CRIMINAL ORGANISATIONS CONTROL BILL 2011

Second Reading

Resumed from 1 May.

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [8.20 pm] — in reply: I thank members for their contribution to the debate and the opposition and the National Party for their support of the policy of the Criminal Organisations Control Bill 2011. This is a very important piece of legislation. I propose to address some of the major themes that have emerged during the second reading debate and leave response to the detail of some of the matters that have been raised to the committee stage, which is a more appropriate place for that to be done.

Perhaps I will start with a comment on Hon Sue Ellery's mention of some differences between the second reading speech and the copy of the second reading speech that was included with the bill and distributed to members of the house. There were some differences, and they arose out of an unfortunate set of circumstances. The bill had progressed through the other place and then it was referred to this house by way of message. In the time that was available between its passage in the other place and its arriving here, I did not have the opportunity to fully go through the document setting out the second reading speech. Some of the phraseology that was used was not what I would have preferred and it was not as descriptive as I would have liked. I simply did not have the opportunity to go through the speech in advance of delivering it. Members will notice some editorial notes on the printed copy that did not find their way into my second reading speech because I picked those up as I was going along. I also changed a number of the references that would have been made by the Attorney General in the first person to ones referring to the government, and made a few other changes. It was also unfortunate that some of the references to clauses in the bill proved to be wrong, and those have been corrected. The thrust of material that is in the second reading speech is what is reflected in the document, with a few minor references to some clause numbers and the like.

Hon Linda Savage: The copy that I have does have notes in it, along with references to someone—the name of a person—and another mistake that I spoke to you about earlier, and you provided me with the correct section. To check whether the reference is correct, can you tell me the date of the second reading speech? I do not have it with me. If I request it, I can get the correct copy.

Hon MICHAEL MISCHIN: I delivered my second reading speech on the bill on Thursday, 22 March this year. If it helps, the reference to *Hansard* is pages 1148 to 1153. If a chamber officer is handy, they can photocopy my copy and provide it to the member. In short, no, it was not one of my best performances and I wish I had had the opportunity to check the detail. It is unfortunate that the printed copy that was distributed and made available for members does not accord precisely with that which was read out. Indeed, it does not accord in some detail with the comments that the Attorney General had made in the other place when introducing the bill. He managed to correct things for his purposes but that did not find its way to me. I hope that explains the difference between the printed version and what is, of course, the more important version, which is that which appears in *Hansard* and which will set out the policy of the bill for posterity.

I will turn to a number of the more general themes that have been raised. Hon Giz Watson indicated that the Greens (WA) are opposed to the bill. I have to say that it is disappointing that the Greens have taken that attitude. The reasons for opposing it seem to be that somehow this bill infringes a number of rights and freedoms. The member descended into the details of the bill, complaining about aspects of it and wanting to refer it to a committee so that the policy of the bill could be examined. It is unfortunate that the Greens do not seem to have taken a broader view of the legislation. One can accept that one has to be vigilant about matters of undue interference in people's liberties and the like, but the policy of the bill is pretty plain and it cannot be said by any stretch of the imagination that the policy of the bill is aimed at anything other than a very serious social ill, which is that of criminal organisations. They are people who band together for the purposes of promoting criminal activities for profit. The most obvious ones that spring to mind are outlaw motorcycle gangs that generally glory under names that I suppose indicate they are outside the law and are intended to strike fear into ordinary law-abiding citizens. They prey on those who are weaker than themselves. Essentially, they are school bullies who never grew out of being bullies and have found common cause with each other to get together to form gangs. They are involved in drug dealing and violence, both for its own sake and for enforcing their illegal activities. Rarely a week goes by without some serious disorder or offence being reported in which the alleged perpetrator has some connection with an outlaw motorcycle gang. Members might remember that only last week the Queensland police said that they would be taking serious action and were most concerned about a case in which an unfortunate woman, a bystander in a public place, happened to be in the line of fire when two opposing gang members shot her, presumably over some grudge or turf war or brawl to try to expand their market share. We had the incident several years ago at Sydney airport, where one of their brawls was effected in full view of people minding their own business in a public place. We have had the killing with a car bomb of retired

Detective Hancock and his friend. Members of outlaw motorcycle gangs have been the subject of violence in public places—being shot at, being beaten up and the like. Yet, rather than taking the view that one might expect that, yes, this is crime a little more than just street thuggery, but has been elevated into effectively organised crime by people who are banding together to gain strength from numbers, and looking for ways to break up these criminal associations, the Greens (WA) have taken the view that, no, there are a number of potential infringements of civil liberties and so they will oppose the bill. We have had nothing constructive as to how the bill might be improved and might protect civil liberties while effecting what is by, I think, any means and any judgement a worthy social and governmental policy, which is to break the power of these organisations and to make life as difficult as possible for them to do what they want to do.

In terms of civil liberties and reference to, for example, the United Nations conventions, Hon Giz Watson might recall, if she casts her mind back, that after the Second World War the United Nations declared the Nazi Party a criminal organisation, and members of every organ in it—the Schutzstaffel, or SS; the Gestapo; and even those who worked as functionaries in the Nazi Party, whether or not they happened to have killed anyone or committed any violence—as nevertheless being members of criminal organisations. The United Nations, even in its International Covenant on Civil and Political Rights, makes it quite plain that although there is a freedom of association, it is subject to certain limitations, and one of those limitations is that it not be for causes that are fundamentally inconsistent with a free and democratic society, or damaging to public order, morality and the like.

To go further, it is the United Nations that has an organised crime convention, albeit it deals with transnational issues. With reference to part of that, I think Hon Giz Watson may have asked—I may be wrong about it—whether two people could form an organisation, and I will come to that in more detail later. However, the convention—this is the United Nations convention, and the United Nations is so often raised as an authority by which we should judge standards of how we deal with issues in Western Australia—does contain a definition of "organized criminal group" in article 2, paragraph (a). That definition involves a group of three or more persons, which was not randomly formed, existing for a period of time, acting in concert with the aim of committing at least one crime punishable by at least four years' incarceration, and in order to obtain, directly or indirectly, financial or other material benefit. That is what the United Nations regards as a sufficient evil to form a basis for a transnational convention to deal with organised crime. Although it is dealing with specific areas of illegal activities such as people trafficking, drug trafficking and the like, the legislation being proposed by the government is entirely consistent with that philosophy of breaking up groups which are dedicated to criminal activity and which pursue it at present in our society and across state borders with a view to personal profit. They use strength in numbers and are bound by their own obscure rules, some of which involve the use of violence to enforce their will and involve codes of silence in order to frustrate authorities investigating the activities, those of their associates and the like. It is just a pity that the Greens could not have been a bit more constructive in supporting the policy of the bill instead of just raising certain issues.

Turning to whether any research had been done, I think I mentioned in the second reading speech at quite some length the sorts of organisations that are more readily associated with organised crime and criminal associations, and the numbers of people involved. I recently received—in fact, it was just today—an update on some of the numbers involved. I think police currently identify nine outlaw motorcycle gangs in the state with something like 330-odd members to the police's knowledge, whether of a permanent or nominee status.

The DEPUTY PRESIDENT (**Hon Col Holt**): Order, members. I just notice that Hon Giz Watson's microphone is on.

Hon Giz Watson: I did not ask for it to be on.

The DEPUTY PRESIDENT: All of your discussions are coming across. I am sorry about that.

Hon Ljiljanna Ravlich: That has saved a lot of embarrassment!

Hon MICHAEL MISCHIN: It depends on what she was talking about!

The scope of the bill is very refined and we will no doubt go into this in much greater detail in the Committee of the Whole stage. The starting point is the long title. I will not read all of it out, but in the first dot point it sets out the bill's intention. It states that the bill is to —

- provide for the making of declarations and control orders for the purpose of disrupting and restricting the activities of organisations involved in —

And I emphasise —

> serious criminal activity, their members and associates and certain other persons who engage in serious criminal activity, and the imposition of criminal sanctions on persons who recruit members for such organisations or finance or support them in other ways; …

I ask rhetorically: what could possibly be wrong with that purpose in this legislation?

Clause 4 of the bill, "Purposes of this Act", states that they are —

> (a) to disrupt and restrict the activities of organisations …

Basically what I just read out before —

> (b) to protect members of the public from violence associated with those organisations and other persons who engage in serious criminal activity.

I, along with a number of other members no doubt, have received emails from certain people opposing this legislation and much of them contain hysterical hyperbole about brutal assaults on fundamental freedoms and the like. Some float the idea that church groups, Rotary clubs, sporting clubs and environmental groups will fall victim to this legislation. The level of hysteria can be gauged by just simply looking at clause 4(2), which states quite specifically —

> Without derogating from subsection (1), it is not the intention of Parliament that the powers in this Act be used in a manner that would diminish the freedom of persons in this State to participate in advocacy, protest, dissent or industrial action.

Hon Giz Watson has said that there is no bill of rights and that although an intention is stated, it would have no legal effect, if I understand the argument. It is a basic principle of statutory interpretation that one looks at the purposes of the bill and the purposes of the bill are quite plainly stated. In any circumstances in which someone will have to make a decision or exercise a power or a discretion under the act, they would have to be informed by and governed by those purposes, particularly in the case of a designated authority. I will come to Hon Giz Watson's criticism about the fact that it might be a retired judge and how somehow after they retire judges cannot be trusted to make rational decisions. But a judge, and even a retired judge, understands matters of statutory interpretation and the appropriate exercise of judicial and other powers and discretions. Any decision that the designated authority would make in respect of a declaration; any decision that a court would make in respect of determining a control order, whether an interim one or a final one; and any decision a court would make in formulating conditions to be applied to people under control orders would be governed by, limited to and informed by the purposes of the act. The very idea that somehow the Commissioner of Police might decide that he does not like the local church group, so will instruct his officers to prepare affidavits and applications to a retired judge or a judge who is a designated authority to declare that a criminal organisation, seems farcical to me.

Hon Giz Watson interjected.

Hon MICHAEL MISCHIN: The idea that somehow the Corruption and Crime Commissioner would decide that the local darts club ought to be declared a criminal organisation and make an application to that effect would, I think, be a basis for having him certified and committed to an institution. On the argument that somehow powers can be abused, yes, that is right. Indeed, bills of rights are no guarantee that powers will not be abused. I think the Soviet Union had a terrific bill of rights in its constitution. I am sure a number of other countries do also. I suppose North Korea also has one. But what preserves our system and the moderation in our system is our own common sense and the fact that our body politic is functioning sensibly.

Hon Ed Dermer: The only guarantee is having a sackable minister at the end of the process. Therefore you need a competitive system. That is why it fails in North Korea and in the Soviet Union.

Hon MICHAEL MISCHIN: If this Parliament becomes corrupted to the point at which it would tolerate and acquiesce in absurdities such as the local darts club being rubbed out by being declared a criminal organisation, I think this society will have gone too far down the track. I do not think any rational public officer would contemplate that sort of stuff. With the number of checks and balances in place —

Hon Ed Dermer interjected.

Hon MICHAEL MISCHIN: It is not even a question of the minister. Many of these things are put aside and given to independent authorities to keep them out of the political sphere. For example, the Corruption and Crime Commissioner is an independent statutory authority. The Director of Public Prosecutions makes decisions in accordance with his statute and his prosecution policies, which are public. He cannot be directed by the Attorney General. The Commissioner of Police cannot be directed on operational matters. The whole point of that distancing is to put it at arm's length from the political influence that the government of the day can exercise.

Hon Ed Dermer: Ultimately, if the system fails, the government of the day pays a price at the election. That is where the political competitiveness brings in accountability.

Hon MICHAEL MISCHIN: Indeed it does. But it all depends on the nature of our body politic and that depends on an awful lot more than bills of rights.

Hon Ed Dermer: Having an honest Electoral Commission is a good start, which we are lucky to have.

Hon MICHAEL MISCHIN: That is right. We are lucky in very many respects, Hon Ed Dermer; I entirely agree. Our society runs the way it does because there is common sense and there is a sense of moderation about it rather than looking at the strict letter of the law. The point I am trying to make here is that this legislation—assuming that just about every public official involved in it does not go insane—is hedged by certain restraints and purposes with a view to preserving or striking a balance between individual freedoms, rights and liberties and a legitimate public policy, which is to protect members of the community against criminal organisations. The government believes that it has found that balance. If there is a problem, that can be dealt with. I am keen to hear about where the bill can be improved. However, at the present time it is unhelpful to simply oppose the bill on the basis that some vague freedom or right may be infringed. The government does have a responsibility to protect its citizenry.

"Criminal organisation" is defined as well. It is not just any collection of people committing any sort of crime. There are limits placed on that, and we will no doubt come to that during the consideration in detail stage. Just in outline, the legislation is framed in a way that it can be engaged only in circumstances when there is a real risk to public safety and order. A declaration can be made under clause 13(1) only when the designated authority is satisfied that members of an organisation are associating for the purpose of organising, financing or facilitating et cetera serious criminal activity and that the organisation poses a serious risk to public safety and order in the state.

"Serious criminal activity" is defined in clause 3. It involves either obtaining material benefits from conduct that constitutes a serious indictable offence or committing a serious violence offence. A "serious indictable offence" is an indictable offence punishable by five or more years' imprisonment. A "serious violence offence", if it involves harm or serious risk of harm to a person, is an offence punishable by 10 or more years' imprisonment. If that is too broad for Hon Giz Watson, I am keen to hear how that might be refined and limited, but that would seem to cover the sorts of evils that we are attempting to address and dispose of.

A number of differing views have been expressed regarding the designated authority. Hon Sue Ellery contended that the Corruption and Crime Commissioner should be the designated authority. Hon Giz Watson suggests it should be the full bench of the Supreme Court. Dealing with that aspect, I think the question was raised by Hon Giz Watson about the provisions in other states. Legislation similar to this bill before the house exists in or is before the Parliaments of Queensland, the Northern Territory, New South Wales and South Australia. In Queensland an application for a declaration is made to a single judge of the Supreme Court. The validity of those provisions is yet to be tested by the High Court of Australia.

Hon Sue Ellery: Is that sitting as a judge as opposed to persona designata?

Hon MICHAEL MISCHIN: I cannot say off the top of my head whether "designated authority" is for a designated person, but I understand it is sitting as the court. I will have clarification of that at the committee stage if members wish to raise it. But all indications are that it is sitting as a court. That may run into the sorts of problems that confounded the two previous cases on the mixture of roles that got to the High Court, but we will leave that aside. It has not been tested at this stage.

Provision for the making of a declaration by a Supreme Court judge acting as a persona designata is contained in the Northern Territory act and in bills that are before the New South Wales and South Australian Parliaments.

Hon Giz Watson: So they are amendments to the existing legislation in New South Wales and South Australia.

Hon MICHAEL MISCHIN: They have taken on board the rulings of the High Court and are attempting to —

Hon Giz Watson: So they are amending their —

Hon MICHAEL MISCHIN: Yes.

The New South Wales legislation considered by the High Court in the case of Wainohu provided for a designated judge of the Supreme Court of New South Wales to make the declaration in that state. The High Court did not accept the argument challenging the validity of that aspect of the New South Wales legislation, and that model has, effectively, been adopted in Western Australia, albeit we have added the requirement that the designated authority provide reasons for his or her decision.

Hon Sue Ellery has foreshadowed amendments to replace a judge or a retired judge with the Corruption and Crime Commissioner as a designated authority. A question arises as to whether or not that position is part of the executive arm of government; yes, the Corruption and Crime Commissioner is. But apart from that, one would think that it would give rise to a serious perception of, if not actual, conflict of interest, because the Corruption and Crime Commissioner or one of his or her staff can apply to the Corruption and Crime Commissioner for a declaration in respect of an association. If anything would give at least the perception of a conflict of interest, it would be that. We have given the Commissioner of Police and the Corruption and Crime Commissioner the power to make the applications, but have removed it from the sphere of law enforcement and given it to someone who is appointed, on the basis of his or her qualifications and judicial experience, as the designated authority in the confidence that such a person would bear in mind the matters of relevance and the like and have enough judicial training and experience to be able to weigh up the material before them and make a rational and fair decision on the evidence presented. We think we have a model that will withstand challenge, and we will oppose the foreshadowed amendments to substitute the Corruption and Crime Commissioner for a retired judge or judge as the designated authority.

As to the suggestion it ought be done in a court, that is one approach perhaps. But the making of a declaration, in the government's view, does not strictly involve the exercise of a judicial power. It does not involve the determination of the rights, liabilities and duties of either party; it is a precursor to action being taken by a court on the basis of a declaration having been made to make a control order against particular individuals, or as an element of the offence when particular individuals are charged with an offence under the act. The government's view is that the function of making a declaration is better performed by designated judges or retired judges rather than the Supreme Court itself, particularly as the Supreme Court may, in due course, have to hear appeals and challenges to the manner in which the designated authority has carried out his or her function.

Hon Giz Watson raised concerns about the application of the rules of evidence and the use of criminal intelligence information that is not provided to the respondent organisation or its members. The High Court recognised as a legitimate possibility that certain information may have to be kept confidential because it is of a sensitive nature that may endanger informants and the like. When an application for a control order is made in the Supreme Court, the ordinary procedures of that court, including the application of the rules of evidence, will apply. So far as making a declaration is concerned, a designated authority will not be bound by the rules of evidence, and the designated authority may inform himself or herself as he or she sees fit. There is nothing unusual in that. A number of groups already operate on that basis, including royal commissions, the State Administrative Tribunal and so on.

Part 5 of the bill makes provision for the use of criminal intelligence information. A couple of points can be made. Firstly, the validity of similar provisions has been upheld by the High Court. Secondly, those decisions show that the determination of whether material is in fact criminal intelligence information and what are reasonable steps to preserve its confidentiality is a matter for the designated authority or, in the case of a control order application, for the court. It is not a case of the police simply asserting that the information should be kept confidential. It is up to the designated authority or the court to examine that information and decide whether that claim for confidentiality is made out. In terms of procedural fairness, it can make its own directions on how much is revealed and in what manner it is revealed so that people can answer the case against them. Those are the sorts of exercises that occur from time to time in legal proceedings even now.

I have covered the matter of freedom of association. As Hon Giz Watson acknowledged, although article 22 of the International Covenant on Civil and Political Rights recognises the right of freedom of association, it is hedged with sensible qualifications. No society can tolerate people associating for the purposes of criminal activity or activity that would disrupt the fundamental peace and order of that society. Criminal organisation controls are not uncommon around the world, including in the United States, various nations in Europe and so on.

The discretion of the Supreme Court to make control orders is enlivened only once a declaration is made. A declaration can be made only once the designated authority is satisfied that the organisation is a criminal organisation and that it presents a risk to public safety and order. Even then the Supreme Court will make a control order only if it is satisfied that it is appropriate in the circumstances to do so, and that is set out in clause 57 of the bill. So there are a number of hurdles, as it were, that an applicant must clear in order to obtain not only the declaration, but also the control orders that will give effect to restraining people's ability to associate and the like.

As I have indicated, the powers of the bill must be exercised for the purposes of the bill, and clause 4 outlines the purposes of the bill.

The matter of juveniles has been raised. Clause 74 of the bill provides that the legislation will apply to persons between 16 and 18 years of age. Amendments to criminal property confiscation legislation likewise apply to

juvenile offenders. The new mandatory sentencing provisions do not apply to juvenile offenders; nor is the provision for a child to have a qualified right to bail taken away. Ordinary principles of criminal responsibility for offences introduced by the bill are those that apply to any other breach of the criminal law. The Attorney General in the other place in *Hansard* on page 431 made clear that the provisions are designed to avoid creating a structure that provides an incentive for criminal organisations to involve juveniles in their activities. In that context, I will read out some aspects of an article that appeared in Adelaide's *The Advertiser* of 20 February 2008. Although it applies to South Australia, it does have reference to other states. It is the sort of situation that was current in South Australia at the time and the sort of situation that we want to avoid in Western Australia if we can. The article is headed "Bikies directing youth gangs" and it states —

> **YOUTH street gangs are being ordered by bikies to commit increasingly violent crimes across metropolitan Adelaide, police have confirmed.**
>
> Special operations have been launched to target three gangs—Team Revolution, Middle East Boys and Rule the Streets—active in the northern and southern suburbs and central business district.
>
> Police intelligence indicates the gangs have formed close links with the Hells Angels, Finks and Rebels, which manufacture drugs sold by their members, who range in age from their early teens to their 30s.
>
> While other youth gangs are predominantly involved in street offences, Team Revolution, Middle East Boys and Rule the Streets are suspected of committing violent home invasions, armed hold-ups and ram-raids.
>
> There is widespread speculation within the criminal legal fraternity that the shooting of a Kadina man two weeks ago —

That was in 2008 —

> at Paskeville was committed by "noms", or young men, wanting to join the Gypsy Jokers.
>
> Other youths, such as the repeat juvenile Aboriginal offenders who comprise the so-called Gang of 49, also are being sent by relatives, including those in prison, to rob sports stores and bottle shops.
>
> Designer sports clothing is then being supplied to the adults, along with alcohol and cigarettes, which are exchanged for drugs such as cannabis, ecstasy and amphetamine.
>
> Youths also are being instructed by adults to rob pharmacies for products containing pseudoephydrine, which is used to manufacture methamphetamine.
>
> …
>
> Crime Gangs Task Force officer-in-charge Detective Superintendent Des Bray yesterday said it was important to distinguish between youth gangs involved in serious crime and other groups who largely met through social links.
>
> This included "gangs" such as Elite Hallett Cove, —

I do not suppose it is any relation to the honourable member —

> which was involved in a street brawl with police last weekend after its members gatecrashed a party at Seacliff.
>
> Members of Elite Hallett Cove yesterday told *The Advertiser* they were predominantly Hallett Cove residents who had formed a gang to defend the suburb from attacks by rival youths.
>
> One Year 12 student said people can join the gang if "they're hard enough, can prove themselves and have a reputation".
>
> "It's been going for ages," he said.
>
> "If a mate gets in trouble just for living in Hallett Cove, so Hallett Cove people start to back up each other and it goes from there …
>
> Another member, 14, said he joined the gang after moving to Adelaide's southern suburbs about four years ago.
>
> "You'll always have back-up and it's the thrill of getting in trouble with the cops," he said.
>
> "People have been bottled, put in hospital, it's mainly at parties and on the street."

"Bottled" I presume means being struck in the face or head with a bottle.

Therefore, we can see the potential for gangs and criminal associations that are subject to a declaration using juveniles who are already on the fringes of, or are involved in, criminality as their agents and their proxies, so

some means of controlling their activities, if necessary by means of a control order, is necessary. It has been limited in the bill to juveniles aged between 16 and 18.

Another point raised by Hon Giz Watson was about clause 17 of the bill, which she said is inconsistent with the presumption of innocence. I am not quite sure that I understand the argument. The point of clause 17 is to ensure that an organisation subject to a declaration does not simply avoid the declaration by changing its name or by having some of its members changed to another organisation. If the character of the organisation is the same, the declaration will apply to it. How does one determine whether that is the case? That will be a matter of fact for the tribunal that makes a control order in due course, which will be the Supreme Court, looking at the evidence to see whether the character of the organisation has changed, whether it is essentially the same one over which a declaration is being made, or a different one requiring separate proceedings.

I refer to another matter that Hon Sue Ellery raised about the parliamentary commissioner's review being provided to the minister for tabling rather than directly tabled in the house. The relevant clause provides that the minister must table the report that is provided to the minister within 12 sitting days of Parliament. There are sensible practical considerations involved here. The parliamentary commissioner would be reporting activities over a period of time. It may be that the parliamentary commissioner's report contains sensitive information that the minister quite rightly might wish to raise with the parliamentary commissioner, not wanting to change the report or its tone but simply to protect what may be confidentiality. In any event, it is quite legitimate for the minister to see the report on one of the pieces of legislation under his or her responsibility in order to address problems that may be identified with it before it necessarily gets to Parliament.

Hon Sue Ellery: Twelve sitting days is different from 12 working days and it is different from 12 ordinary days. If the minister receives that report in December, and the house rises and we do not come back until March, 12 sitting days is four sitting weeks. That four sitting weeks can actually be spread over two months, maybe even three months, so effectively Parliament might get the report, theoretically, five or six months after it has been tabled. I do not think that is reasonable.

Hon MICHAEL MISCHIN: If the member wishes to propose an amendment to that, it will be considered. At the moment there is no proposed amendment before us. It was something that was acceptable to the other place. I do not recall for the moment whether it was the subject of any significant debate.

Hon Sue Ellery: No, I do not think it was. I read it and raised it with the officers when I was briefed. It seems to me, with the way the sitting patterns are now, that it could be nearly six months.

Hon MICHAEL MISCHIN: Perhaps we can consider that during Committee of the Whole. The idea of it going to the minister first is, I think, what the honourable member's complaint was. I would simply suggest that that is quite a legitimate course. It is not as though it is not going to get to Parliament in due course and be considered and the subject of debate. If something is raised by the parliamentary commissioner that is a legitimate and fixable problem, the minister quite properly has the opportunity to correct that in the interim period and defuse the problem. I take the honourable member's point about the length —

Hon Sue Ellery: Politically defuse the problem.

Hon MICHAEL MISCHIN: In practical terms.

Hon Giz Watson mentioned that grounds for an application for a declaration do not need to be advertised—no; that is right. The content of the advertisement will identify the application being made against a particular organisation. It will contain a brief explanation as to the effect of it. Those who are affected by it will have the opportunity to respond to it. It is not usual to set out in detail anyway, in terms of advertisements and in publications, the grounds for applications of this character.

There was something about a retired judge not having a registrar to assist him or her; I am not quite sure I understand that argument and the effects it might have on the ability of a designated authority to do his or her job, but a registrar does not assist a judge in court in any case; a registrar is simply the agent for the receipt and filing of documents and so forth. The registrar will receive applications, notices of intention to object, correspondence and the like, and pass it on to the designated authority. I am not sure how the presence or absence of a registrar assists the designated authority in carrying out their function.

In respect of the idea of using retired judges, retired judges have an immense amount of experience, and we have had quite a number of retired judges who have, over the years, given sterling service in their retirement, including presiding over royal commissions, some of considerable length and complexity. Many retired judges act as judges to fulfil needs in the District Court, the Supreme Court, the Family Court and even the Magistrates Court. They can perform functions such as being the commissioner for the Corruption and Crime Commission or

being a parliamentary inspector; so why they cannot be trusted and be thought to be competent enough to perform the task of being a designated authority defeats me.

I have already touched on what organised crime is and what is involved in being an organisation; otherwise, I think most of the matters that were raised relate to specific provisions of the bill. It is probably more sensible for those to be addressed when we get to specific clauses.

On that note, I commend the bill to the house and move that the bill be now read a second time.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Jon Ford) in the chair; Hon Michael Mischin (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon SALLY TALBOT: I have some serious questions that I want to raise on this bill, and I should perhaps explain to members, and particularly to the parliamentary secretary, why I have chosen to make my remarks during the clause 1 debate rather than by participating in the second reading debate. I, as with other members of the opposition, have no objection to the stated policy of this bill, and it is certainly not my intent in raising these questions to delay the passage of this bill in any way. So I thought it was probably more appropriate to raise these concerns during the clause 1 debate rather than take up time during the second reading debate.

When I say that the opposition supports the policy of the bill, I am clearly referring to the purpose of the bill as set out in clause 4. Nobody on this side of the chamber believes that it is not appropriate to take actions to—I paraphrase the words of the bill—disrupt and restrict the activities of organisations involved in serious criminal activity, their members and associates, so as to reduce their capacity to carry out activities that may facilitate serious criminal activity.

While we stay focused on that object, I do not think there will be any disagreement in this chamber. However, as has become apparent during the second reading debate, this bill is full of complexities. That is not a bad thing. I have said many times in this place that we are here to deal with complexities—that is what we do; and when we do it well, it has a profound effect on the lives of ordinary people in this state. What we are dealing with here is organised crime and ways to disrupt and prevent and terminate the occurrence of organised crime.

However, the method that we have chosen to adopt in pursuing this bill is the criminalisation of association. We are criminalising association. One does not have to be a very experienced student of history to know that when we start criminalising association in this state and in this country, and all over the world, we often run into serious difficulties. We start off by criminalising association in relation to criminal organisations, and too often we end up involving organised labour in those measures that are supposed to relate to criminal organisations, and too often we end up involving political organisations in that criminalisation of association. I am not suggesting that is the intent of the government. I am merely pointing out that historically the fact is that when we start to criminalise association, we often end up involving people who were not the intended recipients or the intended subjects of things like control orders when the measures were put in place. In this state, we need look no further than a couple of decades ago when we had the notorious section 54B. Certainly, if we look around the world, we can find very troubling examples of the way in which these kinds of measures can get out of hand.

So in raising these questions about this bill, what I am doing is giving the parliamentary secretary, and therefore the government, the opportunity to put on the record their intentions with regard to certain circumstances. I am asking about the checks and balances that the government believes are in place to prevent the very strong and widespread powers that are contained in this bill from being abused. I am not talking about the way that these measures will stop criminal activity; I am talking about the way that these measures might be abused to stop activity that is not criminal or certainly not the kind of criminal activity that the government is presumably envisaging being caught up in the provisions of this bill.

During the second reading debate the parliamentary secretary said that to oppose a bill because it may be abused is not helpful, or something along those lines; I did not write it down verbatim. I think the parliamentary secretary does the whole process of debate around these kinds of very serious topics some disservice when he is so apparently dismissive of the kinds of concerns that people have been raising. I particularly want to mark the contributions to the debate that have been made so far in this state by Search For Your Rights, particularly by Pearl Lim, who has done a very good job of setting out the concerns of a significant section of this community about this type of legislation. I also refer to the contributions made by some union members, particularly from

the Australian Manufacturing Workers' Union, the Maritime Workers' Union of WA and the Construction, Forestry, Mining and Energy Union, about how anti-association laws may impact on their activities in the future.

The government knows that this bill will be challenged. When the Attorney General delivered his second reading speech in the other place, or it may have been during the debate, he said that he knows that this bill will be litigated. I think it is very important that we get these points on the record. If the parliamentary secretary or you, Mr Deputy Chair, would prefer me to pursue these points at specific moments during the committee stage, I am happy to do that, but it is not clear to me where any of these points fit. I will outline my concerns.

The DEPUTY CHAIR (Hon Jon Ford): Perhaps you should ask one question at a time, so we can have a question and an answer.

Hon SALLY TALBOT: The first one that I want to raise relates to a situation in the future in which an organisation related to the labour movement—a trade union—becomes designated as a criminal organisation because of certain activities under the terms of this bill. I would like to hear the parliamentary secretary's comments about what measures this bill contains to prevent a trade union being designated a criminal organisation.

Hon MICHAEL MISCHIN: I thought that I had already covered that by pointing out, firstly, the scope of the operation of the bill as set out by its purposes in the long title and, more specifically, by the parameters and the purposes of the bill in clause 4, including the qualification and limitations on its application as an expression of the will of Parliament as to how it ought to be interpreted in clause 4(2). Clause 13 gives the discretion to the designated authority to make an order if satisfied of certain things. I will not go into the detail of that because that can be dealt with when we get to clause 13. In substance, the designated authority has to be satisfied that the respondent is an organisation. We have had some questioning about whether two people or more is an organisation—that will be a matter of fact for the designated authority to determine on the material before him or her—and also whether the members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity.

"Serious criminal activity" is defined in clause 3 as any of the following —

> (a) obtaining material benefits from conduct that constitutes a serious indictable offence;

I have already indicated that a serious indictable offence is an offence that carries a term of more than five years' imprisonment. The definition of "serious criminal activity" continues —

> (b) obtaining material benefits from conduct engaged in outside this State (including outside Australia) that, if it occurred in this State, would constitute a serious indictable offence;
>
> (c) committing a serious violence offence;

That is an offence in which harm is caused or threatened to someone and carries a term of 10 or more years' imprisonment; and, finally —

> (d) engaging in conduct outside this State (including outside Australia) that, if it occurred in this State, would constitute a serious violence offence;

Also, the designated authority has to be satisfied —

Hon Sally Talbot: Sorry, which clause was that?

Hon MICHAEL MISCHIN: Clause 3 on page 7 of the bill defines "serious criminal activity" and a "serious indictable offence". The definition of "serious violence offence" is on page 8.

The designated authority also has to be satisfied that the organisation represents a risk to public safety and order in this state. There is a very high threshold, the government would say, before a declaration can be made in respect of an organisation.

Hon Sally Talbot: And that is under clause 13?

Hon MICHAEL MISCHIN: Yes. The manner in which it is dealt with is set out in clause 9. Under clause 10(3), people who are directly affected, whether or not adversely, by the outcome of an application have the opportunity to be present at a hearing and to make submissions. Under clause 14, the reasons have to be given for the decision for making or not making a declaration.

One of the mistakes that can be made, with respect, is to look at labels to see whether an organisation is a labour organisation or organised labour, a sporting club, a motorcycle club, a church group or a rotary club, as I think some of the objectors to this legislation have suggested. The label that is put on an organisation does not necessarily govern its character. It may very well be—I do not deny it—that something that portrays itself as an organised labour union and calls itself that either is in fact a front for, or is, a criminal association. That is not

unknown. In the United States the mafia used to run unions in a particular way. The intention, however, which is stated in the policy of the bill under clause 4, is that a designated authority, when considering whether or not to make a declaration exercising his or her discretion based on their knowledge and experience as a judicial officer or former judicial officer, will not make a declaration in respect of an organisation that does not fulfil the minimum criteria but is an organisation that is aimed simply at labour organisations or some other harmless organisation. A very high threshold must be met.

Hon SALLY TALBOT: I thank the parliamentary secretary. I will just work through those comments. The member raised the definition of "organisation". The declared group has to be an organisation.

Hon Michael Mischin: The respondent to an application for a declaration has to be an organisation. You cannot make a declaration that it is a criminal organisation without it being an organisation first and foremost.

Hon SALLY TALBOT: So a trade union would come under that definition.

Hon Michael Mischin: Arguably, yes.

Hon SALLY TALBOT: Arguably, yes, or yes?

Hon Michael Mischin: If it is organised, then it is an organisation, yes.

Hon SALLY TALBOT: That leads me directly to my second question, which relates to the second part of the parliamentary secretary's answer, which was about serious criminal activity. There have been instances—I will not go into specific details, because if people are interested, we can talk about it later—of people employed by trade unions who might be union officials or shop stewards engaging in certain behaviour. Charges have been laid and people have been found guilty of criminal behaviour. I have two questions. The first is: what responsibility would union leaders have for the behaviour, which might be serious criminal activity, on behalf of their employees? I have just looked at clause 3, on page 8, in which that definition that the parliamentary secretary referred to appears. It states —

> ***serious violence offence*** means an offence for which the penalty specified by a written law is or includes imprisonment for 10 years or more or life …

Would that render the organisation liable to have an application made in relation to it being a criminal organisation?

Hon MICHAEL MISCHIN: No. If the member reads clause 13(1)(b), she will see that it states that not only must the respondent not be an organisation, but also that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity. It is not that serious criminal activity of one or more of the members is an incident or a coincidence with their being members of the organisation; the purpose of their association is to effect serious criminal activity. Also, clause 13(3) states —

> For the purposes of subsection (1)(b), the designated authority may be satisfied that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity —
>
> (a) whether or not all the members associate for that purpose or only some of the members, but if the designated authority is satisfied that only some of the members associate for that purpose, the designated authority must be satisfied that those members constitute a significant group within the organisation, either in terms of their numbers or in terms of their capacity to influence the organisation or its members;

[Quorum formed.]

Hon MICHAEL MISCHIN: The clause continues —

> (b) whether or not members associate for the purpose of organising, planning, facilitating, supporting or engaging in the same serious criminal activities or different ones;
>
> (c) whether or not the members also associate for other purposes.

Therefore, it would be a question of fact whether an organisation of say 1 000 people and the numbers of those people who choose to associate and use that organisation for the purposes of serious criminal activity form a minority or a majority —

The DEPUTY CHAIR: Order, members. You have gone quiet; I thought you would be asking me why!

Hon MICHAEL MISCHIN: — and the amount of influence that that group might have with what may be legitimate purposes of the organisation. Again, it is a question of fact and a question of degree, but simply because a couple of the leading members of the association decide to use or misuse it for those purposes does not of itself make a criminal organisation for the purposes of the bill.

Point of Order

Hon GIZ WATSON: I do not wish to call into question this debate, but it seems to me that debate on the first clause does not involve going into and responding clause by clause, because we will have to do this all again because I am not asking my questions on particular matters. I took the opportunity to refresh myself on earlier rulings about the purpose of the debate on the first clause. Questions can be raised about various clauses, but if we start to engage in the detailed answers, I think it will get a little problematic, because I wonder whether I should say something now or wait until the actual clause in question comes up. Perhaps I could have some guidance from the Deputy Chair.

The DEPUTY CHAIR (**Hon Jon Ford**): I think it is really up to the member's discretion in this regard. If I recall, in response to Hon Sally Talbot's first question, the parliamentary secretary referred to three or four different clauses to answer that one question, which seems to be what debate on clause 1 is all about if it is the will of the house. That does not preclude a member from asking detailed questions when debate gets to those particular clauses. It seems to me that they can be asked now and if they are asked at clause 3 or 4 and other clauses still have to be referred to, there is still the same issue the member is talking about. Quite often clause 1 debates go for days and the debate falls away fairly rapidly after that. Therefore, it is the will of the house. Clear as mud?

Committee Resumed

Hon SALLY TALBOT: There are certainly things we can take up there in relation to the specific clauses. I will just phrase the third question and then we can come back to the details when we get to the individual clauses. There is reference in the bill to control orders determining what employment a person can have. I am not sure whether that is the exact phrase, but I gather that people can be prohibited from taking up certain occupations. I will just put a hypothetical scenario to the parliamentary secretary and again, I suspect that the answer will come back in terms of specific clauses. If there are two or three people who were subject to control orders, they may well then be employed on something like construction sites or some kind of workplace around the state where they end up working together on the same worksite. Is it the case that a person subject to a control order could still work alongside others with whom he or she was prohibited from associating—prohibited from having any sort of communication with in terms of what is specified in various clauses in the bill—and that they can do that legitimately while they are, I will just use a shorthand phrase here, on the boss's time? I will perhaps let the parliamentary secretary answer that first.

Hon MICHAEL MISCHIN: The relevant clauses are 58 and 59. Essentially, it depends on the nature of the order that is framed and any exemptions made to the order. Those will be determined by the Supreme Court not only hearing evidence from the applicant for the control order, but also giving the respondent to the control order the opportunity to be heard and explain their situation. They would be informed also by the objectives of the bill, which is to affect the operation of the declared organisation; so, "it would depend", is the answer.

Hon SALLY TALBOT: With respect, parliamentary secretary, I do not see how they can be the relevant clauses because if the control order is determined by the court, how could the court possibly know who else is going to be on a particular worksite who might also be subject to a control order? It would be an impossible calculation to make. Even if the judge could make the calculation at any designated point in time, he could not then assume that determination would be the same tomorrow, let alone in a week, a month or a year.

Hon MICHAEL MISCHIN: There is not a one-size-fits-all answer. It is not unknown for orders made by any court to sometimes be varied; they can be revoked and adjusted to suit particular circumstances. It happens with bail orders and with orders made by the courts when they are sentencing people to community service and the like. There is not a simple answer to say no, it cannot happen or it can happen. Sometimes circumstances change, which is why courts have discretions and powers to change the effect of orders they have made that may have seemed like a good idea at the time, but they may need to be reviewed with changing circumstances or additional information.

But the member is right; those are not the only provisions. Section 77 and onwards deal with non-standard conditions and standard conditions that apply to control orders. At the end of the day, the Supreme Court, which is considering an application for a control order, will not only apply standard orders but also address any additional orders that are sought and calculated to achieve the objectives under the act.

Progress reported and leave granted to sit again, pursuant to standing orders.