CRIMINAL LAW (UNLAWFUL CONSORTING AND PROHIBITED INSIGNIA) BILL 2021

Second Reading

Resumed from 30 November.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [11.35 am] — in reply: I will pick up where I left off on Tuesday evening by giving a brief summary of the points I made regarding the assertion that what we are proposing to do in part 2 of the bill will somehow make it easier for child sex offenders to consort.

Firstly, the new scheme introduced by this bill will significantly improve the police's ability to disrupt and restrict the capacity of child sex offenders to offend. This is a greater capacity than what is currently available. The current scheme presents operational difficulties for police and these plus the ineffectiveness of the existing anti-consorting scheme are key reasons for the introduction of the new scheme. The current scheme provided for under section 557K of the Criminal Code requires a police officer of any rank to warn a convicted child sex offender that consorting with another convicted child sex offender may lead to the committing of the offence of habitually consorting with a child sex offender. As I previously stated, under the terms of the current section 557K anti-consorting scheme, child sex offenders are not generally prohibited from consorting with other child sex offenders; rather, the prohibition is on habitually consorting and that prohibition arises only once a child sex offender has been issued a warning by a police officer. What does the term "habitually consort" actually mean? It is not defined under the Criminal Code and its lack of definition has resulted in significant difficulties in prosecuting the existing offence. It at least means that there has been an ongoing course of conduct and that the child sex offenders are in each other's presence time and again. The stringent nature of the current scheme has meant that since 2015, only 20 prosecutions have been commenced under section 557K(4) of the Criminal Code. Only eight convictions have been recorded, with most sentences being a fine ranging from $10 to $4 000. One conviction resulted in a six-month term of imprisonment, and of the 20 commenced prosecutions, several are still before the courts.

Section 557J of the Criminal Code is another existing anti-consorting provision that will be replaced by the scheme in this bill. Section 557J applies to declared drug traffickers and has not been operationally effective for similar reasons as I have already explained in relation to child sex offenders. In the case of declared drug traffickers, there is no register of current notices and there have been no prosecutions.

The scheme that will be introduced by the bill does not seek to simply replicate the existing provisions; rather, firstly, it will apply to a broad cohort of offenders; secondly, it will be targeted in its operations; thirdly, notices will not be levied only on child sex offenders; fourthly, it will be more straightforward to prosecute offences; fifthly, it will be supported by important safeguards; and, sixthly, it will be effective in achieving its purpose.

The anti-consorting scheme in this bill has been developed in close consultation with the Western Australia Police Force to ensure that it is operationally workable and will be effective in disrupting serious and organised crime. The commencement of the scheme will be supported by sworn police officers and dedicated project staff, which will ensure the appropriate and targeted dedication of resources. This is a significant change from the current scheme, which as I mentioned, has been used with limited success in respect of child sex offenders and with zero success with respect to drug traffickers.

It may assist members if I can explain precisely how this scheme introduced by this bill will improve and strengthen the current laws. I will start by explaining who will be eligible for the scheme. Every child sex offender subject to the existing anti-consorting scheme will be a relevant offender under the bill. Every person convicted of a child sex offence in Western Australia, Australia or overseas will fall within the scope of this new scheme. The bill provides for a three-year transitional period to enable police to review the existing consorting notices in respect of each current offender subject to a warning under section 557K(4) of the Criminal Code.

The new scheme will give discretion to the police, who worked on this bill alongside the Department of Justice, to issue unlawful consorting notices to any child sex offender if a senior police officer considers it appropriate to issue a notice to restrict or disrupt the offender's ability to engage in conduct constituting an indictable offence. There will be no requirement for a police officer to have personally observed the child sex offender engaging in conduct constituting an indictable offence. This is not a high threshold in view of the types of offences of which these child sex offenders have been convicted. The police have access to a range of data sources such as criminal histories, including whether the offender had any co-offenders or offences involving consorting, address checks, prison periods, intelligence databases, prosecution notices and national child sex offender databases. These information sources will assist in informing the authorised officer when issuing notices under the new scheme. Having been developed in close consultation with the police, the government is confident that this scheme will appropriately capture child sex offenders and other serious offenders when it is appropriate to do so in order to disrupt and restrict their capacity to engage in criminal conduct.

Hon Nick Goiran referred to having been told during the briefings that approximately five per cent of those in the current scheme will be captured by the new scheme. I am able to provide members with some clarity on that matter. The WA Police Force has data holdings that suggest that approximately five per cent of offenders who are the subject of current warnings have consorted with the person of whom they were warned. Of course, because of the difficulty of proving habitual consorting, not all these occasions of consorting have resulted in charges being laid. It is this five per cent that we expect will immediately transition to the new scheme. It is not possible to say with certainty the number of people subject to current notices who will or will not be subject to a notice under the scheme contained in the bill. The three-year transitional period will provide WA police with time to consider each current offender's eligibility for the new scheme. As I have said, the new scheme does not set a high threshold for the issuing of notices, and the government and, importantly, the WA Police Force, is satisfied that notices under the scheme will be issued to child sex offenders in every circumstance when it is appropriate to do so.

There will, of course, be some warnings under the current scheme that will not be replaced with a notice under the new scheme. I draw to members' attention the fact that current notices do not expire. Accordingly, there are current warnings on the register for offenders who are deceased, incapacitated, infirmed or who have moved overseas. We can reasonably expect that new notices will not be issued to the offenders in these cohorts.

Hon Nick Goiran spent some time in the course of his remarks raising the concern, as I understand, that a requirement in the bill that an unlawful consorting notice be issued by an officer at the rank of commander or above will mean that lower ranked police will be deprived of the opportunity to issue notices under section 557K(4) of the Criminal Code. I trust that it will be of some assistance if I can explain to the member how the current scheme actually operates in practice. It is not the case that under existing section 557K(4), cadets, constables or other junior officers are independently issuing warnings to convicted child sex offenders. It is in fact the case that all warnings under section 557K(4) are overseen by the sex offender registry within the sex crime division of the WA Police Force. The sex offender registry is the team that currently liaises with operational police to assess the appropriateness of issuing warnings, compile the written form of the warnings, support operational police to serve the warnings and oversee the register of warnings. Under the consorting scheme introduced by the bill, the sex offender registry will continue to carry out this central role in coordinating the issuing and servicing of notices. Accordingly, the operational process for issuing notices will remain centralised within the sex crime division but with improved decision-making consistency and the targeting of notices through the oversight of senior police officers being of the rank of commander or above.

I am also pleased to advise that the operation of the sex crime division and the operation of the consorting scheme will be bolstered by additional internal resourcing from police. Police have allocated five additional unsworn officers to a newly established central unit to assist in the coordination of the issuing of notices. Further, the 950 program funded by the McGowan government will see an increase of sworn officers at all ranks. These additional resources will mean that police will be even better equipped to identify eligible child sex offenders and, where appropriate, issue unlawful consorting notices whether they are subject to an existing warning or have been issued with a notice for the first time.

The criteria for issuing a notice is only one factor to consider in how the scheme introduced by the bill will improve the ability of police to disrupt and restrict crime and hold offenders to account. This bill will increase the scope of unlawful consorting notices and introduce a lower threshold for when an unlawful consorting offence is committed. Firstly, under this bill, a single unlawful consorting notice can prohibit a child sex offender from consorting with any number of other offenders named in the notice. An offender need only consort on two occasions with any person named on the notice, whether that is the same offender or a different offender each time, and they will commit an offence. Compare this with the current section 557K(4), under which a warning can be given only in respect of consorting with one other offender, and prosecution is limited to when habitual consorting with that one offender can be proved.

Secondly, the bill will introduce a new and improved definition of the term "consorting" that will now make it clear that consorting can be via direct or indirect communication, including when using a third party, and whether by email or other form of electronic communications. Consorting is also expressly defined in the bill to include not only communication but also seeking or accepting, or being in, the company of the other person. This will improve the likelihood of successful prosecution by both broadening and clarifying the meaning of consorting. This new definition, along with the removal of the term "habitual" as an element of the offence, will help facilitate the prosecution of these cases.

Thirdly, the reforms will expand the scheme beyond just consorting between child sex offenders. We know that when child sex offenders nefariously consort with others, it is not always with other sex offenders; it could be with other offenders such as drug dealers or cybercriminals. Further, the other person could be located here or abroad. Under the existing law, only habitual consorting between sex offenders is prohibited. Under these reforms, the net will be cast wider so that if a child sex offender is consorting with another serious offender of any kind, police will be able to target their conduct.

Fourthly, under the new scheme, not only will prosecutions be easier to facilitate, but also the bill will increase the penalties for unlawful consorting from a maximum of two years' to five years' imprisonment. It will move from being a summary offence to an indictable offence. Not only will this make the penalty the highest anywhere in Australia, but the increase in penalty will also enliven police powers so that any offender who contravenes a notice can be arrested without a warrant. That power is not available for the current offence. The new scheme will, therefore, better equip police to take immediate action against these offenders.

It is also important to note the existing mechanisms in the criminal justice system that exist for the purpose of continuous reporting and oversight of serious offenders. For example, the parole scheme, post-sentence supervision scheme and high-risk serious offender scheme provide mechanisms of supervision and monitoring for offenders leaving the custodial system. Further, child sex offenders are also captured as reportable offenders under the Community Protection (Offender Reporting) Act 2004. They will continue to be subject to reporting obligations under that act following the passage of this bill.

The consorting scheme in the bill will be an additional tool to help protect the community from criminal conduct. Its purpose is grounded in restricting and disrupting communication between offenders who are considered at risk of engaging in further serious criminal conduct with other offenders. As I have mentioned, the new scheme is targeted; it contains important safeguards; and it is constitutionally robust. Importantly, unlike the existing consorting scheme in the Criminal Code, it will be operationally workable and effective in disrupting serious and organised crime. I trust that this will assist members in understanding that the bill will in fact see improved procedures, improved consistency, improved resourcing for police, and overall improved oversight of child sex offenders.

I now move on to another area. Hon Nick Goiran asked whether consorting legislation from other jurisdictions was considered. In short, the answer to that is yes, it was. Prior to the development of a new consorting scheme in WA, cross-jurisdictional analysis of other consorting legislation was considered, particularly the New South Wales legislation under the operation of part 3A, division 7 of the Crimes Act 1900. In addition, Victoria's Criminal Organisations Control Act 2012 and Queensland's Criminal Code Act 1899 were examined. In-depth consultation was conducted with a visiting prosecutor from the Office of the Director of Public Prosecutions of New South Wales, who worked closely with the New South Wales Police Force's Strike Force Raptor, the team that deals with organised crime gangs and the consorting scheme in New South Wales. This provided insight into the defence provisions and how, in general, the New South Wales scheme has impacted individuals involved in outlaw motorcycle gangs. This bill draws largely upon the consorting legislation introduced in New South Wales in 2012, which was tested by the High Court in the decision of Tajjour v New South Wales [2014] HCA 35. In this case, the High Court found that the consorting regime under section 93X of the Crimes Act 1900 was constitutional, noting that it was reasonably appropriate and adapted to serve the legitimate end of the prevention of crime in a matter compatible with the maintenance of the constitutionally prescribed system of representative government.

As Hon Nick Goiran noted, on Wednesday, 13 October 2021, *The West Australian* published an opinion piece by the prominent legal commentator Tom Percy, QC. In Mr Percy's view —

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

Mr Percy then added that bikies —

> … have always found a way to flout the law and exploiting this one will be little more than a new challenge for them.

He also said —

> Similar measures in Queensland have had almost no effect.

I now table a copy of Mr Percy's opinion piece.

[See paper 954.]

Hon MATTHEW SWINBOURN: What is most noteworthy about this QC's opinion is that it appears to have been provided at a time when the bill had not been made publicly available and all but the highest level of description of its contents had been announced to the public. The bill was tabled in the other place a day after Mr Percy's opinion was published, on Thursday, 14 October 2021. There is certainly nothing in Mr Percy's opinion to suggest that he had actually seen or reviewed the provisions of the bill. For instance, Mr Percy appeared to focus only on the prohibited insignia offence and did not engage at all with the consorting or dispersal notice scheme. If Mr Percy had not seen the bill prior to making these comments, this might be the first QC opinion I have seen that has provided comment on legislation without the QC having read the legislation in the first place. As to Mr Percy's analysis of the situation in Queensland, I confirm that the WA Department of Justice consulted with its counterpart, the Queensland Department of Justice and Attorney-General, during the development of this bill. Queensland's view is that its insignia prohibition resulted in club members immediately stopping wearing their colours. It is therefore unclear which facts Mr Percy was relying on when he said that the Queensland laws have had almost no effect. In any

event, Queensland's consorting scheme is materially different from WA's proposed scheme, including that, unlike in Queensland, this bill, firstly, contains a broad definition of what constitutes consorting; secondly, does away with the requirement to provide that the person habitually consorted; and, thirdly, provides that the unlawful consorting need be with only one other person, in contrast with the Queensland legislation which only prohibits consorting with two or more people. Therefore, the laws are so materially different that it would be a mistake to treat them as the same.

The issue of who was consulted on the drafting of the bill was raised by members. It is again worth noting that part 2 of this bill largely reflects the 2020 unlawful consorting bill, and there was consultation on that bill. On this bill, in addition to consulting the New South Wales Office of the Director of Public Prosecutions, as I have already mentioned, the following were consulted on its development: the WA Police Force; the State Solicitor's Office; the Solicitor-General of WA; the Office of the Director of Public Prosecutions of Western Australia; the Parliamentary Commissioner for Administrative Investigations, otherwise known as the Ombudsman; the Department of the Premier and Cabinet; the Department of Treasury; the Department of Local Government, Sport and Cultural Industries, specifically the director of Liquor Licensing; the Aboriginal Legal Service of WA; Legal Aid Western Australia; the Corruption and Crime Commission; the Commissioner for Victims of Crime; courts and tribunal services within the Department of Justice; the Honourable Chief Justice Peter Quinlan, Chief Justice of the Western Australian Supreme Court; the Honourable Justice Julie Wager, Chief Judge of the District Court; and His Honour Chief Magistrate Steven Heath of the Magistrates Court of WA.

Undoubtedly, we will be asked about what stakeholders had to say, but I will say this: consultation was undertaken throughout the drafting of the bill with key stakeholders over an extended period. We are talking about up to three years of policy and drafting work when the previous bill is also taken into account, with input from stakeholders throughout that period. This has included a combination of telephone discussions, direct consultation, meetings and emails, as well as written correspondence. A significant amount of feedback was received over that period and incorporated into the policy decisions and iterative drafts of the bill. Consultation was also undertaken with a view to the findings of the report of the New South Wales Ombudsman on the operation of consorting legislation in New South Wales. Although it is not possible to distil this extensive consultation into a few key points, it has been focused throughout on ensuring a balance between the objects of the bill and the need for appropriate safeguards to protect vulnerable members of the community.

There has also been some question about when the provisions of the bill will come into operation. This bill has been developed in close consultation with key stakeholders, including subject matter and legal experts, and the bill is ready to be proclaimed as soon as it is passed. The proclamation clause is not included for the purposes of delaying proclamation of the bill; it is simply a matter of drafting that has been adopted in the bill. The government intends to proclaim this legislation as soon as possible after it receives royal assent. It will not be proclaimed in stages. As I said in the debate on referring the bill to the Standing Committee on Legislation, police have been closely involved in the development of the bill and are working to prepare the necessary internal policies, training, information system improvements and information-sharing protocols with the Ombudsman. For operational reasons, it is not appropriate to disclose whether particular reforms contained in the bill will be operationalised prior to others—operationalised, not proclaimed. However, it is important to note that the three-year transitional period that applies to current unlawful consorting notices issued under section 557K of the Criminal Code has been incorporated to allow police to assess all current notices and issue new notices when appropriate.

Hon Nick Goiran referred to the marked-up version of the Criminal Code in the blue bill, which shows section 557K(4) as deleted. Let me clarify for the benefit of other members that the effect of this bill on section 557K(4) of the Criminal Code will not be its deletion upon proclamation of the bill. The marked-up version of the Criminal Code in the blue bill to which the member referred shows all amendments affected by the bill, without taking into account when those amendments will commence.

I take members to the commencement clause of the bill, which, to summarise, provides under clause 2(b) that the act, other than clause 67, will come into operation on a day fixed by proclamation. Clause 67 will come into effect three years after proclamation. Clause 67 is the operative provision that will delete section 557K(4) and related subsections from the Criminal Code, and that will commence three years after proclamation. As I have mentioned, that is to allow for police to assess all current notices and issue new notices when appropriate.

I will now turn to the issue of defences to both the consorting and dispersal provisions, specifically the defences provided at clause 18(2)(a)(viii) in relation to charges of consorting contrary to an unlawful consorting notice and clause 43(2)(a)(viii) in relation to charges of consorting contrary to a dispersal notice, which relate to members of industrial organisations engaging in legitimate industrial activities. Both Hon Nick Goiran and Hon Peter Collier have asked whether such defences are required, and Hon Nick Goiran has put amendments on the supplementary notice paper to delete both those defences. Generally, the policy intent behind all the defences in clause 18(2)(a) and clause 43(2)(a) of the bill is to provide specific circumstances that will allow a person subject to an unlawful consorting notice to engage in important law-abiding day-to-day activities. The range of defences contained in the bill contemplate situations that contributing members of society partake in, such as employment and education,

and accessing health and welfare services. The defences recognise that in these circumstances, it may be necessary for people to communicate—that is, to consort. We also need to be mindful of other situations that members of society find themselves in, such as the need to obtain legal advice to comply with a lawful direction or court order, or when they may be in custody.

The government has also provided provisions that take account of the systemic discrimination that Aboriginal and Torres Strait Islander people face and the fact that members of the Aboriginal and Torres Strait Islander communities are over-represented in our justice system. The bill recognises the need for Aboriginal and Torres Strait Islander people to comply with cultural practices, obligations, customary law or traditions and does not criminalise consorting that is necessary for these purposes. However, this is not an open invitation to relevant offenders to use these defences as a cover to avoid the operation of unlawful consorting notices or if the consorting relates to criminal activity. This is provided for in clause 18(3) and clause 43(3) of the bill.

It is important to note that the defences in clause 18(2) and clause 43(2) will apply if two conditions are met: firstly, that one of the circumstances listed in clauses 18(2) or 43(2)(a)(i) to (ix) apply, and, secondly, under clause 18(2)(b) and clause 43(2)(b), that the consorting in those circumstances was necessary. Therefore, a person charged with the offence of unlawful consorting or consorting contrary to a dispersal notice will have the onus of proving that those two conditions were met in order to enliven the defence provision. Engaging in a lawful occupation, trade or profession is also a defence that is provided at clause 18(2)(a)(i) and clause 43(2)(a)(i). This is obviously quite a mouthful as I go along here! The defence at clause 18(2)(a)(viii) and clause 43(2)(a)(viii) is inextricably linked to employment. This defence is about ensuring that people can communicate for the purpose of protecting their employment and workplace rights.

Hon Nick Goiran in his speech referred to a defence for union officials. With respect, these provisions are not directed at the activities of union officials and it is wrong to characterise them as such. Union officials would be covered by the defences provided at clause 18(2)(a)(i) and clause 43(2)(a)(i), as being a union official is a lawful occupation, trade or profession. More precisely, the defence extends to those who are members of trade unions. Of course, this includes teachers, nurses, childcare workers, public servants, tradies, retail and hospitality workers and many other occupations, including construction workers.

Hon Nick Goiran quoted a former member who had a penchant for describing trade unions and their members in the most disparaging manner possible.

Hon Nick Goiran: Now I know you haven't written this speech. I know where it comes from. You ran that line about Hon Michael Mischin. It's all right; I understand. You've taken instructions. It's fair enough.

Hon MATTHEW SWINBOURN: No, that is my line, member. I have sat through many debates and heard the former member refer to trade unions in the most disparaging manner. I think at that time he revelled in it. I think that former member effectively equated being a member of a trade union as akin to being a member of an outlaw motorcycle gang. Although this suited his political and ideological narrative, it was neither accurate nor fair. The importance and legitimacy of trade union membership and activity is well understood and accepted by members that sit on this side of the house and by the McGowan government. I wish we could say the same for members opposite; however, that would ignore the years and years of work they have put into trying to undermine the efforts of workers to collectively organise and have their interests represented by democratically elected trade union officials.

I think what is telling about the position being taken by those opposite is that the amendment being proposed is not to extend the available defences to other legitimate activities, but rather to simply remove the defence as it relates to legitimate industrial activities by union members. As a person who has worked for three different trade unions—as it was in those days, the Australian Liquor Hospitality and Miscellaneous Workers Union, now the United Workers Union; the Construction, Forestry, Maritime, Mining and Energy Union; and the Health Services Union—over 15 years, it will come as no surprise to members that I strongly support the virtues of being a member of a union and the work that unions do. The fact that some members of unions might also be members of outlaw motorcycle gangs is not a revelation. Membership of unions is open to all workers who fall within the membership coverage of a union. Union membership reflects the make-up of our society and it is important to note that unions do not pick their members. It is our expectation that the cohort of relevant offenders targeted by the bill will become contributing members of society and are employed. We must afford them the ability to pursue what is fair and reasonable as an employee. This includes engaging in lawful industrial activity.

Turning to the narrow nature of this defence, the accused will have to prove the following. Firstly—and this element has two components—that both the restricted offender and the named offender with whom they were consorting are members of an organisation of employees, and that that organisation is registered under the relevant state or commonwealth workplace relations laws. That is important because there are some organisations that hold themselves up to be unions but do not hold registration under either state or commonwealth laws. Secondly, that the consorting occurred in the course of activities undertaken for the purposes of the business of the organisation—that is, industrial activities. Thirdly, that the consorting was necessary in the circumstances. The business of an organisation could

include, for example, providing information and advice about making an application to an industrial tribunal, assisting in negotiations about conditions of employment, or explaining workplace safety obligations. To conclude on this point, without this defence, workers will be denied the opportunity to communicate with others to pursue the legitimate rights to which they are entitled in connection with their employment.

Much has been made of why the office of the Parliamentary Commissioner for Administrative Investigations, the Ombudsman—that is how I will refer to that position from this point forward—has been selected to provide the monitoring compliance role under the bill, rather than the Corruption and Crime Commission. Hon Nick Goiran has placed a range of amendments on the supplementary notice paper that seek to replace the Ombudsman with the CCC as the agency with that role. To be clear, the government will not be supporting these amendments.

During drafting of the bill, the government considered which oversight body, the CCC or the Ombudsman, would be best placed to undertake the monitoring function under the legislation. The government is of the view that the Ombudsman is the more appropriate oversight body to undertake the role, for a number of reasons. The Ombudsman's role is set out in part 4 of the bill. The primary function of the Ombudsman will be to scrutinise the powers conferred on police under the unlawful consorting scheme. In carrying out this role, the Ombudsman must scrutinise police records, may make recommendations to the Commissioner of Police to revoke or vary consorting notices, and must prepare an annual report for the minister that must be tabled in Parliament every year. The annual report may include any observations that the Ombudsman considers appropriate to make under the operation of the act and review the impact of the scheme on a particular group if such an impact has come to his attention. The annual reporting function will ensure rigorous consideration of whether the policy objectives of the unlawful consorting scheme are being met, and the exercise of powers and the administrative and procedural processes being employed under the act.

As outlined in part 4 of the bill, the Ombudsman's role is to provide broad scrutiny, oversight and reporting. The monitoring will come in the context of a proposed consorting regime that is transparent and contains several statutory safeguards and checks and balances. This broad monitoring role can be compared with the Ombudsman's existing role under the Telecommunications (Interception and Access) Western Australia Act 1996. Under that regime, the Ombudsman has a monitoring role to examine compliance with telecommunications interception legislation through inspections and the preparation of reports to the relevant minister. The recordkeeping obligations found under part 2 of the Telecommunications (Interception and Access) Western Australia Act 1996 ensure that the Ombudsman can effectively scrutinise the operations of the act. Similarly, clause 53 of the bill provides explicit recordkeeping obligations for the Commissioner of Police to ensure that relevant information is recorded in the register and provided to the Ombudsman for examination. A similar function is also conferred on the Ombudsman under the Criminal Organisations Control Act 2012, which includes monitoring and reporting on the exercise of powers conferred on the Commissioner of Police and police officers under the act.

In considering the appropriate body for the statutory monitoring role, regard was had to the CCC's statutory role under the Criminal Investigation (Covert Powers) Act 2012. Under that act, police officers are excused from criminal responsibility for certain behaviour. In the context of that regime, the CCC's role includes oversight of the exercise of undercover and otherwise potentially criminal activities of police. The powers conferred on police under the bill can be distinguished from the covert powers conferred on police under the Criminal Investigation (Covert Powers) Act 2012. The processes under the bill are transparent and subject to review, and fit within the usual operational functions of police and criminal procedure generally. Accordingly, although the monitoring role of the Ombudsman involves the review of police powers, the purpose of the scrutiny function is far broader and will include annual reporting on policy, administrative and procedural matters associated with the operation of the regime. It is worth noting that the Ombudsman has an obligation under section 28 of the Corruption, Crime and Misconduct Act 2003 to report to the CCC any matter that the Ombudsman suspects on reasonable grounds concerns or may concern serious misconduct. This ensures that any information that raises a concern about misconduct revealed by the exercise of the Ombudsman's monitoring functions will be reported to the CCC. In considering all these issues, the government formed the view that the Ombudsman is the more appropriate body for the particular compliance role outlined in the bill.

Hon Nick Goiran queried whether the provisions will withstand any challenges by outlaw motorcycle gangs. It is, of course, acknowledged that outlaw motorcycle gangs have the means and inclination to test these laws. That means it is usually funded from their unlawful activities, and the inclination is that they do not like going to prison. Whether laws we make in Parliament will withstand the scrutiny of the courts over time is always an open question; however, we are confident that these laws will withstand any such challenge. The Solicitor-General has provided advice regarding the constitutionality of the bill. Based on that advice, the Attorney General is confident that the bill is constitutionally robust. I will provide some further detail on why we say we are confident; however, I will not disclose the detail and nature of the advice that was provided by the Solicitor-General.

Regarding part 2 of the bill, the question of whether consorting legislation effectively burdens the implied freedom of political communication on government or political matters was considered by the High Court in the case

that I referred to earlier—Tajjour v New South Wales [2014] HCA 35—which challenged the constitutionality of the New South Wales consorting regime contained in division 7 of the NSW Crimes Act 1900. New South Wales submitted that section 93X is not directed at political communication. Further, a person constrained by section 93X retains the freedom to engage, in a variety of ways, in the kinds of communications that are covered by their freedom. It was also submitted that section 93X would only prohibit such communication when it occurs as an occasion of consorting between convicted offenders on whom a consorting notice has been served. In that case, the High Court found that the New South Wales consorting regime was not invalid.

I turn to part 3 of the bill, which contains two principal reforms that will criminalise the display of insignia of identified criminal organisations in public places and disrupt the ability of members of identified organisations to consort in public places. Members may recall that in my second reading speech, I tabled a report, by way of justification, about the provisions of part 3 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. That report was prepared by the Western Australia Police Force in close consultation with the Solicitor-General and the State Solicitor's Office, and provides evidence of the facts upon which Parliament can rely to ensure that the reforms are appropriate and adapted to their purpose. Again, although I am unable to disclose the detail of the legal advice received, the bill has been prepared with specialist advice to ensure it is constitutionally robust, and the government is confident it will withstand any challenge.

Hon Dr Brian Walker raised a concern about reforms of this kind driving behaviours of outlaw motorcycle gangs underground. In a similar vein, Hon Sophia Moermond raised concerns about difficulties in identifying members of outlaw motorcycle gangs if they are not wearing their insignia or displaying tattoos. The components of the bill have different purposes and it is important that these are not confused. The purpose of the unlawful consorting scheme is to disrupt and restrict offenders from communicating. Convicted persons involved in established organised networks pose the greatest risk to the community when they are in communication with or in the company of like-minded individuals. Communication allows individuals to build networks and spread activities over multiple markets. This can support a range of offences, such as domestic and global illicit drug markets, fraud, sexual exploitation of children, money laundering, firearm offences and cybercrime. Outlaw motorcycle gangs remain the highest profile manifestation of organised crime in Australia. The link between outlaw motorcycle gang members and many types of serious crime, including illicit drug production and distribution, illicit firearm trafficking, group violence, and extortion is clear. Unlawful consorting notices, dispersal notices and a prohibition of the display of their insignia in public will provide an effective tool to disrupt and dismantle those criminal activities. The insignia prohibition scheme and the dispersal notice scheme in part 3 of the bill is about community safety and protection from the fear and intimidation caused by gangs that have a reputation for violence and criminal activity. The government is confident that legislation will help achieve this purpose.

Western Australia Police Force has extensive intelligence reporting on who outlaw motorcycle gang members are. There is also access to national and international intelligence reporting through various means that identify and track new additions to outlaw motorcycle gang groups, as well as club structures. It is the nature of being an outlaw motorcycle gang member to proudly show that they belong to an outlaw motorcycle gang group. In addition to the community safety element, prohibited insignia will lessen the attractiveness of becoming a member.

Western Australia Police Force undertakes various overt and covert strategies to keep tabs on who these outlaw motorcycle gang members and associates are. They do not simply rely upon their display of patches or tattoos bearing their insignia. Taking the intimidatory factor away from outlaw motorcycle gang members through this legislation will not drive them underground, but will diminish the perceived power they exhibit to commit crime—in other words, they will become nobodies without the ability to hide behind gang colours for support.

Members also raised some concerns about possible overreach and the inappropriate expansion of laws of this kind. The government has put those matters at the forefront of this reform. If we look at part 3 of the bill, we see that both the prohibited insignia scheme and the dispersal notice scheme rely upon the list of identified organisations contained in schedule 2 of the bill. Additional organisations can be added to the list in schedule 2 only through amendments passed by this Parliament. There is no mechanism to add further organisations through executive action, such as the promulgation of regulations. The government considered this aspect in detail, sought advice from key stakeholders, and made the decision as a matter of policy to not permit additional organisations to be prescribed in regulations. This approach guards against the potential for misuse of the provisions by a future government, preserves the sovereignty of Parliament, and ensures that the reforms are applied in a way that is targeted, supported by evidence and constitutionally robust.

The passage of this bill will give police more tools to disrupt those who choose to live outside the bounds of society's rules; those who revel in the notoriety of being an outlaw; those who engage in behaviour that is designed to intimidate, harass and imperil others; and those who choose to engage in heinous acts that put the safety and welfare of the rest of community at risk, whether they are members of outlaw motorcycle gangs, child sex offenders, or drug traffickers. I ask members to support the bill, and I commend it to the house.

Question put and passed.

Bill read a second time.

Committee

The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon NICK GOIRAN: At the outset, I thank the parliamentary secretary for his reply to the second reading debate and I commend him for the tone he took in delivering his response. I particularly thank him and those who have assisted him in the delivery of that reply for the detailed and considered information he provided on the range of topics that were raised during the second reading debate. I suspect we will ultimately have to agree to disagree on certain elements and approaches of this bill, not the least of which being who should monitor these powers—the Ombudsman or the Corruption and Crime Commission—but I commend the parliamentary secretary for the approach he has taken in this matter, in contrast with the approach taken in the other place.

The first question I have at clause 1—I note that the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021 is a variation on the bill that was introduced into this place last year—is: other than the insertion of part 3, "Prohibited insignia and consorting contrary to dispersal notices", are there any other clauses that have changed since the 2020 bill was introduced; and, if so, what are they?

Hon MATTHEW SWINBOURN: As the member knows, we provided the opposition with a table of comparisons between the 2020 bill and the current bill. I presume the member has a copy of that. I have a copy of that document as it was provided to the opposition and I am happy to table that for the record. I seek to table that document.

[See paper 955.]

Hon MATTHEW SWINBOURN: In relation to more specific changes, I think the member is quite right when he says that the most significant change between this bill and the 2020 bill is the insertion of part 3, which introduces the insignia and dispersal notice provisions. Some other changes are consequential to that; for example, the definitions clause has been changed to include reference to those sorts of things. Other changes that have been driven largely by the Parliamentary Counsel's Office are just of a drafting nature.

I refer the member to clause 2 of the bill. In the 2020 version of the bill, paragraph (b) referred to section 39 commencing on the day after the period of 12 months beginning on the day applied, being the day that the rest of the act commenced. Paragraph (b) in the 2021 bill refers to the rest of the act other than section 67. Paragraph (c) now refers to section 67 coming into operation after a period of three years beginning on the day applied under paragraph (b), being the day that the rest of the act commenced. The reason for this is that the WA Police Force and the Ombudsman agreed that a three-year transitional period is more appropriate to allow for current notices issued to child sex offenders under the Criminal Code. I think I covered that quite thoroughly in my reply to the second reading debate.

As I said, there are definition changes at clause 3. Clause 6 includes the term "relevant offender", which was previously "convicted offender". I will not read what the previous provision said, but the term is now "relevant offender", with the same meaning as previously drafted, but extended to include an offence under clause 25(2), the prohibited insignia offence, or 42(1), the dispersal notice offence. The term is referred to in clauses 8, 9 and 10. That is all I have for the member at the moment.

Hon NICK GOIRAN: The document the parliamentary secretary tabled, which I have in my possession here, sets out across seven pages the changes between the bill before us now and what is referred to as the "2020 bill". I recall in the last Parliament that the bill that arrived in this chamber, which is the basis upon which this reconciliation has been undertaken, was not the same as the bill introduced in the Assembly in the first instance. Have any of those changes incorporated by the Assembly in the last Parliament been dispensed with or have they all been retained in this bill?

Hon MATTHEW SWINBOURN: They have all been retained.

Hon NICK GOIRAN: With respect to the change at clause 2, the change between the bill before us and that of the last Parliament is the insertion of part 3, which deals with these new prohibited insignia and consorting contrary to dispersal notices schemes—those two schemes. There are other consequential amendments as a result of the insertion of part 3 and there are some drafting and stylistic changes. One of the more substantive matters that the parliamentary secretary referred to is the material change at clause 2 to allow for a three-year period for police to consider these provisions and to do the necessary assessments, rather than 12 months. I recall that the 12-month period was raised when we last debated the bill last year. What information have WA police provided to the government to explain why they have changed their view about the need to change the 12-month period of assessment to a three-year period?

Hon MATTHEW SWINBOURN: The first thing to note is that since the 2020 bill was debated, 200 new offenders were added to the consorting provisions. Obviously, that has increased the number of people whom police will have to transition over time.

I indicated to the member previously that consultations around the period of 12 months to three years were held with the WA Police Force and the Ombudsman. Obviously, consideration was given to some of the other elements. One of the elements that arose during that reconsideration is that if it is done within a 12-month period, the work will not be spread out over a period of time, so there will be a big load of things to do every three years—almost on an anniversary date—because the consorting notices expire after three years. At this stage, work will be done methodically, identifying the most high-risk offenders that cause issues, over the three-year period. Consideration was given to the increased number of offenders and wanting to flatten out the work in future years.

Hon NICK GOIRAN: It seems like there was some benefit in the less hasty passage of the previous legislation in that, as we would both agree, this legislation has expanded, at the very least, the part 3 provisions. It would have otherwise had an unintended consequence of perhaps creating a very significant rod for the back of those agencies involved moving forward that are now able to spread that substantial workload over a three-year period.

The parliamentary secretary mentioned that 200 new offenders were added. I presume that is an approximate figure rather than a precise one. Are they all child sex offenders or has a range of offenders been added?

Hon MATTHEW SWINBOURN: There are approximately 200 new offenders. That is not a precise figure. Yes, they are all child sex offenders.

Hon NICK GOIRAN: According to the notes I took during the briefing, we were told that there were 800 such offenders. Are the 200 offenders that the parliamentary secretary mentioned part of the 800 offenders or is the figure now 1 000? What is the current number of offenders?

Hon MATTHEW SWINBOURN: The figure of 800 offenders includes the 200 offenders.

Hon NICK GOIRAN: When the parliamentary secretary said that approximately 200 offenders have been added—I am happy for the parliamentary secretary to answer by way of interjection, if that is helpful—I think he mentioned that that was since the passage of the last bill or since the last time it was considered. The parliamentary secretary referred to some sort of time frame.

Hon MATTHEW SWINBOURN: As the member knows, the other bill did not pass through Parliament because of prorogation. The time period is from when the bill was first introduced into Parliament until now.

Hon NICK GOIRAN: It was a 2020 bill so, evidently, it had to be fewer than two years. According to my notes, the bill was read a third time in the other place on 23 June 2020. I assume that the passage of time that the parliamentary secretary is referring to is when the bill was introduced into Parliament, not necessarily into this chamber.

Hon Matthew Swinbourn: Yes, since its introduction to Parliament.

Hon NICK GOIRAN: We are talking about a time frame of at least 18 months and fewer than two years. We can at least narrow it down. We do not need to be more specific than that.

The point I want to make at this stage, and to which I seek a response from the parliamentary secretary, relates to the 200 new offenders who were added over those 18 months to two years. Again, if we are going to work in some form of approximate basis, it looks like about 100 new offenders are added every year. Has the Western Australia Police Force factored that into the workload that it will take up in the future? The parliamentary secretary mentioned that there has been some consultation on that and that was one of the reasons we moved from a time period of 12 months to three years, as set out in clause 2. Has that future workload been factored in and does the modelling suggest about 100 new offenders a year?

Hon MATTHEW SWINBOURN: It has been factored in by the WA Police Force. Yes, there are about 100 new offenders every year. We are not talking precise figures here; it is approximately 100. Obviously, we hope that, in any given year, there are fewer offenders because of a decrease in child sex offending, but it depends on the nature of this sort of offending.

Hon NICK GOIRAN: That is helpful to understand and also, in part, why the police would have asked for the extended period to undertake these assessments. With the parliamentary secretary's agreement, it is probably convenient to undertake the analysis between the existing consorting scheme and the proposed consorting scheme under clause 1 rather than elsewhere in the bill. Part of the reason for that is that the amendments to section 557K are not addressed until far later in the bill, under clause 67, and the new consorting notices are addressed at clause 9. The parliamentary secretary provided some explanation of how the existing scheme works and how the proposed scheme is intended to work. Is it the case that any police officer in Western Australia, of any level or rank, can issue a section 557K warning?

Hon MATTHEW SWINBOURN: Technically, a police officer of any rank can issue a warning, but, as I outlined in my reply, that does not happen in practice.

Hon NICK GOIRAN: As a matter of law in Western Australia at the moment, and that is what we are interested in as lawmakers, any police officer of any rank can issue a section 557K warning. I understand the caveat the parliamentary secretary gave that in practice that is not occurring, but as a matter of law, they have the power and authority to do so. Will any police officer of any rank be able to issue an unlawful consorting notice once this bill passes?

Hon MATTHEW SWINBOURN: Only commanders and above will be able to issue the notice, but it is worth noting that any police officer can serve that notice on an offender.

Hon NICK GOIRAN: The parliamentary secretary might recall that in my second reading contribution I was keen for the government to provide details of how many officers in Western Australia fell below the rank of commander. Does the parliamentary secretary have data on the overall size of the WA Police Force at the moment and how many of that cohort are commander or higher?

Hon MATTHEW SWINBOURN: I do not have a precise figure. Obviously, that sort of detail—what is the word I am looking for?—changes. There are approximately 7 200 sworn officers in the Western Australia Police Force, 28 of whom with the rank of commander and above. That is the broad range of numbers, but it is not a specific number.

Hon NICK GOIRAN: That sounds consistent with the answer provided yesterday. I absolutely appreciate that it is not a precise figure. As the parliamentary secretary said, the figures will fluctuate, particularly with regard to the first figure provided for the general number of officers in the police force. In fact, some of them are potentially being marched out the door at the moment, subject to their dispute with the Commissioner of Police. We will see how many of those police officers are affected by those things.

In terms of approximate numbers, more than 7 000 Western Australian police officers can currently issue a section 557K warning as a matter of law. They have been authorised by a previous Parliament to issue these warnings, but, moving forward, only approximately 28 police officers will be able to issue unlawful consorting notices. The parliamentary secretary mentioned that the government will take three years to consider these various assessments. With respect to the section 557K notices, until such time as this bill passes, it will continue to be the case that those more than 7 000 Western Australian police officers will be able to, by law, issue a warning. Once the bill passes, will any of those warnings still be issued?

Hon MATTHEW SWINBOURN: Once the bill passes and comes into operation, no new notices under section 557K will be able to be issued because the new anti-consorting provisions will have come into effect. Obviously, in those circumstances, only those officers with the rank of commander and above will be able to issue unlawful consorting notices, subject to the constraints of part 2 of the bill. In terms of the operational practicalities of 7 200 sworn officers having the power to issue notices—the member said "technically at law"—I want to re-emphasise the point that 7 200 police officers do not issue notices under section 557K. They go through the sex crime division currently and that is where they will continue to be placed under the new regime.

Hon NICK GOIRAN: I am looking at section 557K of the code. We seem to be interchanging the use of the words "warning" and "notice". Under 557K does a police officer issue a warning or do they issue a notice?

Hon MATTHEW SWINBOURN: That was my error, member, confusing the difference between a warning and a notice. Under 557K it is definitely a warning. For the purpose of some context, it is an oral warning and no paperwork is issued to a person who is warned. They are obviously provided with information by the police officer at the time about the nature of the warning. It is then recorded in the police's record keeping system, which I believe is the IMS—information management system. That is how that works. The "notice" as we say is a much different thing and the format and content of the notice is obviously dealt with in part 2 of the bill.

Hon NICK GOIRAN: The parliamentary secretary said that oral warnings are delivered, not written ones. He mentioned that some information is still provided to the person receiving the warning. Is no written information provided to the person at the time the oral warning is given?

Hon MATTHEW SWINBOURN: My advice is that no written advice is provided.

Hon NICK GOIRAN: What written record is maintained of the warning having been given?

Hon MATTHEW SWINBOURN: My advice is that a form is filled out by police; it is an internal form they keep for the purpose of their record keeping. A copy of it is shown to the offender or to the person who is issued with a warning but no copy is provided to them. I hope that covers off what the member is asking. Apparently, material is included with the internal police form that they do not want to be in the constant possession of the person. There might be other information and those sorts of things. The police explain to the person the effect and meaning of the warning. Obviously, that is quite appropriate, given that we want them to stop consorting. If what the warning means is not explained to them, the chances of them continuing to engage in the behaviour we want them to stop engaging

in is much more likely, I suppose in one sense, to get a conviction at the other end. However, we do not want convictions, we want them to stop behaving the way they have been behaving, which is not good.

Hon NICK GOIRAN: Currently a form is completed by the WA Police Force, which is shown to the offender but a copy is not provided to the offender. That is the level of record keeping of the warning that is provided pursuant to section 557K. How many of those forms have been completed by the WA police?

Hon MATTHEW SWINBOURN: My advice is that approximately 800 of those forms have been completed.

Hon NICK GOIRAN: I understand that approximately 800 warnings have been issued to approximately 800 offenders and that the record keeping is these forms that are kept by WA police and shown to the offender but not necessarily provided to them. What is the lowest rank of police officer who has issued one of these warnings under section 557K?

Hon MATTHEW SWINBOURN: I do not have that level of detail available to me.

Hon NICK GOIRAN: Under the new scheme, it is the case, as the parliamentary secretary confirmed at the very least in his second reading reply, that a police officer must be, I think the phrase the parliamentary secretary used was "only senior police officers". The parliamentary secretary used that as a generic term. That is not a criticism on my part. But to be more precise, when the parliamentary secretary says "senior", in this context we are referring to someone with the rank of commander or higher. Under clause 3, they are the authorised officers who will be able to issue one of these notices. The parliamentary secretary said that although by law any police officer can issue a section 557K warning, in practice, that is not how it works. In other words, I take it that whoever the police officer is, of any rank, who decides or is directed or is asked to issue one of these warnings to a particular offender, has to go through an internal approval process. Can the parliamentary secretary step us through what that approval process is? How many police officers are involved in a matter that ultimately delivers a warning to a person? I am particularly keen to know the highest ranked level of police officer who is involved in the process at the moment. For example, have any of these 800 warnings been issued without the involvement of a police officer at the level of commander or higher?

Hon MATTHEW SWINBOURN: The member asked quite a lot, so it might take us a little while to answer it.

Hon Nick Goiran: No problem.

Hon MATTHEW SWINBOURN: The first thing that Hon Goiran asked about was the internal approval process. The sex crime division is made up of unsworn officers—sorry; that is not correct. The sex offender registry is made up of unsworn officers, who develop the material to support a warning. It then goes for investigation by the sex offender management squad, or SOMS. Two officers will work on the ground to issue the warning. In practice, these warnings are issued only by officers in SOMS, or, in the regions, specialist officers working with SOMS. I do not think we have an answer for the member yet about the highest level of police officer involved, but we will get that; I will be working on that for the member as we continue.

Hon NICK GOIRAN: While the parliamentary secretary is doing his hard work and his advisers continue to undertake this task, just as an interim question, SOMS is the sex offender—is it management service?

Hon MATTHEW SWINBOURN: Management squad.

I am conscious of the time, obviously, member. We are just trying to work out who is who in the zoo, if I can use that particular term—I am sure police officers will not appreciate me calling them that! Just for the sake of it, typically an inspector is involved. We might be able to give the member a more precise answer after the adjournment.

Sitting suspended from 1.00 to 2.00 pm

Hon MATTHEW SWINBOURN: Members might recall that before the adjournment, we were talking about an issue raised by Hon Nick Goiran regarding the processes that exist for the issuing of the 800 or so notices to child sex offenders. Some of the member's questions related to the highest level of officer involved and those sorts of things. We cannot give him a definitive answer on that. The scheme started in 2004, so those notices have been issued over the period of the scheme. In terms of being able to trace the highest level of officer involved, the documentation that exists would not even indicate what level of officer was involved. The individual officer would be on the form, but each of those 800 notices would have to be reviewed. That would not mean that other more senior officers were not involved in the process at each of those particular points, so I am not able to give the member any more specific answer than I gave immediately before the break. Typically, the highest level of rank that is involved in these matters would be the inspector level.

Hon NICK GOIRAN: That is quite helpful. Is an inspector more senior or more junior to a commander?

Hon MATTHEW SWINBOURN: An inspector is more junior. I can run through the ranks for the member if that would be of assistance. The police rank starts with the most senior level, which is the commissioner himself; then the deputy commissioner; assistant commissioner; commander; superintendent; inspector; senior sergeant; sergeant; senior constable; first constable; constable; and cadet.

Hon NICK GOIRAN: I thank the parliamentary secretary. I think this is extremely helpful information for people to be able to properly understand the difference between the existing consorting warning process and what will be the new consorting notice process. The parliamentary secretary indicated prior to the luncheon adjournment that in practice, these consorting warnings are issued by the sex offender management squad, or a person within the sex offender management squad, and I suppose the caveat that was provided was perhaps with respect to some of the regional areas. What is the make-up of the sex offender management squad at the moment? I think that the parliamentary secretary indicated that that squad will continue to have a role moving forward with the issuing of notices.

Hon MATTHEW SWINBOURN: Can the member just give some clarity about what he is asking in terms of make-up?

Hon NICK GOIRAN: Yes. Presumably, there will be a number of officers involved in the squad, because at least a police officer is required to be able to issue one of these warnings. If the sex offender management squad is routinely issuing these warnings, evidently, it must consist of at least one or more police officers, in comparison with the sex offender registry, which the parliamentary secretary indicated earlier consists of unsworn officers who prepare the information that is ultimately provided to the squad. What is the make-up of the squad? Is it only police officers, or are other individuals involved who are not police officers? How many people are involved? I think the parliamentary secretary indicated in his earlier reply that another five police officers might be commissioned into this role or a similar division. If he could provide some sort of indication of the composition of the squad, that would be useful.

Hon MATTHEW SWINBOURN: The sex offender management squad is made up of sworn police officers, with administrative support, compared with the sex offender registry, which we mentioned earlier, which is made up of unsworn officers. If it helps the member, I can give a brief rundown of the structure within the Western Australia Police Force that applies to this area. There is an assistant commissioner for state crime. Under that position is the sex crime division and within the sex crime division is the child abuse squad, the child assessment and interview team, the joint anti–child exploitation team, the sex assault squad, and, of more interest to us in terms of convicted sex offenders, the sex offender management squad and the sex offender registry.

Hon NICK GOIRAN: One of the units under the sex crime division is the sex offender management squad. The parliamentary secretary indicated that the sex crime division reports to someone—was it an assistant commissioner?

Hon Matthew Swinbourn: Yes, it is the assistant commissioner for state crime.

Hon NICK GOIRAN: Is it intended that the unlawful consorting notices, which will be issued by authorised officers in due course, will still be managed by the sex offender management squad?

Hon MATTHEW SWINBOURN: My advice is yes.

Hon NICK GOIRAN: A little earlier, the parliamentary secretary indicated that an inspector is involved in the sex offender management squad. Is a commander involved in the sex offender management squad?

Hon MATTHEW SWINBOURN: When I gave the honourable member that breakdown, I omitted to say that under the assistant commissioner is a commander for crime operations. That was my error; my apologies. I will run through that list again for the sake of clarity. There is the assistant commissioner for state crime, then a commander for crime operations, then the sex crime division and then those other units I mentioned previously—the child abuse squad, child assessment and interview team, joint anti–child exploitation team, sex assault squad, sex offender management squad and sex offender registry. My apologies, member, for not including that information.

Hon NICK GOIRAN: To be clear, we have an assistant commissioner for state crime in Western Australia. Underneath that assistant commissioner is at least one commander; perhaps there are more, but that is not relevant for our purposes at the moment. That commander may have one or more responsibilities, one of which is for the sex crime division, and within that division is the sex offender management squad. I think the parliamentary secretary indicated that the squad consists of some sworn officers and administration support. What is the highest ranking officer within the squad?

Hon MATTHEW SWINBOURN: It is a senior sergeant.

Hon NICK GOIRAN: I find this very fascinating, parliamentary secretary, when I consider some of the remarks made by the Attorney General in the other place. Now, we have done a little bit of work. I really have to thank the Leader of the House for allowing us to have this time. Members might recall that I asked that this matter be considered by the Standing Committee on Legislation over the summer recess, but the government said a firm no to all that—in no circumstances would that happen.

We will get to the issue with clause 2 and the rather amusing response provided by the government that this is just a drafting issue. Do not worry that the legislation says that the laws will be proclaimed in due course; the government is fit and ready for it to commence straightaway. I find it quite interesting that despite all the rhetoric in the other

place, we now find out that the highest ranking police officer in the squad in WA police that in practice will issue these warnings is a senior sergeant. No doubt a senior sergeant is a very experienced police officer and a person of great integrity, as are the vast majority of WA police officers, who I thank for their ongoing work and service for the people of Western Australia. But a senior sergeant is the highest ranking person in a squad, and it is a squad that routinely issues these warnings. That is the current system that enables, as a matter of law, one of the more than 7 000 police officers in Western Australia to issue a warning under Section 557K, which, interestingly, is a section of the Criminal Code that the Attorney General wrongly told the Assembly the government was not repealing, despite the fact that it will be repealed three years after proclamation. That is exactly what this bill will do. However, without any caveat whatsoever, the Attorney General said that section 557K is not being repealed. Evidently, it is. In any event, a senior sergeant is the highest ranking person who is involved in issuing these warnings. But moving forward, of course, we know, when we read—something that I have encouraged the Attorney General to do a few times; I know that he would have done it in the past, but for whatever reason that has not happened with the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill. If he took a moment to look at clause 9, he would see that the government is asking us to agree that the new authority —

Hon Matthew Swinbourn: Sorry, member, I am somewhat distracted by a cicada, if you can hear it.

Hon NICK GOIRAN: Yes; I did notice it, actually—not this afternoon, but earlier in the week, as I was walking through the corridor to the other place there was a similar sound.

Hon Matthew Swinbourn: It means summer is here.

The DEPUTY CHAIR: I am sure Hansard has taken due note that there is an interjection from a cicada.

Hon NICK GOIRAN: Thank you, deputy chair. Many members are looking forward to the summer recess, including the Attorney General, I suspect, during which he will have the opportunity of a bit of extra time to read the bill that is currently before the chamber. Clause 9 refers to an authorised officer and if the Attorney General pauses and turns back a few pages, he will see that on page 2 it states —

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

We are now being told that inspectors get involved from time to time, but that in actual fact the squad that issues these notices at the moment has a senior sergeant in charge who, despite their extensive experience, professionalism and integrity, are a far lower rank, a more junior rank, than what the Attorney General wants us to agree to here with respect to an authorised officer who is a commander or more. The government has told us that the process will be better and is offended when the opposition suggests that not only will the process be different, but also a different standard, or a different bar, will be applied to these warnings. The warnings take two different forms. At the moment, as the parliamentary secretary kindly informed us earlier this afternoon, the warnings are provided in an oral fashion to the offender. There is a written document—a form—that is completed, which is shown to the person but which is not provided to them. Moving forward, there will actually be a notice, and we will unpack that a little more when we get to clause 9. But as part of the whole process, at the moment, we will need to knock on the door of the commander, one of the highest ranking officers in the 7 000–plus strong Western Australia Police Force, and until such time as somebody can open his or her door, there will be no chance of one of these notices being issued. We can perhaps now better understand why it will indeed take WA police some three years to properly assess all these processes. The poor old commander is going to be busy signing off on notices, which at the moment are issued by a squad in which a senior sergeant and other officers are involved. It is very interesting indeed.

What is the situation with declared drug traffickers? At the moment, how are declared drug traffickers captured by our unlawful consorting laws and schemes? Is it the same as with a child sex offender in which a warning is provided, a form is completed by the police officer, and the form is shown to the offender, not provided to them? Does the same process apply for declared drug traffickers, or is a different approach taken?

Hon MATTHEW SWINBOURN: No notices are being issued to drug traffickers. I think I acknowledged in my reply to the second reading debate that the system with regard to drug traffickers has been completely ineffective; I may even have used the word "failed", so it is not the same process.

Hon NICK GOIRAN: The parliamentary secretary helpfully outlined the process for child sex offenders—the form and so on. Is there a policy or procedure in the police manual that sets out that process?

Hon MATTHEW SWINBOURN: There is nothing in the police manual that deals with that.

Hon NICK GOIRAN: How do we know that the system involves the sex offender management squad and consists of sworn officers and administrative support? How do we know that there is a form that needs to be completed by police officers? How do they know that they need to do that, and how do they know that they need to show the form to the person, but not actually provide it to them? Which document guides that process?

Hon MATTHEW SWINBOURN: I am advised that there are internal manuals within the sex crime division that deal with that. Obviously, the advice we are receiving is informed by that and the practical experience of those who have been involved with it.

Hon NICK GOIRAN: I thank the parliamentary secretary. When I referred earlier to whether there is a policy or procedure in existence and the parliamentary secretary indicated that there was not, I must confess I would have expected to capture in that any internal manuals, but I appreciate —

Hon Matthew Swinbourn: I think I said "police manual". I was quite specific in my answer. I said there was nothing in the police manual, but I acknowledge that your first question was broader than whether it was in the police manual. I have now clarified for you that there are internal policies.

Hon NICK GOIRAN: There is an internal manual that sets out the process for how these 557K warnings are issued?

Hon MATTHEW SWINBOURN: Yes.

Hon NICK GOIRAN: The police manual sets out what I would describe as the policy, procedure—I appreciate that police may have a different phrase for it—process and guidelines for police officers before they go and exercise the power that Parliament has given them, all 7 000-plus police officers in Western Australia, to issue one of these 557K warnings. They are instructed and directed by and obtain guidance from this police manual. Does the police manual provide a similar set of guidelines and directions on declared drug traffickers?

Hon MATTHEW SWINBOURN: I am advised no, member.

Hon NICK GOIRAN: Just help me understand that then, because the parliamentary secretary indicated that part of the contention by the government is that the scheme has failed regarding declared drug traffickers, but it seems that no-one has bothered to try to use the declared drug trafficker provision. No notices have been issued and nobody has stopped to update the internal police manual with a process to guide police officers in that respect. Is any information available to the chamber to further corroborate why the government says that the declared drug trafficker provisions have failed, notwithstanding that they have never been used and no-one has actually transcribed anything into the police manual?

Hon MATTHEW SWINBOURN: To get to the point about why it has failed as a scheme in that regard—the honourable member is saying there has not been any issuing of notices—the best advice I have from police is that it has been difficult to establish the proof that drug traffickers know each other. Drug traffickers are obviously a lot more sophisticated than child sex offenders in terms of the scope and nature of what they do. Obviously, there is a spectrum of the level of sophistication of all people committing crimes. I think that they do not seek each other out in the same way that sex offenders seek each other out. I think that is really why it has not been an effective mechanism. The other issue is that habitual consorting element has to be shown. The member can imagine the kind of people we are thinking about when it comes to drug traffickers. These are not people growing a bit of pot in the backyard; these are sophisticated organised crime units. The anti-consorting provisions have not been seen to be practical in that way. As I said, I am not sure I can explain more fully why they have failed. I do not think anyone wants them to fail, but the new scheme introduces lower thresholds and there will probably be a range of other policy considerations taken into account when catching, dealing with and managing drug traffickers.

Hon NICK GOIRAN: I think this is a point of contention between the parliamentary secretary and me because he indicates on behalf of the government and his instructor, the Attorney General, that the new scheme will introduce a lower threshold. I think the parliamentary secretary and the government mean by that that there might be a lower threshold for a prosecution. If we just park that to one side, we can test it in due course when we get to those provisions in the bill. Before we get to the stage of a prosecution, at the moment there has to be a warning; under the new scheme that there will be a notice. The point of contention of the opposition is that the threshold will be higher, the bar will be higher, in order to issue the notice as compared with the warning. The first step in the process at the moment under the law, as the parliamentary secretary has helpfully indicated to us, is that a warning is issued. The warning is not just issued in a haphazard fashion; it is guided by the internal police manual. That is the first step: a warning has to be issued and the police commissioner, quite rightly, wants to make sure that his police officers, the more than 7 000-strong police force, know in what circumstances they should be issuing a warning, rather than just issuing a warning to this person and the other. The threshold at the moment is about that warning—stage 1.

But moving forward, the first stage will be the issuing of an unlawful consorting notice, and that will require a higher bar. As an additional demonstration of this point, the government has said it does not want any old police officer issuing these notices, which will be the replacement of the warnings; it wants a commander or somebody more senior to be involved. The parliamentary secretary indicated that one of the issues with declared drug traffickers is being able to prove that they know each other and are habitually consorting. That is also one of the issues the government has with the provision at section 557K of the Criminal Code. As I compare and contrast section 557J with section 557K, I see that they are extremely similar, particularly in terms of the main operative provisions. In order for a declared drug trafficker to be prosecuted under section 557J, does there first need to be a warning

issued by a police officer, just in the same way that a warning needs to be issued for a child sex offender under section 557K?

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: The issuing of the warning has a couple of elements to it under section 557J, and subsection (2) sets this out. These are all provisions that the government wants us to strike out. We know this, again, because the copy of the blue bill tells us that this will be deleted by virtue of clause 66 of the bill. Clause 66 of the blue bill that is before us will delete section 557J of the Criminal Code. Very interestingly, clause 66 is not subject to the same time limitation as clause 67, as the parliamentary secretary has helpfully indicated to us. Clause 67 of this bill will not come into force until three years have passed after the day that the rest of the bill has been proclaimed. It is not intended to be proclaimed in parts. The parliamentary secretary has already informed the house that it will be proclaimed on one day. The operative provisions will be proclaimed on one day. Part 1 will commence on the day the act receives assent. The rest of the bill, except for clause 67, will commence on one day determined by the government. The government is ready to go on that. According to the government, it can be proclaimed immediately after this bill passes, but not clause 67. That clause, which, interestingly, repeals section 557K(4), notwithstanding what the Attorney General wrongly told the other place, will happen and be repealed three years after the day when the government decides this whole bill will commence. This does not apply to section 557J. That will commence straightaway. The striking out in the blue bill commences immediately.

When I compare and contrast that, the legislation provides, firstly, that the warning by the police officer has to include that another person is also a declared drug trafficker and, secondly, that consorting with that other person may lead to the person being charged with an offence under this section. The parliamentary secretary indicated that the police provided some information to him and the government. The police say it is harder to prove that the two drug traffickers knew each other. Is that an indication that the government only issues consorting notices to child sex offenders if the WA Police, as a starting point, has some preliminary information indicating that one child sex offender knows another?

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: In other words, the parliamentary secretary is saying that the approximately 800 notices that have been issued under section 557K have only been issued because WA Police has some preliminary information that indicates that one child sex offender knows another. That triggers a concern by police and they then embark upon the procedure set out in the police manual, ultimately resulting in one of these warnings by somebody in the sex offender management squad. In comparison, if we look at the declared drug traffickers, WA Police is saying that it is harder for it to prove that they know each other. Does WA Police have any information that indicates that any drug trafficker in Western Australia knows another drug trafficker?

Hon MATTHEW SWINBOURN: I do not think we are saying that they do not know that drug traffickers might know each other in some form. Of course, I talked about proof, about establishing that they are engaging in that activity. If drug traffickers have been convicted of a drug offence, they have probably met other drug traffickers while serving time in prison. We are not saying that they are so remote from each other that they never cross paths, but in terms of elevating that to the level of being justified to issue a warning, they have not had grounds for doing that in this area. The government has acknowledged that it has failed with respect to drug traffickers. We are not trying to defend the system as it currently exists for drug traffickers in any way, shape or form. The government's position is that we need to move to this new system because it will have in that system drug traffickers who are associated with other people convicted of indictable offences rather than drug trafficking offences, and a consorting notice can then be issued. Those consorting notices might include any range of other offences, such as people who engage in serious crimes other than drug trafficking, child sex offences, and bikies—somebody who has engaged in serious assault and planned serious assaults and those sorts of things.

Hon NICK GOIRAN: To be clear, the opposition is not saying that the new scheme does not have any redeeming features about it at all. That is absolutely not our position. However, with regard to the declared drug trafficker provision, before we as the Legislative Council start striking out provisions, whole sections of the Criminal Code, at the request of the government, I am just testing to make sure that someone has actually tried to apply it. It is easy to come along and say that the whole system has failed, but if we have never used it, it is difficult to have the evidence to suggest that it has failed. Does the parliamentary secretary have this information available, within approximate terms—a bit like we had with the child sex offenders: how many declared drug traffickers are in Western Australia?

Hon MATTHEW SWINBOURN: The advisers here do not have that information at hand. If it is important to the member, we can seek to obtain it at a later time and provide it to him either behind the chair or when we come back to this bill. I would like to think that we will finish it today, but I do not think that is very likely, so it may be the next time we deal with it, next week.

Hon NICK GOIRAN: Yes, that information would be helpful. We know that WA police would like three years to assess the child sex offenders to see who will be transitioned, if you like, from the section 557K scheme at the moment into the new scheme that will be applied moving forward. One of the redeeming features of this bill is that it will no longer be limited to just child sex offenders and declared drug traffickers, albeit that the declared drug trafficking provisions have never been used. As the government has said, and we agree with it, it is good that this will be broadened to a greater category of offenders. As the parliamentary secretary indicated a moment ago, that will include the ability to crossmatch offenders. Correct me if I am wrong: at the moment we are saying that a child sex offender cannot consort with another child sex offender and, technically, under law, one declared drug trafficker cannot consort with another when there has been a warning and the necessary circumstances have been set out in the act. But moving forward, WA police will be able to say to one child sex offender that they are not to consort with a declared drug trafficker, and vice versa, and we might be able to bring in some outlaw motorcycle gang members and so on.

Hon Matthew Swinbourn: I think your characterisation is a fair one.

Hon NICK GOIRAN: Yes, and I think that is a good redeeming feature of this legislation, which has our support. I know that the shadow Minister for Police has indicated that these types of elements absolutely have our support. The government has been quite right in emphasising that WA police have been asking for these things. There is no dispute by the opposition about that whatsoever, but we want to make sure that these things are going to work. The last time we raised this, a year ago, we asked whether one year would be long enough. Now here we are sometime later and, funnily enough, the government has said that on Western Australia Police Force advice, it will need three years with regards to child sex offenders. I want to be sure that this crossmatching and so forth will work. At the moment, those at the table—this is not necessarily a criticism of anybody here—and the Legislative Council do not know how many declared drug traffickers there are. How do we know what type of workload we will expect of the police? We know that we are giving them a workload for the 800 child sex offenders. The parliamentary secretary indicated earlier that the approximate uptake, if you like, is, sadly, 100 per year, but we do not have that kind of information with regard to declared drug traffickers. The parliamentary secretary has kindly agreed to take that on notice and we will see what the number of declared drug traffickers is in due course. I would have thought that someone in WA police would have that information.

Perhaps to clarify this point, at the moment the notices under section 557K with regard to child sex offenders are all managed under the sex offender management squad, which falls under the sex crime division, which has a commander and assistant commissioner for state crime. The parliamentary secretary indicated that no notices have been issued under section 557J. How are they managed by WA police? Is there a unit that concerns itself with the activities of declared drug traffickers?

Hon MATTHEW SWINBOURN: I do not think that we can equate declared drug traffickers in the same way that we can equate child sex offenders because child sex offenders are covered by a range of very specific pieces of legislation. Declared drug traffickers are declared drug traffickers by a court and that informs how the police deal with them under a number of different laws. My understanding is that might cover a range of different areas of the police and their operations, so I cannot say that there is a single unit that manages declared drug traffickers in the same way that that there is one for child sex offenders. Declared drug traffickers present a different kind of risk to the community than do child sex offenders. We obviously monitor child sex offenders very, very closely. Declared drug traffickers are dealt with because of the nature of their offending in different investigative and policing matters.

Hon NICK GOIRAN: Perhaps therein lies the problem—that is, there is not a dedicated unit. Although we have been able to have the benefit of the experience of WA police under section 557K to deal with child sex offenders because of the work undertaken by the officers in the sex offender management squad, we apparently do not have that same squad that deals with declared drug traffickers. Is there some form of drug squad in WA police?

Hon MATTHEW SWINBOURN: There is; it is called the drug and firearms squad.

Hon NICK GOIRAN: Is the drug and firearms squad always notified when a drug trafficker is declared by the courts?

Hon MATTHEW SWINBOURN: No, member.

Hon NICK GOIRAN: We are replacing the existing anti-consorting scheme with a new scheme. Part of the government's contention is that the scheme for declared drug traffickers has wholly failed, so it wants a new scheme. How does the government propose to do that if it does not know who the declared drug traffickers are?

Hon MATTHEW SWINBOURN: I might have lost track of the member's question in an attempt to get across the broader issue about drug traffickers. Can the member bring my attention back to what he specifically wanted, by interjection if he likes?

Hon Nick Goiran: If we do not know who the declared drug traffickers are, how are we going to be able to capture them in the new scheme moving forward?

Hon MATTHEW SWINBOURN: I think we do know who they are. We were referring to the drug and firearms squad. The member asked whether there was a particular thing. It is a particular thing, but, of course, drug traffickers are dealt with by major crime and this particular crime squad. It depends on the level of offending and how serious it is. The WA Police Force does know who they are; it has those records. The member's question was whether police are notified. As I say, I think it will depend largely on those particular things.

In terms of the focus of the current legislation, we are capturing drug traffickers as the current section 557J does. We make specific provision in clause 6(b) for "relevant offender" meaning —

> a person who is declared to be a drug trafficker under the *Misuse of Drugs Act* …

That is because drug traffickers can include people who are convicted of simple offences, so we have included a specific provision. Of course, most overwhelmingly, drug trafficking–related offending happens in relation to indictable offenders, so they are caught under that scheme in any event. Outlaw motorcycle gangs, drug traffickers and others who engage in those sorts of things do not live in silos. As we know, the police force has 7 200 sworn officers; it is a large organisation. I suspect, like all organisations, we would want it to have as much focus on particular areas as possible, but the police work across the entire organisation on these kinds of matters. Because we are casting the net broadly, with the indictable offence provision being more specific to the declared drug trafficker provisions under the Misuse of Drugs Act, by virtue of capturing those who are convicted of only simple offences, we are trying to make this a more useable system. I get the point the member made about not removing a wall without understanding why it is there in the first place. We are trying to achieve a more direct and effective system that is broader than drug traffickers and child sex offenders. It includes outlaw motorcycle gangs and those who engage in other organised criminal activities. We are trying to achieve that end.

Hon NICK GOIRAN: Does the sex offender management squad have a list of all child sex offenders?

Hon MATTHEW SWINBOURN: I will talk about reportable child sex offenders under the Community Protection (Offender Reporting) Act because they are the ones who end up on the sex offender register. The sex offender management squad has access to the sex offender register, which is where the reportable child sex offenders are listed. Obviously there would be an issue if a child sex offender from overseas was not in the system. That would depend on the information that became available to the police and those sorts of things. I do not want to give the member an absolute answer that does not contemplate people who have slipped into our jurisdiction and who may not be on our register. There are obviously other registers around Australia, and child sex offenders are known to move across jurisdictions. Generally, the police will have access to those registers because of the sharing arrangements between jurisdictions. As much as we can, we make sure that that information is available to the police.

Hon NICK GOIRAN: Section 557K(1) of the Criminal Code sets out a number of definitions, one of which is "child sex offender". Is every child sex offender defined under section 557K listed on the sex offender register?

Hon MATTHEW SWINBOURN: No, member, not every offence listed in section 557K is on the sex offender register; however, they can be put on the register by virtue of a court order, if that comes to the attention of the authorities.

Hon NICK GOIRAN: I am trying to grapple with how WA police determines at the moment that it is going to issue one of these consorting warnings. The parliamentary secretary indicated earlier that the sex offender register—registry, I should say—

Hon Matthew Swinbourn: There is also a register.

Hon NICK GOIRAN: That is right. The sex offender registry, which consists of some unsworn officers, prepares information that is then sent to the sex offender management squad, which ultimately, in accordance with the police internal manuals, manifests itself in a warning being provided to a child sex offender. A child sex offender, of course, has to be a person who complies with the definition in section 557K(1). It is not apparent at the moment that WA police has a convenient list of individuals who meet the definition of child sex offender. If that is the case, as it appears to be from what we are being told at the moment, is that intended to change under the new scheme that we will have moving forward? It seems to me that WA police will need to have this information. If WA police wants to be able to issue these consorting notices, it will need to have a list of who it is permitted to issue a notice to in the first place.

Hon MATTHEW SWINBOURN: I am advised by the police that they know all the people who are covered by the offences that are listed in schedule 1 of the bill, which essentially is a replication of section 557K(1). Police advise that they have a list, for want of a better word, or a register of people who do not fall under the sex offender register itself. They know of people who might technically sit outside that. There are some issues with people who committed offences before the sex offender register came into force, so they have those people. They absolutely know who are the 800 people currently subject to consorting notices. I will repeat for the third time that the police say that they know who these people are. In saying that, there is always a degree of fallibility. Someone might have slipped into our jurisdiction who should not be here—they will have committed some sort of fraud to do that—but the police are confident about the veracity of the information that they have.

Hon NICK GOIRAN: It is taken for granted that the list will evolve over time, because new people will be added to the list and others will die and so forth. It is understood that it is an evolving list. However, it sounds like there are two lists in Western Australia at the moment. There is the sex offender register and, separate from that, some other list that captures all the offences set out in schedule 1 of the bill. Who manages that list? Is there a division, squad or group that manages that second list? For the purposes of our debate today, I will call it the schedule 1 list.

Hon MATTHEW SWINBOURN: The sex offender register manages all the sex offender data. That would obviously include the sex offender registry as it arises under the Community Protection (Offender Reporting) Act, as well as all the additional data described by Hon Nick Goiran as the schedule 1 stuff. Of course, that falls within the sex crime division. The sex offender registry manages the list—lists; we probably want to use that term. We have to be careful about elevating these into discrete things. It is data that is managed by them.

Hon NICK GOIRAN: I understand that. The point is that if a police officer had a concern and wanted to explore the possibility of issuing a section 557K warning, the place they would go to find out whether they could comply with the law with respect to these individuals is the sex offender registry, which will have this data and this information. My question is: who keeps this same type of data on declared drug traffickers?

Hon MATTHEW SWINBOURN: I thank the member for his patience. There is no registry of declared drug traffickers in the same way that we have a register of child sex offenders. Obviously, specific legislation provides for the keeping and management of that record, who has access to it and all those sorts of things. But drug trafficker information is kept on the police incident management system under an individual's name and is discoverable if required. I am advised that a list of all the declared drug traffickers could be extracted from the police incident management system.

Hon NICK GOIRAN: If police were to interrogate their incident management system through the relevant search, would they be able to inform us how many drug traffickers there are in Western Australia?

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: If WA police could be so kind as to undertake that search—I do not know how long it would take to do —

Hon Matthew Swinbourn: I think that was the thing I took on notice previously.

Hon NICK GOIRAN: I think it would be very helpful for us to know how many people are going to be captured under this new scheme moving forward. As we can see in clause 6, a relevant offender is not limited to a person who is declared to be a drug trafficker under section 32A(1)(c) of the Misuse of Drugs Act 1981 or a person against whom a conviction has been recorded for a child sex offence. Those matters are already captured by our existing scheme, regardless of whether we think they have been working well or have even been attempted. A relevant offender will include a range of other individuals who commit indictable offences, including an indictable offence under a law of the commonwealth that, if committed in this state, would constitute a child sex offence; and an offence under a law of another state, a territory or another country that, if committed in this state, would constitute an indictable offence or child sex offence. With the modelling and consideration that has been done for this bill, do the WA police or the Department of Justice have an indicative number of relevant offenders in Western Australia who will be captured by these provisions?

Hon MATTHEW SWINBOURN: No, member, there is not an indication of all the people who might be captured by this system. I think the point here is that the policy intent is to have a targeted approach to the kind of people that we want to issue notices to. Of course, it will not be every person who has ever been convicted of an indictable offence, because in those circumstances, there are probably many, many thousands of people—possibly tens of thousands—over time. If we go back to the oldest person in the state and the next 18-year-old off the production line, a very large group of people could fall within that. Also, in relation to commonwealth matters, we cannot possibly know how many people would fall into that area. The kind of people we are targeting with this legislation are those who come to the attention of police through the course of the activities that they are actually engaging in now. They are the people we are most interested in. But, no, I cannot give the member a precise figure, or even a general figure in that regard.

Hon NICK GOIRAN: Under the new scheme, will it be necessary for the police to have some preliminary information indicating that a relevant offender knows another relevant offender?

Hon MATTHEW SWINBOURN: Yes, member. Under clause 9, "Issue of unlawful consorting notice", there are a number of factors that have to be taken into account. Clause 9(1)(b) states —

> the person is a relevant offender who —
>
> (i) has consorted, or is consorting, with another relevant offender; or
>
> (ii) the officer suspects on reasonable grounds is likely to consort with another relevant offender;

The short answer is yes.

Hon NICK GOIRAN: What that tells me is that these laws will not be used against declared drug traffickers, because earlier the parliamentary secretary indicated that one of the problems WA police have is that it is very hard for them to prove that these drug traffickers know one another. That is under the existing scheme; that is not going to change under the new scheme. They still need to have some information that they know —

Hon Matthew Swinbourn: Member, you are saying that drug traffickers have to know each other. Remember that the drug trafficker would only have to be consorting with another person who is a relevant offender.

Hon NICK GOIRAN: I have no problem with that. The parliamentary secretary raises a very good point. I indicated earlier that the opposition supports the expansion of the scheme, and I think that is one of the redeeming features of it. But to clarify my earlier comment, for consorting between two declared drug traffickers, that is not happening at the moment. WA police are not enforcing the unlawful consorting of declared drug traffickers at the moment, and the reason they give is that it is very hard to prove that they know each other. That is still going to be the case moving forward. I guess my concern is that as much as we are tearing down the existing drug trafficker provision, which has largely been untested, that element of it that is being transposed over to the new scheme—that is, two declared drug traffickers being able to consort with one another—really will not change anything other than the fact that not any old police officer in Western Australia will be able to issue the warning; they will have to go through this process going all the way to the commander. It seems to me that that is just not going to happen. We do not even have a convenient list. We are going to have to interrogate the police incident management system.

I make these comments not to suggest that the bill and these provisions relating to declared drug traffickers ought not be supported; my concern is how this is going to work in practice. It seems it is not working at the moment, and these provisions that relate to declared drug traffickers are not going to work moving forward, albeit I accept the point the parliamentary secretary is making that at least we would be able to say that a drug trafficker knew a child sex offender or a bikie or somebody else who has been convicted of an indictable offence. It is probably not so much a question at this point; it is more an observation that I have a concern that the declared drug trafficker provision has not been used to date. It does not appear that it has been tested. It is not immediately apparent to me why a police officer could not have issued any warnings—not one warning at all—in Western Australia. I thought that there would be at least one case, if not more, of accomplices to drug traffickers, who were working together and convicted at or around the same time, that police would know about. Police certainly would not want those two individuals to be consorting with one another, so why would they not immediately issue them a warning? The fact of whether they would ultimately be prosecuted under the soon-to-be-repealed section 557J is another matter altogether, but, at the very least, issuing them a warning would have been a useful test of the scheme, and that simply has not happened.

I have a number of other questions about clause 1, but I believe the shadow Minister for Police might have a few questions.

Hon PETER COLLIER: I am about to bring down the government, so be prepared. Pardon?

Hon Matthew Swinbourn: Why would you? You don't need us!

Hon PETER COLLIER: I have a few questions and will not take up too much time, but I want a bit of clarification on a few things, particularly on the insignia component of the bill. As I have said, I am primarily concerned with that area. I have been dealing with the Western Australia Police Force and I know that it is very supportive of this aspect of the bill.

First of all, is the gang crime squad responsible for oversight of, keeping an eye on, outlaw motorcycle gangs?

Hon MATTHEW SWINBOURN: Yes, member, it is the gang crime squad.

Hon PETER COLLIER: I appreciate the sensitivities about staffing, but what is the number of staff in the gang crime squad and what —

Hon Matthew Swinbourn interjected.

Hon PETER COLLIER: It is the number of officers.

Hon Matthew Swinbourn: Can I just say by way of interjection that we will not be disclosing the number for operational reasons. We can talk about other bits and pieces.

Hon PETER COLLIER: To clarify, I have asked very, very similar questions in Parliament in the past and the WA Police Force has been forthcoming. Is that a definite no on the crime squad?

Hon MATTHEW SWINBOURN: I am told yes, and that has come from police. It is not a government decision not to disclose that information. I have been told that we will not provide information on the numbers of operational and sworn officers in that particular area. I am not trying to be difficult, member.

Hon PETER COLLIER: I appreciate the sensitivities, and I am always respectful of that with police. I have asked similar questions in estimates hearings, and sometimes a response is given and sometimes it is not in terms of the sensitivities. With this one, I would not have thought it was sensitive; I thought it would be a badge of honour, to be honest, for police to have a certain number of officers committed to overseeing the OMCGs.

We do know that the Methamphetamine Action Plan Taskforce has 100 officers because that information is publicly available. I noticed in comments to Hon Nick Goiran earlier, the parliamentary secretary listed the hierarchy of responsibilities of the departments et cetera within WAPOL. I appreciate that the meth task force transcends all areas; it is multifaceted et cetera. Where does the meth task force fit in terms of the gang crime squad?

Hon MATTHEW SWINBOURN: I am advised by police that it is the serious and organised crime division.

Hon Peter Collier: They both are, are they?

Hon MATTHEW SWINBOURN: Yes, the gang crime squad and the meth task force fall within that; that is the advice I have been given.

Hon PETER COLLIER: Thank you, acting chair.

The DEPUTY CHAIR: Deputy chair.

Hon PETER COLLIER: Deputy chair, I apologise. I have been falling asleep; I should not say that! Can I just say that I am pleased to hear that; that is what I wanted to hear—that they were within the same division.

Hon Matthew Swinbourn: I am happy to please.

Hon PETER COLLIER: That is good.

In 2021, 28 kilograms of methylamphetamine was seized from OMCGs. How does that seizure from OMCGs compare with previous years?

Hon MATTHEW SWINBOURN: I do not have a year-on-year comparison. I suspect the member got the 28-kilogram figure from the report; it refers to that in there. I do not have at hand how that amount compares with previous years. The member will have to appreciate that there has been a change in the policing and drugs scene because of the COVID-19 pandemic and the controlled borders. I think the general narrative is that that has helped policing because, obviously, the police have more control over who is coming in and out of the state. Even if we did have the figures, they may not necessarily be a good indication of a trend or anything else like that because of the changes in the overall Western Australian environment.

Hon PETER COLLIER: So that is the reason we have the closed borders!

Hon Matthew Swinbourn: I didn't say that.

Hon PETER COLLIER: I am conscious of that. I thought the parliamentary secretary might have had information on the amount that has been seized from gangs. That is fine; it is not a circuit-breaker. But the point is, without a shadow of a doubt, the closed borders and COVID-19 have resulted in a direct correlation with a reduction in seizures of methamphetamine.

Hon Matthew Swinbourn interjected.

Hon PETER COLLIER: That is okay; if you can chew and walk at the same time.

Hon Matthew Swinbourn: No, sometimes I can't.

Hon PETER COLLIER: That is all right. No doubt those things have had an impact on the seizure of drugs from gangs. I asked that because I wanted to ascertain exactly what the decline had been.

With regard to gangs on runs from interstate—I want clarification more than anything; the parliamentary secretary can respond via interjection if he likes—I assume that the insignia part of the bill will also be relevant to them?

Hon MATTHEW SWINBOURN: If they are listed in schedule 2 as one of the gangs, then yes, it will apply to them.

Hon PETER COLLIER: Thanks. I am just looking at access routes, for obvious reasons. We have seen a significant decline across the state in methamphetamine seizures. It will be interesting to see what happens when the borders open and these guys get back to their evil deeds. Having said that, I am pleased that the gang crime squad and the methamphetamine task force are in the same unit, which is good. Moving on to another area, with regard to the number of verified OMCG members, according to the report there are currently 431. How do we know that there are exactly 431 verified OMCG members? That is conservative—the exact number of 431, but the report states that there are up to about 700 of these other colourful characters.

Hon MATTHEW SWINBOURN: It is police intelligence. As the member knows, they watch these people very closely. They know who they are, and these are the people who they have identified. I probably cannot go into any more detail than that it is based on police intelligence as to how they know who these particular people are—for obvious reasons, in terms of how they find out.

Hon PETER COLLIER: That is what I thought. I would be staggered if they had to fill out a membership form to become a member et cetera. That is why I thought it was rather remarkable to have in this report the very specific number of 431 members. The parliamentary secretary is quite correct. It is quite subjective, really. It probably would have been more accurate to say anything from 400 to 700, I would have thought.

Hon Matthew Swinbourn: I think that's —

Hon PETER COLLIER: That is going to bring me to my next point?

Hon Matthew Swinbourn: Yes.

Hon PETER COLLIER: That is exactly why I raised this point. With regard to insignia and identification, the parliamentary secretary mentioned in his reply to the second reading debate that it was not just the insignia, but that there were other means by which group members can determine who is in a particular group. What are those other means?

Hon MATTHEW SWINBOURN: Does the member mean how police know through other means or does he mean how they each know who is within the —

Hon Peter Collier: Both.

Hon MATTHEW SWINBOURN: Regarding how individual bikie members might be able to identify each other as being a member of an outlaw motorcycle gang, we know that they rely on patching. Obviously, they know the people who are a part of their own organisation, but if a Bandido member comes across a Club Deroes member who they have never met before, they will know each other by the patches that they wear or things that they have on their face. That is one of the reasons that we want to remove them, so that two people walking past each other on the street are not going to punch each other because a gang is having a dispute with another gang.

Obviously, there is then the implication that if we ban insignia—that is, the patches and the things that commonly identify bikies as bikies—how would the police then know who the bikies are? Police reassure us that they know who the bikies are, and that they rely on police intelligence. Police intelligence is built up and gathered by the policing work and investigating that they do. They do it through covert strategies and national databases are put together by the Australian Criminal Intelligence Commission. We do not want to disclose too much about how they find out, because we do not want bikies to drive their behaviours accordingly, but they even use Facebook; they do those sorts of things as well. That is how they know.

We also have to appreciate, as I am sure that the member does, that this is what the gang crime division does day in, day out. Unfortunately, they live and breathe outlaw motorcycle gangs, and so it is their job to know. That is why they do that. I am sure in another time and another place, the member will get the opportunity to speak to them. As the member is the Chair of the Standing Committee on Estimates and Financial Operations, the police might be able to describe more precisely, in closed session, the way that they engage in those activities, but for obvious reasons, police are very sensitive about the way that they get this intelligence and those sorts of things.

Hon PETER COLLIER: It is not a trivial point; it is something that I would like to get some clarification on. I understand. Conservatively, the report states that there are from 431 up to 700 OMCG members. We do not need a PhD to work out that there are 46 identified groups; there are not too many. If you get around a school, you are going to know a lot of the kids. I really do get that, but we are talking about removing the insignia. Insignia is defined in clause 22, which specifically says —

> **Insignia of identified organisation**
>
> (1) The following are ***insignia*** of an identified organisation —
>
> (a) the name of the organisation;
>
> (b) the logo or patch of the organisation;
>
> (c) another image, symbol, abbreviation, acronym or other form of writing or mark that indicates membership of, or an association with, the organisation.
>
> (2) In addition, the following are taken to be ***insignia*** of every identified organisation —
>
> (a) the symbol "1%";
>
> (b) the symbol "1%er".

It is quite specific, although that third part opens it up to a degree. With that said, what is the difference between insignia and colours in a motorcycle gang?

Hon MATTHEW SWINBOURN: I do not really know what the member means by "colours", as such. As the member just indicated and pointed to me, there is a definition of "insignia". It will now have a legal meaning that

captures all those sorts of things that are associated with that. If colours, as the member was contemplating, falls within the definition of an insignia, then a colour is an insignia, but as I said, I do not know what the member means by colours.

Hon PETER COLLIER: I will refer to the report again. I just want to check whether "colours" is broader than insignia or is a colloquial term for insignia. Page 13 of the WAPOL report states —

> OMCGs, Affiliate Gangs and Street Gangs each have their own brand (insignia) which is often depicted as the official gang logo or emblem. This forms part of each gang's 'colours' —

That is why I am asking this —

> which comprise of the logo/emblem as well as the leather or denim jacket on which they are attached and a series of badges/patches. The 'colours' of an OMCG member serve as a notice to the world that the wearer is a member of an outlaw gang and are generally worn during OMCG events.
>
> OMCG 'colours' usually contain a number of badges displaying the gang's insignia and other OMCG specific terms or references. These identifying marks are either specific to one particular gang or common throughout motorcycle gang culture. Particular patches and badges can reveal significant information about the wearer, including:
>
> - the wearer's length of time with the gang;
> - significant events in gang history;
> - deeds the wearer has completed for the club;
> - acts of violence the wearer has performed;
> - indicating if the wearer deals in or has contacts for illicit drugs; and
> - characteristics of their personality.
>
> These badges are generally located on the front of the vest.

I am asking the question because this is much, much broader than the definition of "insignia" in the bill. Are the gangs going to be able to bypass the insignia, abandon the insignia, but have this plethora of other things known as colours that are, as the report says, as broad as leather or denim jackets? Will they have a different shade of denim jacket and somehow be identified as a Comanchero or something along those lines? I think it is a valid question. I could understand if colours and insignia were the same thing, but the definition in the bill is not the same as that in the report that was tabled in this chamber. The definition of "colours" in the report is much broader. As I said, I applaud getting rid of the insignia. We know what will happen. The gangs will find a means of getting around it, one way or another. As I said in my contribution to the second reading debate, they are not Ghandi. They will find a way around this thing, but if it is as simple as altering their colours, I think that is somehow a bit of a deficiency in the bill.

Hon MATTHEW SWINBOURN: I thank the member for bringing my attention to the wording in the report. I have read the report, but the sense of what colours are is illuminated here, and I think it would be fair to say that colours are a combination of all the things that go into the identifiable outfit of an outlaw motorcycle gang member. Reference is made here to leather and denim jackets and those sorts of things. If we remove all the patches and insignia from the denim jacket, it is just a denim jacket; it is not a marker of membership of a gang in the same way. I suppose over time it might be. We have contemplated this with the use of dual insignia, and in other jurisdictions we have seen the adoption of sporting team paraphernalia as an alternative to patches. The definition of "insignia" has been drafted so that it will capture insignia that has a dual purpose, which is what the member is talking about—that is, the shade of a jacket—although I think that that is so fine that nobody will really be able to identify them. Let us be serious here; people wear patches to be notorious. If they get to a point that the colours are too meek, it will take away from the notoriety that they are trying to achieve.

Having said that, in relation to the things that are used for a dual purpose, this is achieved by the limb of the definition that applies to any other image, symbol, abbreviation, acronym or other form of writing or mark that indicates membership of or an association with the organisation. For example, members of the Mongols Motorcycle Club, which is an identified organisation in schedule 2, are known to routinely wear clothing bearing the name and logo of the Las Vegas Raiders American football team. This has occurred in some jurisdictions, but if any attempt is made to overcome bans on the OMCG insignia, OMCGs will have no such success in avoiding the operation of the law as it applies under this bill. It will, therefore, be a question of fact in each case whether the name, logo or image is that of an identified organisation. This will be proved by way of expert evidence, likely by police experts, about the use of insignia by identified organisations.

Hon PETER COLLIER: I thank the parliamentary secretary for that. I guess I am playing the devil's advocate here. As I said, I am sure everyone understands that these people will do anything they possibly can to get around this ban in this piece of legislation. That is not a criticism and we cannot do anything about that; they will do it.

Personally, I think the definition in the bill could have been broader. Quite frankly, from the police report, it is evident to me that the colours of a motorcycle gang are much broader than insignia. The insignia is a by-product or subset of the colours. Did the parliamentary secretary have anything else to say on that?

Hon Matthew Swinbourn: No.

Hon PETER COLLIER: What about ink? We cannot do anything about that, can we? If people realise that they are going to be stopped from displaying insignia, I think the government will have to make some sort of alteration to expand the process of capturing the insignia with the colours. I think the government will have to do that down the track. It will take people five minutes to fix that up. What if the Comancheros decide to put ink on their foreheads or forearms et cetera?

Hon MATTHEW SWINBOURN: That is covered by the term "mark". That would be a mark. That would, therefore, be covered as an insignia as such. For example, if people decide to put red ink on their head —

Hon Peter Collier: No, I mean "ink" as in a tattoo.

Hon MATTHEW SWINBOURN: The legislation extends to tattoos. A tattoo is a mark, and the legislation includes tattoos on people's bodies. A tattoo is still identified as an insignia under the definition in the bill, which states —

> The following are ***insignia*** of an identified organisation —
>
> …
>
> (c) another image, symbol, abbreviation, acronym or other form of writing or mark that indicates membership …

If someone gets a tattoo and decides that that will be some abstract ink marking that all members of their club can identify, that will fall within the definition of an insignia so that will be covered.

Hon PETER COLLIER: Having said that, as we all know, a lot of these groups or gangs are flush with funds. Will a member of one of those gangs get a fine for having a tattoo on their forehead or hand? These things are permanent; they cannot be taken off. What happens then? They will have paid the fine, but they will still have the tattoo.

Hon MATTHEW SWINBOURN: I suspect, initially, a fine will be imposed. The offence provisions are contained in clause 25. Clause 25(2) 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.

For an individual who has inked themselves and is persistent in their activities, I suspect the court will initially impose a fine and if that individual proceeded, it would gradually result in a term of imprisonment.

Hon PETER COLLIER: Thanks for that, parliamentary secretary. I was aware of that and I alluded to that in my contribution. However, as I said, that would be pocket money to a lot of those places, and they would still have their insignia planted across their forehead. They will go feral at this thing. They do not want to have their insignias, their colours, constrained. They simply do not. This is more of a comment than a question, but the parliamentary secretary can respond if he wishes. With all due respect to the parliamentary secretary's responses, I am not convinced that clause 22 is sufficiently broad to capture all the criteria for colours of a gang that were contained in the report from WAPOL tabled in this chamber titled *Report by way of justification of the provisions of part 3 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021: Final version.* Firstly, WAPOL has given a very extensive coverage of colours that is broader than the definition in the bill. Secondly, with regard to ink or tattoos, it is all good and well to fine them a couple of grand or whatever it might be, but they will still have that tattoo. They will still be identified as a member of the Comancheros; therefore, I cannot see how that can be prevented. I do not know whether the parliamentary secretary wants to offer a comment on that.

Hon MATTHEW SWINBOURN: The government is confident in what this will capture. As with all new laws, we will see what the effect of it is over time. There is a three-year review clause on this bill that will obviously look at its effectiveness and those sorts of things within that review period. Police will continue to feed information back to the executive government about whether it is effective and whether more powers are needed. This provision has been developed in close conjunction with WA police and the Department of Justice. They are confident about scope of capture. When provisions were introduced in Queensland and Tasmania regarding patches, a change in behaviour was evidenced in what outlaw motorcycle gangs went out into public as. Those provisions did not extend to tattoos. Our law goes that one step further, so, of course, time will only tell how effective it is, but we think we have captured it.

Hon PETER COLLIER: I appreciate that, parliamentary secretary. I was not being difficult; I was just highlighting what I saw as a clear difference between the standards that were captured in the bill and what is captured in the report. I know the government cannot do the whole lot; I know that is simply not possible. I support the merits of the provisions on insignia—I really do.

Hon Matthew Swinbourn: You have been clear on that, member.

Hon PETER COLLIER: Yes, and I want to ensure that the parliamentary secretary understands that. I support police in their endeavours. I know that police are very supportive of this particular component of the bill. Good luck with it. I hope that in some shape or form it hinders the gangs' evil processes and their involvement in the illicit drug trade, particularly methamphetamine. I hope it goes a long way to overcoming a lot of issues in that area. Having said that, now that the parliamentary secretary is battered and bruised, I will hand him back to Hon Nick Goiran.

Hon NICK GOIRAN: I was called away on urgent parliamentary business, but I was here for most of the contribution and questioning by the shadow Minister for Police that I think helps us to better understand some of the difficulties that will be experienced by WA police in their unenviable task of tackling these gangs. I note the document that was tabled by the government and authored by the Western Australia Police Force dated 15 October 2021 titled *Report by way of justification of the provisions of part 3 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021: Final version.* For the benefit of Hansard, I indicate that it is a tabled paper.

Pages 8 through to 13 of that document set out the 46 identified organisations, albeit not necessarily in alphabetical order as it has been done in schedule 2 of the bill where it lists the identified organisations. Can the parliamentary secretary indicate to the chamber what would happen in the event that one or more of these gangs were to amalgamate?

Hon MATTHEW SWINBOURN: The member's question is not perhaps straightforward in one regard because the culture and history of these organisations is —

Hon Nick Goiran: They're anti-amalgamation.

Hon MATTHEW SWINBOURN: Yes; there is that element. They tend to "patch over" to competing organisations. They do not give up the cachet that is associated with their insignia and often they are connected to national and international groups. If they became a truly new organisation, we would have to come back to Parliament to add it to the list because obviously we have not allowed for regulations to update the list for the reasons I described during my second reading reply. If it was more form over substance and they were, in fact, still two separate gangs but closely aligned, in substance they would still be the same gangs that are listed in the bill. That contemplates the two most probable scenarios that we are talking about.

Hon NICK GOIRAN: In particular, I note that in this document they are categorised into four categories: outlaw motorcycles gangs for Western Australia, outlaw motorcycles gangs for Australia, affiliate gangs and street gangs. Five of the six affiliate gangs are said to be OMCG affiliate gangs. I will take one as an example. Number 41 on the list is the Raiders. Is it an affiliate gang of one of the OMCGs otherwise listed in the table?

Hon MATTHEW SWINBOURN: The answer is yes. More specifically, the Raiders are an affiliate of the Mongols Motorcycle Club.

Hon NICK GOIRAN: I will take that example a little further. Very much respecting what the parliamentary secretary indicated earlier, that the history of these clubs is anti-amalgamation, not pro-amalgamation, one would think that if any gangs were inclined or have a greater propensity to amalgamate, it might be a gang and its affiliate gang. If they were to rebrand themselves the Mongrel Raiders, for example, would that amalgamated organisation still be captured by the existing provisions or would the government have to come back to Parliament for an amendment?

Hon MATTHEW SWINBOURN: It is always a matter of substance over form with this bill. The answer is if the two groups to which the member referred merged, in substance, they are still the same thing. If they changed their insignia or their name, they would still be captured because, in substance, they are still those two groups. They would not have registered constitutions and they would not sit down and have committee meetings and those sorts of things. In fact, they would still be the Mongol members, and that particular group. Again, if as a matter of fact in law they ended up being a new but identical organisation, we would have to come back to Parliament to do that thing. However, we are advised by the police advisers that, in practice, they do not do that. I suppose we can contemplate it here but the practice with outlaw motorcycle gangs within Western Australia, Australia and internationally is that those sorts of things do not happen. Could it happen? Of course it could, but their intelligence to us is that it does not.

Hon NICK GOIRAN: I think that is fair enough. We have to work on the propensity of the evidence provided. I think the parliamentary secretary referred to it as expert evidence and the history tells us through police that this has not been the done thing. It would be a fresh approach if it were to be taken. It is not anticipated that that fresh approach is likely. We are being told that it seems improbable. If that is the case, that can ameliorate our concerns; and, if not, the government would have the opportunity to come back to us on that. In any event, I imagine before the government

did that, there would have to be some form of test case. The government would seek to prosecute the individuals associated with this so-called new amalgamated gang. They would present their extra evidence to the court and, ultimately, if there is an unfavourable decision to the police, I am sure they will lobby the government with respect to any proposed amendment and additions to the schedule.

Has any intelligence been provided by police to government to suggest that new gangs are imminently ready to arrive or be established in Western Australia other than the 46 that are currently listed?

Hon MATTHEW SWINBOURN: The police advice is no.

Hon NICK GOIRAN: That is good. I might just make an observation in passing before I move to the next theme. No response is required to this. Page 13 of that same report sets out that particular patches and badges can reveal significant information about the wearer. It includes six dot points of what is referred to by police as "significant information about the wearer". The first dot point is information about the wearer's length of time with the gang. I must say that I do not really care how long a person has been part of a gang. Nevertheless, the second dot point is information about significant events in gang history and the third dot point is information on the deeds the wearer has completed for the club. The mind boggles what those deeds might be. It is particularly disturbing to read the fourth dot point, which is the acts of violence the wearer has performed. It is quite extraordinary that we have individuals running around Western Australia with these so-called badges that confirm the acts of violence they have performed. The police certainly have the opposition's full respect and support for tackling these individuals who seem to have no regard for the law of Western Australia, so much so that they supposedly proudly display a badge to confirm the acts of violence they have perpetrated against another individual. If those badges can assist police in the identification of individuals and some of their past so-called deeds, that would be terrific.

During the parliamentary secretary's reply to the number of charges and convictions that have been laid in regard to the child sex offender warnings under section 557K, he provided some information, which I was scribing at great speed. I have here that there might have been 20 charges and eight convictions.

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: I think that the purpose of the parliamentary secretary mentioning that to the chamber was to say that there have not been many —

Hon Matthew Swinbourn: That is since 2015. That is the most up-to-date information we have.

Hon NICK GOIRAN: From 2015—in other words, there might have been charges and convictions prior to 2015. I think the provisions started in 2014. Perhaps the parliamentary secretary could check that.

Hon MATTHEW SWINBOURN: They commenced in 2004 and the information from 2015 is what was provided to us by police.

Hon NICK GOIRAN: I appreciate that the parliamentary secretary will not have this information, but I ask whether he can take this on notice. It would be useful if the police provided the full data since 2004 so that we could know the exact number of charges and convictions that have been laid under the section 557K(4) warning provisions. That said, I think the purpose of the government providing that information in the course of the debate was to indicate that as far as the government is concerned, it is indicative of some of the difficulties the police have had prosecuting these charges. I think some weight has been given to the term "habitually consort", and the difficulty in proving that. I recall that in the recent debate we had on the COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2021, one of the things that bill did was extend the life of one of the provisions in the Criminal Code. We could call it the COVID-19 assaults provision. I cannot remember whether the parliamentary secretary was handling that bill.

Hon Matthew Swinbourn: No.

Hon NICK GOIRAN: No, another member was. The purpose of that provision was to apply extra penalties to anyone who committed what I will describe as a COVID-19 assault for the period that COVID-19 is with us and for the life of the bill. In that particular instance, we were told by the government that not many charges or prosecutions had been laid for these COVID-19 assaults. The government was saying that this is proving that the laws are working. Basically, the government was saying to the opposition, "Don't be worried that the police have not had to lay any charges and prosecute, because the very existence of the law is proving that the laws are working." If we were to apply that same logic to child sex offenders, one could say that these 800 child sex offender warnings that have been issued by police, these forms that have been filled out and shown to the offender, but not provided to them, are indeed working and, as a result, only very few child sex offenders have ignored these warnings and the laws of Western Australia, so much so that since 2015, there has been the need for only 20 charges to be laid and eight convictions. Therefore, it could be argued, using the same logic that the government provided to us only a few weeks ago, that this indicates that section 557K is working and there will be no need to repeal these provisions in three years' time, despite the fact that the Attorney General said in the other place that there will be no repeal. That would seem to suggest that they may well be effective. Does the government have some information from police to

suggest that despite the warnings that have been given to child sex offenders, they have been consorting in any event, but the nature of the consorting has been such that police have not been prepared to proceed with a prosecution?

Hon MATTHEW SWINBOURN: I think the member used the example of the previous discussion about the COVID-19 provisions being effective because nobody has been charged. Of course, the nature of any law is to provide a deterrent. We are not making that argument with respect to this particular bill. I am sure it was a worthwhile and meritorious argument on the previous bill. In relation to this bill, the advice that has come from WA police about the 800, and the current regime under section 557K, is that it is difficult to get circumstances in which they are comfortable to prosecute. Yes, they have commenced 20 prosecutions and there have been eight convictions. I indicated in my reply that some of those matters were still before the courts. Where we are going from here with the current provisions at the prosecution level is that we will be lowering the bar from habitual consorting to consorting twice. It will be just a question of fact rather than perhaps a legal and a factual question about habitual consorting. If there is evidence that they have consorted two or more times, there will be a breach. Therefore, initially we would anticipate that a range of more prosecutions would be successful, but, ultimately, we would hope that there would be fewer prosecutions because of the deterrent factor that the law has. It is a bit of a chicken-and-egg argument: how much does a law deter offending and how much do successful prosecutions reflect a successful law? Hon Nick Goiran is a lawyer so he understands that point.

Hon NICK GOIRAN: That is interesting. We have a situation in which, in this instance, the government is not relying upon the deterrent argument that it used in a different debate. That said, was consideration given to defining "habitually consort"?

Hon MATTHEW SWINBOURN: Not as such. Of course, the scheme we are providing is much broader than the existing drug traffickers and child sex offenders. I think Queensland still maintains the term "habitually consorts", and we can obviously say that that means two or more times. We are moving away from that language here. We have made it very clear what consorting means in terms of the definition and how that would then lead to potential prosecution. We did not try to fix what we thought was a problem in the existing regime and import it into the new one.

Hon NICK GOIRAN: Absolutely. I accept that the new provision will be broader in its application for more categories of offenders, and that the prosecution bar will be arguably lower. But the initial step—the deterrent step—and the warning provision will be far higher. That is a point that the opposition continues to be very concerned about and appreciates the opportunity to demonstrate during the Committee of the Whole House process. In Queensland, is the habitually consort provision defined as two instances of consorting, similar to what will be the provision here moving forward?

Hon MATTHEW SWINBOURN: The Queensland provision is, excuse me for saying it, a bit of a dog's breakfast to be perfectly honest. Section 77B of the Criminal Code Act 1899 provides —

> (1) A person commits a misdemeanour if —
>
> (a) the person habitually consorts with at least 2 recognised offenders, whether together or separately; and
>
> (b) at least 1 occasion on which the person consorts with each recognised offender mentioned in paragraph (a) happens after the person has been given an official warning for consorting in relation to the offender.

It then provides —

> (2) For subsection (1), a person does not habitually consort with a recognised offender unless the person consorts with the offender on at least 2 occasions.

Hon Nick Goiran would appreciate that it is a bit of a dog's breakfast in that regard. The continual use of the term "habitual" is problematic because, as I say, "habitual" is not a legally defined term for our benefit, although I think it might have some meaning in the Queensland Criminal Code Act; I think it only refers back to the definition within the existing section. If it occurs a couple of months apart, does that mean it is habitual? It is that sort of thing. There is a whole issue about the temporal nature to the consorting, which we have avoided. We wanted to get away from that.

Hon NICK GOIRAN: The New South Wales provision, as I understand it, requires there to have been four instances of consorting, whereas the Queensland provision that the parliamentary secretary has mentioned requires there to have been at least two. As I understand it, the new provisions here moving forward will require two instances. Can the parliamentary secretary clarify that?

Hon MATTHEW SWINBOURN: Yes, it will be two or more occasions once a person has been issued with the notice.

Hon NICK GOIRAN: In Western Australia, there will have to have been a notice and at least two occasions of consorting. In Queensland, a person has to have had at least one instance of consorting after the notice has been

issued, but overall there have to have been at least two instances. There could have been one prior to the notice being issued and one after the notice was issued. The point is that in New South Wales, the provision is for there to have been four consorting occasions. The New South Wales law was challenged in the High Court, and the parliamentary secretary touched on that at the very least in his reply and he may have touched on it in his second reading speech. As I recall, the challenge to the New South Wales law was unsuccessful. One of the things that we can ordinarily take confidence in is that if there is a law that restricts people from associating, whether it is under the guise of anti-consorting laws or otherwise, and the threshold is that there need to have been four occasions of consorting, the High Court is going to deem that that law is okay. But in this case we are going to provide for two instances. The parliamentary secretary mentioned earlier that Queensland also provides for two instances, but he also mentioned that there are going to be a number of differences between the bill before the chamber and the Queensland law. I think the Attorney General has been quite keen to say that our law is going to be the toughest in the land. If we are trying to compare jurisdictions, our scheme is going to be more closely aligned, if you like, with the Queensland scheme, because we are going to have the threshold of two instances rather than the four instances in the New South Wales law. But the parliamentary secretary has indicated that there will be differences between our law and the Queensland law. Will those differences make our law more susceptible to a challenge?

Hon MATTHEW SWINBOURN: The member asked whether it will be susceptible to challenge. Obviously, susceptibility to challenge is an interesting concept, because things are susceptible to challenge if a highly motivated and well-heeled person wants to challenge the law. In that regard, we think it will probably be challenged. The real question is about the likely success of that challenge. I indicated in my second reading reply that consideration was given to the constitutional issues that might arise and the kinds of matters that were raised in the challenge to the New South Wales law. I think what was not central to that challenge was the issue that the member is talking about, which is the number of times there was consorting.

Hon Nick Goiran: Sorry, was or was not central?

Hon MATTHEW SWINBOURN: My understanding is it was not central, but I think, before I get locked into that position, we may need to have greater reference, because, obviously, the Solicitor-General was the one who gave advice regarding the susceptibility to and possible success of a challenge. The people at the table here did not give that advice, so I do not want the member to say, "You've said this now." There is an issue around that. Our understanding of the High Court decision was that it was more about the reasonableness and appropriateness and the infringement on the implied rights of political communication, and the analysis was not limited to the number of instances of consorting that would give rise to an offence.

Hon NICK GOIRAN: Fair enough, parliamentary secretary. I have only one final area to touch on with respect to clause 1.

The parliamentary secretary was a participant in the briefing that the opposition had on this bill, and there was an indication during that briefing on more than one occasion that it is anticipated that five per cent of existing child sex offenders—it was expressly said during the briefing that this is merely an estimate or a best guess—will be captured in the scheme moving forward, and it will take some time over the next three years to do the proper assessment and so on and so forth. In his reply, the parliamentary secretary helpfully gave some explanation of the five per cent. The best I can recall, because, obviously, I do not have the benefit of *Hansard* at this stage, was that five per cent is the estimate by police based on information about those child sex offenders who are known to have consorted. There have been instances of consorting by approximately five per cent of these individuals. I think the parliamentary secretary said they would basically be automatically transitioned into the new scheme, but I understand the rhetorical flourish of using the word "automatically"; there will still be a comprehensive assessment process and so on and so forth. Five per cent of 800 is 40. We are talking about approximately 40 of these 800 child sex offenders who have been given a section 557K(4) warning. Police are saying that about five per cent of those offenders—in other words, 40 of them—have been known to have consorted with one another. The indication that the parliamentary secretary gave earlier was that since 2015—we are waiting for the data since 2004—there have been 20 charges laid and eight convictions. Those rough numbers do not seem to indicate that there is too much of a problem. The data that police have is that about 40 people have been consorting, and at least since 2015 there have been 20 charges laid and eight convictions secured. I know that is a very simple analysis—if we were in a Standing Committee on Legislation hearing, we would be able to dig a lot deeper with police and probably with the prosecutors to get a better understanding of this—but it is not immediately apparent that there is quite the level of problem that might have been suggested.

In any event, my question more at this point in time is: if police currently do not have information about the other 95 per cent—evidently, they do not, because they have said that they have information that five per cent have been consorting; in other words, police do not currently have information that the other 95 per cent have been consorting—is that not an indication that the 95 per cent will not be captured under this bill? Unless they start consorting from hereon in and say, "Look, there's this fantastic new WA Labor bill that's passed through the Parliament, so we now feel that we can continue to consort and ignore those warnings", which would be incredibly stupid on the part

of those people, or they commit some new act moving forward, it seems that the 95 per cent will not be captured under this new scheme.

Hon MATTHEW SWINBOURN: I am conscious of the time, leading up to question time, so the answer I will give is the best I can do at this point. The member said that 95 per cent will not be captured by the scheme. They will be captured in the sense that they will be subject to the scheme, but whether it will be appropriate to issue them with a new anti-consorting notice is a question that obviously police will examine. The member has to understand, as I am sure he does, that the existing scheme does not have an end date. Some of these notices, which have been in place since 2004, could have been issued to individuals many years ago—in 2004, 2005, 2006 or 2007. Police may not have had any further contact with those individuals because they might have died or, more importantly, stopped their aberrant behavior. If they have been rehabilitated—I know that might be a bit of a pipedream, unfortunately—and are therefore not engaging in that behavior, the notice will have had the effect we particularly wanted and would therefore not come into it. There is that element of it.

I know the member said that 40 offenders does not seem like many. I know the member takes child sex offences extremely seriously, and I do not mean that in a glib or facetious way at all. So, 40 child sex offenders —

Hon Nick Goiran: It's shocking.

Hon MATTHEW SWINBOURN: Yes. The damage that they can do to our community and children is extremely worrying. I am assured by the fact that police have identified this group of five per cent at this stage as being immediately eligible for notices, and that they intend to issue them as expeditiously as they can on the commencement of this legislation to hopefully get them to address this behaviour that we do not want to see in any way, shape or form. I think there is a balance here. There is a bit of, "We've got to clean up the 800 because we haven't been able to take anyone off that because the provisions of the current act do not allow for that." There are people who have moved on, but we do have a hardcore group of people who are not changing their behaviour.

Committee interrupted, pursuant to standing orders.

[Continued on page 6144.]