|
| Hon Klara Andric | Hon Peter Foster | Hon Sophia Moermond | Hon Matthew Swinbourn |
| Hon Dan Caddy | Hon Lorna Harper | Hon Shelley Payne | Hon Dr Sally Talbot |
| Hon Sandra Carr | Hon Jackie Jarvis | Hon Dr Brad Pettitt | Hon Dr Brian Walker |
| Hon Stephen Dawson | Hon Alannah MacTiernan | Hon Stephen Pratt | Hon Darren West |
| Hon Sue Ellery | Hon Ayor Makur Chuot | Hon Martin Pritchard | Hon Pierre Yang *(Teller)* |

Pairs

| | |
|---|---|
| Hon Neil Thomson | Hon Rosie Sahanna |
| Hon Tjorn Sibma | Hon Samantha Rowe |

**Amendment thus negatived.**

**Clause put and passed.**

**Clauses 44 to 47 put and passed**

**Clause 48: Parliamentary Commissioner to monitor exercise of powers —**

**Hon NICK GOIRAN**: The Ombudsman—a super professional individual undertaking an immense amount of work on behalf of the Parliament and the people of Western Australia—will be undertaking monitoring activities, which we identified earlier he has absolutely no experience in. The chamber has already decided that the Corruption and Crime Commission will not monitor these powers; it will be the Parliamentary Commissioner for Administrative Investigations. I am concerned that the parliamentary commissioner will very quickly become overwhelmed, because clause 48 says he must inspect the records of the Western Australia Police Force. It says "must". There is no choice here; he has to do this. Clause 48 states that the parliamentary commissioner —

(a) must inspect the records of the Police Force in order to ascertain the extent of the Police Force's compliance with Parts 2 and 3;

How many records are we talking about that will be created per annum?

**Hon MATTHEW SWINBOURN**: I cannot give the member a figure because I just do not know how many records there will be, but I can say that the Ombudsman will be working with the police on record keeping. The Ombudsman has not raised any concern about being overwhelmed, as the member characterised it, in the role he will be given by the bill; therefore, we are reasonably comfortable that the Ombudsman will have the capacity, skills and ability to take on this oversight role.

**Hon NICK GOIRAN**: Is the Ombudsman ready?

**Hon MATTHEW SWINBOURN**: I am advised that he is ready.

**Hon NICK GOIRAN**: The Western Australia Police Force has been saying to the McGowan Labor government, "Let's get this bill passed urgently so we can access these new extraordinary powers." As part of that the Ombudsman will immediately be required to undertake monitoring activities with no previous expertise. I asked the government how many WA police records it expects the Ombudsman will inspect. Its response was: we do not know. The Ombudsman is working—present tense—with WA police to work all this out. This only further highlights my concern. I think that the Ombudsman will need to inspect a very large number of records if WA police utilise these powers sufficiently. The parliamentary secretary indicated that there are about 700 members of the 46 identified organisations, so we can expect police to be issuing many dispersal notices for those 700 people. We can expect WA police to take plenty of action on the display of insignia by those individuals, and that is before WA police even get to the mammoth task of working out over the next three years who of the existing 800 will be subject to section 557K warnings captured by unlawful consorting notices. In addition, there will be a further group of individuals—another

mammoth number of individuals—including the infamous declared drug traffickers that police are unaware of, who will be subject to these new laws. The Ombudsman is required to monitor all these things and will be given no additional resources by the government. I cannot suggest in all good conscience that the opposition is persuaded and satisfied that the parliamentary commissioner will have the necessary resources to fulfil the tasks that we are about to agree to here—that is, the mandatory requirement to inspect the records of WA police under clauses 46(2) and 46(3); and, having done so, then report to the minister and undertake any other ancillary and incidental functions associated with that. We discussed police misconduct earlier. Will clause 48(2)(c) capture an investigation into police misconduct?

**Hon MATTHEW SWINBOURN**: Member, I think I have mentioned this a number of times. The Ombudsman is obliged to refer to the CCC any instances of police misconduct that he becomes aware of. I mentioned the act and the section that that relates to; it is not at my fingertips, but that would obviously still apply. I would hazard a guess that, given that there is an obligation to refer incidents of alleged police misconduct, it would not include—other than the Ombudsman satisfying themselves that, on the face of it, there was misconduct—investigating it as well. That is the job of the CCC. If there is communication between the CCC and the Ombudsman about misconduct in this instance, it would obviously fall under matters that the Ombudsman could report back to the minister and, therefore, back to Parliament, but not in terms of the investigation of it.

**Clause put and passed.**

**Clauses 49 to 66 put and passed.**

**Clause 67: Section 557K amended —**

**Hon NICK GOIRAN**: Does this clause delete section 557K(4) of the Criminal Code?

**Hon MATTHEW SWINBOURN**: Yes, it will have the effect of deleting it three years after proclamation.

**Hon NICK GOIRAN**: Is the parliamentary secretary very sure about that?

**Hon Matthew Swinbourn**: That's the advice I have.

**Hon NICK GOIRAN**: It is very interesting that the Attorney General told the other place on 9 November this year —

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

He was very adamant and, in fact, very rude to the Leader of the Liberal Party in his disparaging remarks on 9 November 2021, when he insisted that the government was not going to repeal section 557K(4), but that is exactly what is going on here; members need only turn to page 51, line 13 to see that. I am grateful to the parliamentary secretary for confirming, without any equivocation whatsoever, that in three years' time, because of this legislation introduced by the Attorney General to the houses of Parliament, section 557K(4) of the Criminal Code will be deleted. That is no small, insignificant matter. In fact, it is the provision that currently allows police to issue warnings to child sex offenders, and we have been told previously that 800 such warnings are in place. Those warnings will no longer exist in three years' time, because despite what the Attorney General said on 9 November, the McGowan Labor government is most definitely repealing section 557K(4).

**Clause put and passed.**

**Clause 68 put and passed.**

**Schedules 1 and 2 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

Bill read a third time, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, and passed.