CRIMINAL LAW (UNLAWFUL CONSORTING AND PROHIBITED INSIGNIA) BILL 2021

Consideration in Detail

Resumed from 10 November.

Clause 24: Display of insignia of identified organisation in public place —

Debate was interrupted after the clause had been partly considered.

Mr R.S. LOVE: We are considering the very interesting part of this legislation whereby the Attorney General is seeking to restrict the display of tattoos and other logos on persons. It is quite a novel approach to take this path. I am not sure that it is done anywhere else, where people have to cover a tattoo et cetera. Perhaps the Attorney General can explain whether he believes this clause will survive challenge because it might not be considered reasonable to stop people from expressing themselves et cetera. If the Attorney General can talk generally about that, I will then ask him a couple of questions.

Mr J.R. QUIGLEY: I wish to make several points. Firstly, prior to the election, the Western Australia Police Force—specifically, the Commissioner of Police and the deputy commissioner—publicly requested laws that outlaw patches, and sought the views of parties going into the election. They made it very clear. These laws against insignia are the government's direct response to a request from the Western Australia Police Force.

Secondly, a couple of other states ban colour patches. No other state bans tattoos, but we are not talking about any tattoo; we are talking about a tattoo that is an insignia or body marking that "comprises or includes insignia of an identified organisation and is left uncovered in a manner that insignia of an identified organisation would be visible to another person in a public place". That includes, as set out in the definitions, the numeral "1" followed by the per centum mark, be it in a diamond or not.

As to the member's question of whether it will survive challenge, before being presented to the Parliament, this law was run by the Solicitor-General to look for any obvious areas of challenge. These insignia are tied back to the named organisations. It is not an impediment on their implied freedom of discussion or discourse because it is reasonable and proportionate, for the reasons I have given. The government is confident, on advice, that it will survive challenge.

Mr R.S. LOVE: Most of the discussion we have had up until now has applied to persons who might be subject to orders et cetera because of their behaviour in the past. This matter is not related to the behaviour of a person in the past, whether a relevant person is defined by the bill; it is any person who is displaying insignia that is deemed to represent one of the organisations named in the legislation. Potentially, other organisations may be named or prescribed in the legislation itself. It becomes a little interesting when we consider that although we have a list of organisations, there is not an exhaustive list of the insignia. There will be some level of interpretation or change over time of what represents a particular outlaw motorcycle gang now and what it might represent in the future.

Given that people getting tattoos is quite a serious undertaking—it is pretty much a lifetime thing to have a tattoo—what potential is there for people to be innocently caught up in this? They do not have to be a relevant person or anyone in particular; they could be Joe Bloggs walking down the street with the same tattoo on their forearm that they have had since they were in the Navy in 1973 or whatever and they suddenly find themselves caught up in a dispute and are asked to cover up. Will there be any level of discretion if it is clear that a person is totally innocent of any association with a motorcycle gang et cetera? The Attorney General indicated that he is onto that, so I will let him go.

Mr J.R. QUIGLEY: The member raised a very important point, and I thank him for doing so. As I said, this matter has been looked at closely by the Solicitor-General, who tried to cover all those scenarios. The member may find reference to that issue a little further on in the legislation under clause 26, "Defences to charge of displaying insignia of identified organisation in public place". Subclause (3) addresses the point that the member raised. It states —

> It is a defence to a charge of an offence under section 25(2) —

That is the instant section we are now examining —

> to prove that the accused did not know that the accused was displaying insignia of an identified organisation.

The defence to the member's concern is set out in the statute.

Mr R.S. LOVE: Clause 24(1)(b)(ii) states —

> is left uncovered in a manner that insignia of an identified organisation would be visible to another person in the public place.

Is there a continuum? The Attorney General mentioned that people may have to wear foundation and make-up et cetera to cover their insignia. Is there a point when the make-up wears off and they are suddenly captured by the legislation? How does this provision operate in reality? If a person already has the insignia, the legislation will require

them to cover it. If the rain comes down and, inadvertently, their cover slips or their make-up comes off, will they automatically be caught up in an offence?

Mr J.R. QUIGLEY: Yes.

Clause put and passed.

Clause 25: Offence of displaying insignia of identified organisation in public place —

Mr R.S. LOVE: I want to ask the Attorney General about the exemption for persons under the age of 18 years and why that has been put in the bill. Clause 25(3) states —

> Subsection (2) does not apply to an individual who has not reached 18 years of age.

I understand that there is a legal age whereby people can have tattoos performed legally; is that correct? At what age is that? Why, if it is not 18 years of age, would that be different from the age in the legislation?

Mr J.R. QUIGLEY: To be frank, I am not aware of any rule that says that there is an age under which a person cannot have a tattoo. I am aware, of course, of the way in which the Department of Communities and the courts look at things—that by the time a child gets to 14 years of age, they are starting to exhibit their own free will. But this legislation is designed to disrupt organised crime. We are not in the business of criminalising young children or any child who might wear a T-shirt that has "Hells Angels" on it. They are clearly not a member of the Hells Angels. We do not want children convicted of this. The police asked us to introduce this law to tell us that the people they are aiming this at are the adult members of outlaw motorcycle gangs and those several organised crime gangs named in the act.

Mr R.S. LOVE: This may come in the next clause about defence. I know we do not like hypotheticals in this place, but supposing a 17-year-old has a Hells Angels tattoo or some other tattoo on their body somewhere. They will not be caught by the offence when they have it applied to their body today, but on the day that they turn 18, they will be caught by the offence. Is that an intended or unintended consequence of this legislation; and, if it is unintended, will they be given licence to display that for the rest of their life without consequence?

Mr J.R. QUIGLEY: No, no, no. It is to apply only to someone, or an accused person, who displays the insignia and has attained the age of 18 years. If a child under the age of 18 years has body markings or is wearing apparel with insignia, there will be no offence. If they have the tattoo placed on their body, are displaying an insignia and are under the age of 18 years, there will be no offence. But on their eighteenth birthday, they would be ill-advised to go into public without covering up that tattoo because it will be an offence even though the body marking was made before their eighteenth birthday.

Mr R.S. LOVE: I want to ask about the sections that relate to bodies corporate in this provision. Subclauses (4) to (6) reference a body corporate and that a body corporate could be subject to an offence. How could a body corporate be subject to this particular offence? Will it be in the sense that they may be the owner of the premises of the organisation? Will it potentially be that the organisation itself is using a particular logo that is of concern or is it simply that it is displayed on the premises?

Mr J.R. QUIGLEY: No. In the organised crime world, it is not uncommon for organised criminals to place their assets in bodies corporate. I am not going to name the organisations now, but we do know that many outlaw motorcycle gangs have one or more bodies corporate attached to them. To give the member an example, if the clubhouse—that is what they call them; I call them dens of iniquity—is in the name of a body corporate, and there are markings on the premises of "Coffin Cheaters", "Hells Angels" or whatever, the body corporate will be liable to a fine of up to $60 000 if the elements of the offence can be proved. We know that these organisations do have premises, and if they do display the names of outlaw motorcycle gangs on these premises, the body corporate will be liable for up to a $60 000 fine.

Clause put and passed.

Clause 26: Defences to charge of displaying insignia of identified organisation in public place —

Mr R.S. LOVE: We recently spoke about clause 26 in terms of it being the defence provision. There are lists of various things—defences to the charge of displaying insignia of identified organisation in a public place. I am talking here about clause 26(1), which states —

> It is a defence to a charge of an offence under section 25(2) to prove that the display was —
>
> …
>
> (iii) the performance of a legal practitioner's functions or the receipt of legal advice;

I am wondering how that would occur. Would it simply be in some sort of court document or process? I am wondering why there is a need to make a particular exemption for performance of a legal practitioner's function or the receipt of that advice.

Mr J.R. QUIGLEY: The insignia, be it on apparel or in photographs, might be delivered to a lawyer as part of an evidential brief. They may display that in a courtroom or other place, or in public; but if it is part of their legal duties, it will be exempt from being an offence.

Mr R.S. LOVE: Clause 26(1)(b) talks about "in the circumstances, reasonable for that purpose." I am just wondering whether that is a defined legal term. Is there an existing legal term that reflects that?

Mr J.R. QUIGLEY: No, because it is not a defined term; it is used in law regularly. Section 24 of the Criminal Code—I am going off the top of my head as to the section number—is honest and reasonable, but a mistaken belief in fact. If I point a gun at the member and discharge it and it kills him, I might have a defence.

A classic case is what occurred in that *Rust* movie in America—the member knows the one I am talking about. Someone said that there was a cold gun. The actor took it and discharged the gun and someone died. He might say, "I honestly believed the gun was empty," and it was reasonable in all the circumstances to hold that belief. Section 24 of the Criminal Code embraces that defence. But, at the end of day, there is both a subjective and an objective test: Did the person actually honestly believe something? Was it a mistaken fact subjectively, but objectively, looked at by the reasonable person, was that a reasonable belief to hold? If the actor took the gun, was not told anything, believed it to be empty and discharged it, was it reasonable for him to hold the belief without either checking the gun or being told it was empty? Probably it is not. Therefore, "reasonableness" is not defined as such; an objective test will be applied by the court.

Mr R.S. LOVE: Clause 26(3), which I think the Attorney General outlined before, states —

> It is a defence to a charge of an offence under section 25(2) to prove that the accused did not know that the accused was displaying insignia of an identified organisation.

If someone has a physical marking on their body, a tattoo that is difficult to remove, on learning that there is a prohibition against the display of this insignia, even though the person quite innocently had it applied to their body or may have been wearing it for years, will there be a duty on that person to either cover it up or remove it, or will their innocence provide for it to be a defence for time immemorial?

Mr J.R. QUIGLEY: Once a person becomes aware that the covering of their tattoo insignia has faded—the foundation cream has rubbed off, come off in the surf or whatever—and they know it is there, under this clause, there is what we call a reverse onus of proof. Someone has to be proven guilty beyond a reasonable doubt and the prosecution will always carry that burden. However, in law, there are circumstances in which the defence creates a reverse onus. This is one of those situations in which the reverse onus will apply and the accused will have to prove that they did not know that they were displaying the insignia or identification of a prohibited organisation. They carry the burden of proving it.

However, at law, in a criminal trial, when a defendant carries the burden of proof, it is to the lesser standard. The person who is charged will have to satisfy the court on the balance of probabilities, not beyond reasonable doubt, that he did not know at that point that he was displaying insignia. That would usually, in nearly every circumstance, require the accused to go into evidence at trial to discharge the burden. When I say "go into evidence at trial", I mean go into the witness box, swear, "I didn't know I was displaying an insignia", in a manner that convinces the magistrate that on the balance of probabilities he is innocent; he did not know he was displaying it.

Mr R.S. LOVE: Thank you for that. It was not quite what I was getting at. What if the person genuinely had no idea that their tattoo was prohibited, bearing in mind there is not an exhaustive list of prohibited tattoos; there are only those that are thought to be related to a particular organisation and although the organisations are defined, the insignia are not? There could well be cases when people do not know. Once it has been brought to their attention that the insignia is prohibited, even though they might have it on their arm, their face or wherever, as a tattoo, will they then be required to cover it, even though when they first got it done, it was not necessarily done due to associating with a particular group? Will they fall under the same requirement to cover up or to remove the tattoo?

Mr J.R. QUIGLEY: Yes, that is correct. Just for the *Hansard*, because the question went on for a little while—I do not want to criticise the question at all—as I understood the question, a person might have got a tattoo some time ago. This legislation —

Mr R.S. Love: I had one go and had another because you didn't get the nub of it.

Mr J.R. QUIGLEY: Sorry?

Mr R.S. Love: I asked it twice.

Mr J.R. QUIGLEY: That is okay; I am in no way critical. I did not want my "yes" to be less than clear, as the member's question was. The answer is yes. If a person had tattoo markings on their body prior to the commencement

of this legislation, there will be no offence. Even though the tattoo was applied prior to commencement, it will become an offence to display it after commencement of this bill. I hope that clarifies it.

Mr R.S. Love: Yes.

Clause put and passed.

Clause 27: Issue of insignia removal notice —

Mr R.S. LOVE: This is about the removal notice that people will be given. It relates only to a relevant place, not to a person's body. We are not expecting someone to take a potato peeler to someone's arm —

Mr J.R. Quigley: To cut off their arm!

Mr R.S. LOVE: No. We are talking about the removal of an insignia from a shop, a house or a shed or whatever is being displayed. The Attorney General mentioned that he felt this clause on the insignia is rigorous and would not fall foul of a legal challenge. Can the Attorney General outline whether these types of removal notices are available in other jurisdictions and whether they have stood up to challenge?

Mr J.R. QUIGLEY: No; I am not aware of another jurisdiction having this provision. As I said in my second reading speech, these will be the toughest and most far-reaching provisions in the nation. However, the structure of this, member, is taken from the Corruption, Crime and Misconduct Act, which has within it anti-fortification provisions under which people can be served with a notice to take down fortifications—remove their reinforced gates et cetera. The ability for the authorities to issue anti-fortification notices under the CCM act has not ever been struck down by the courts. The structure of this is the same as that but rather than it be a notice to take down a reinforced gate, it is to take down the insignia.

Clause put and passed.

Clauses 28 to 33 put and passed.

Clause 34: Police powers relating to insignia removal notice —

Mr R.S. LOVE: Clause 34 refers to police powers relating to insignia removal notice. Clause 34(5) states —

> The Commissioner of Police may recover from the owner of the relevant place costs incurred by the Commissioner under this section in a court of competent jurisdiction as a debt due to the State.

I am just wondering what sort of costs that would cover. Is it all the legal costs? Is it the physical cost of going out and dealing with insignia at a relevant place? What does that entail and how would that be pursued?

Mr J.R. QUIGLEY: For example, if there is a banner sign above club premises saying "XYZ motorcycle club", the police would not get up a ladder and take it down themselves; they would get a contractor with a cherry picker to get up there, unscrew the sign and take it down.

Mr R.S. LOVE: It is the physical cost of the removal, not the legal cost?

Mr J.R. QUIGLEY: No, the cost of the removal becomes a debt recoverable. It is exactly the same way as the police can recover as a debt the cost of removing an anti-fortification under the Corruption, Crime and Misconduct Act. If they do not remove the gate, the police can call in a contractor to remove the gate. This refers to the costs incurred in physically removing the sign.

Clause put and passed.

Clause 35: No compensation under this Part —

Mr R.S. LOVE: Clause 35, "No compensation under this Part", states —

> (1) The provisions of this Part do not entitle any person to compensation.
>
> (2) Nothing in subsection (1) prevents claims in tort in relation to a place other than those in respect of which an insignia removal notice is given.

Again, I must point out my lack of legal training. Clause 35(2) seems to contradict clause 35(1). Clause 35(2) suggests that there might be some claim in tort in relation to a place —

Mr J.R. Quigley: Other than.

Mr R.S. LOVE: — other than those in respect of which an insignia removal notice is given. Perhaps the Attorney General could explain what the operation of this clause actually means, and whether he is aware of any other legislation that contains a clause about compensation that is written in this way, whereby it refers to tort, and how the government or the court would resolve a dispute on that?

Mr J.R. QUIGLEY: Certainly. I thank the member for the question. I have been fascinated at home, as I eat my breakfast, watching people build a two-storey house next door. The equipment really swings around a lot. I think:

crikey, I hope they do not hit my house or the neighbour on the other side! This is aimed at that. If the contractors were taking down a notice, for example, and their cherry picker damaged the property next door, which is not the place over which the insignia removal notice was given. Even though the police or their contractors at the time would be operating under law, under section 34, they could damage a neighbouring property. We call tort a civil wrong. That property owner could introduce proceedings to recover damages for the civil wrong, not being the place upon which the insignia was attached.

Mr R.S. LOVE: Thank you for the explanation.

Clause put and passed.

Clause 36: Issue of dispersal notice —

Mr R.S. LOVE: Clause 36 is the issue of the dispersal notice, which is a written notice in respect of a person who has reached the age of 18 and the police officer reasonably suspects is a member of an identified organisation who has consorted or is consorting in a public place with another person who has reached 18 years of age and is a member of an identified organisation, and a dispersal notice has not already been issued in respect of the restricted person for the suspected consorting. This is all about gangs consorting, rather than other persons who might have been relevant persons under the act. It will not catch people who are involved with drugs, sex offenders and the like; it is only with regard to members of named organisations in the schedules of this act. Is that correct?

Mr J.R. QUIGLEY: Once again, I thank the member. Yes, because clause 36(b)(i) states that the person is a member of an identified organisation, and has consorted or is consorting with a member of an identified organisation. The member is quite right; it is between those two people. I will just quickly say the purpose of this. Consorting notices are different because the police officer has to get a commander or above to issue the notice and has to show that the two people have committed serious offences. The member will remember all the criteria that we discussed in consideration in detail last week. A dispersal notice does not require all that proof; it just requires reasonable suspicion that both of them are members of an organisation and that they are together. This is to give the police the capacity to break up those big rides. We will come to this in a moment, but clause 39(2) states that because a dispersal notice requires no proof of indictable offences or the intention to commit further indictable offences, the notice lasts only seven days. It does not last three years like an anti-consorting notice. If a mob has gathered, the police can quickly break up the mob without having to prove all those criteria. If a national ride comes through, member, the police can ask them to disperse. If they go down to Norseman and they are consorting again, they can get arrested. We have to give the police some grip on these people when they encounter them.

Mr R.S. LOVE: Is there a requirement for a police officer to be a certain grade or rank to issue a dispersal notice, or could any police officer issue that notice? We will talk a bit further about the actual serving of the notice later.

Mr J.R. QUIGLEY: This is different from a consorting notice. The constable who intercepts them might be a traffic constable out on the Eyre Highway or anywhere. If the constable who intercepts them forms a reasonable suspicion that they are a member of an identified organisation and so is the other person, they just issue the notice. It has to be on reasonable suspicion, so within the police department or the police force the constable can ring up the organised crime squad, which is available 24/7. I will just interpolate here: one of my concerns with banning insignia—this is when I was a bit naive, last year or the year before—was that if they did not have the insignia, how would we know who were the gang members. The police disabused me of that and said, "We know all the gang members, all their nominees, all their associates. Don't worry about that, Attorney; we know all of those people." If a policeman intercepts someone on a ride and suspects that they are a member of an organisation, he can do a licence check and get straight on the blower, ring up organised crime and they will say, "Yes, he's a member." That will form the basis of a reasonable suspicion. The officer can hit the two gentlemen with a dispersal notice that will last seven days. A person can apply to the Commissioner of Police for review if he thinks he has unfairly copped one.

Mr R.S. LOVE: Does this power exist elsewhere in jurisdictions that the Attorney General is aware of? How confident is the Attorney General—what legal advice has he sought?—that this particular power, given that it may be novel, depending on the first part of the question, will actually stand up to any legal challenges?

Mr J.R. QUIGLEY: One does one's best and I have taken advice from the best Solicitor-General in Australia, who says that if we limit it to seven days, we will hold against any challenge because it is a reasonable constraint on these bikie runs. There is provision for review before the Commissioner of Police and it follows the statutory precedent, if you like, of move-on notices, which constables hand out regularly to people in Northbridge and other places—probably not quite as regularly as I would like to see them handed out. But the police can hand out move-on notices; this is not dissimilar, except with the police move-on notice, people do not have the ability to go to the Commissioner of Police to ask for it to be reviewed. Here, they have that safety net and they can always go to the commissioner and ask him to review whether it was unfair.

Mr R.S. LOVE: I want to quickly ask about the effect of paragraph (c), which states —

> a dispersal notice has not already been issued in respect of the restricted person for the suspected consorting.

I assume that if there were an existing dispersal notice, another one would not be resubmitted and some other action would be undertaken, such as an arrest. What about the situation in which it may be a slightly different group of persons who are represented in the current group? If there is a dispersal notice for that particular restricted person consorting with other members of a particular gang, do they have to be the same members of that particular group; and, if not, what happens then?

Mr J.R. QUIGLEY: The answer is no, they do not have to be the same members of the same gang. It is just as long as they are suspected of being a member of the gang themselves and they are with a person who the police reasonably suspect is a member of another identified gang. This here is the caveat. The bill states that the notice can be issued in accordance with paragraphs (a) and (b) and then it has the conjunctive "and" —

> (c) a dispersal notice has not already been issued in respect of the restricted person for the suspected consorting.

Therefore, in relation to that one contact, they get one dispersal notice. At the end of seven days, the police can hit them with another one. The police can keep doing this.

I am sorry. When I say "issue another one", I do not mean they will just revive the existing one. The police can issue them with a disbursement notice. At the end of seven days, if on the eighth day they see him consorting with another gang member, they can issue another disbursement notice and they can keep this process going. But each one of those disbursement notices will be valid for only a seven-day period.

Mr R.S. LOVE: It might be covered a little bit later on—are we all good?

Mr J.R. QUIGLEY: I have to make a correction of a solicitor's tongue. Sorry, Hansard. I said "disbursement notice". Of course, that is a solicitor's tongue—I need my disbursements paid! I meant to say dispersal notice, not disbursement notice. I am sorry.

Mr R.S. LOVE: I am just struggling to understand this. A police officer comes to a group of people on a run and issues a notice in respect of a restricted person. So if there were 10 persons on motorbikes, all together in a suspicious circumstance, does each person receive a notice or just one of the persons? Also, the Attorney General did not really convince me that this would mean that they could not talk to another group of persons who were also of a particular organisation at a later date, within the seven days, if they were a completely different group of persons from the first group mentioned.

Mr J.R. QUIGLEY: The member is on the money. If I could answer in this way: if there are 10 people and the police officer believes, or reasonably suspects, that they are all members of identified organisations, they give one a notice and they have to name the other nine—well, they do not have to, but if they want to prime the notice, they want to name all nine because otherwise down the track they could be talking to number eight who was not on the notice. For the person who is consorting, the notice should name the people they should not consort with, but for them to be charged, they would have to receive a dispersal notice naming everybody else, because a person can only be charged if they are the recipient of the notice. But the notice will name other people whom the person is not to consort with and whom they are presently consorting with, so not someone who is away or not someone who is a member of the club but is in Perth when the person is out on the highway. The notice is just a dispersal of those people who have gathered together in a group in public.

Mr R.S. LOVE: Is a "restricted person" any person who is a member of an identified organisation? Is that the simple definition of a "restricted person"?

Mr J.R. QUIGLEY: We have to hark back to clause 21, which states that an "identified organisation means an organisation named in schedule 2". They are the 46-odd ones that I have named. Then two definitions below that, it states —

> ***member***, of an identified organisation, means a person —
>
> (a) who has been accepted as a member of the organisation, whether informally or through a process set by the organisation; or
>
> (b) who identifies in any way as belonging to the organisation; or

He might have markings on his body that indicate that he is a member of the organisation. It continues —

> (c) whose conduct in relation to the organisation would reasonably lead another person to consider the person to be a member of the organisation;

Therefore, it is a pretty wide capture.

Clause put and passed.

Clauses 37 to 42 put and passed.

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

Mr R.S. LOVE: Subclause (2)(a)(i) to (ix) lists the defences, including engaging in a lawful occupation. If two people are both members of a bikie gang and happen to work in the same coffee shop or hairdressing salon or whatever it is that they do—manicurists whatever they may be; I am trying not to stereotypically define them as construction workers or something else, as it could be a range of occupations —

Mr J.R. Quigley: Or parliamentarians!

Mr R.S. LOVE: Maybe not those, but perhaps.

How will this provision not be simply manipulated by the organisations? We know that some organisations have semi-legitimate businesses that people can be involved in. How will that be —

Mr J.R. Quigley: Tow truck operators.

Mr R.S. LOVE: It could be a whole range of things. I am not going to go into them all, but we know there are organisations that have branched out to other businesses. It seems to me that this defence could be used in a range of circumstances to avoid the legislation. Can the Attorney General explain how he sees that that will not become a problem in the enforcement of this legislation and thereby render this provision, or preceding provisions, quite useless?

Mr J.R. QUIGLEY: Clause 43 repeats clause 18 on consorting notices, which we discussed last week. That does not directly answer the member's question but I will come to it. The defences set out in clause 43 to dispersal notices are the same as the defences to anti-consorting notices. In relation to the member's specific question, take the example of a tow truck firm that is running half a dozen tow trucks. One of its drivers is a member of an identified restricted organisation and he has a sidekick who is also a member. I take the member to subclause 43(2)(b), which states, "was necessary in the circumstances". The driver would have to prove it was necessary that he was with the other member of the organisation. Why was he not with the other truckie? Why did the driver have to be with the driver who he knew was a member? The driver who is a member of the organisation who chooses to be with another member of the organisation will be charged if there is a dispersal notice live in relation to both of them. People have to show that it is necessary—I had no choice; I had to be there—because otherwise we may run into constitutional problems. If the person has to be there, it was necessary.

One defence is attendance at an educational institution. Who would want to take these people away from getting a better education? They might want to go to TAFE to learn something to do with employment, but is it necessary for them to sit next to each other in the lecture theatre? Could the process be properly engaged in with one sitting in the front row and one sitting in the back row so they cannot talk criminal business?

Clause put and passed.

Clause 44: Police powers relating to issue and service of dispersal notices —

Mr R.S. LOVE: Clause 44(2)(a) to (e) talks about what a police officer, who suspects on reasonable grounds that someone is a relevant person, may do and lists a number of actions that they may ask them to do. Are these actions not already enforced through existing legislation—for instance, through move-on notices and that sort of thing? Is it necessary to have that provision in this legislation?

Mr J.R. QUIGLEY: No, they are not, member, because the person has not been charged with an offence. For example, under the Criminal Investigation Act, police have no powers if the person has not been charged with an indictable offence or any other offence that would require them to accompany them to a police station. When the officer's book of dispersal notices is on his desk, he can say, "You come with me." They have that power. Short of a power of arrest or direction under the Criminal Investigation Act, police do not have that power. Under the Traffic Act, they can require a person to stop. Under the Criminal Code, they cannot require a person to stop unless they are calling upon them to stop in the course of a pursuit for committing an indictable offence, not just any offence. Even the requirement for a citizen to provide police with their name and address is not at large. Police must have a reasonable belief that they are investigating an offence, and then they can require the person to proffer their name and address. But under this provision, they will not have to worry about whether there is reasonable suspicion that the person has committed an offence; they can just demand their details if they believe they are a member of a named organisation and they want to issue a dispersal notice—simple.

I draw the member's attention to paragraphs (d) and (e) in particular. They can require the person to remain at the police station for up to two hours. That is what you call custody. This is custody without an arrest. Police could say, "You will stay here, sunshine, and you will wait for up to two hours while we get our hands on dispersal notice forms, because you are going to be served." That is what paragraph (d) says —

> require the person to remain at a police station or other place for as long as is reasonably necessary, but no longer than 2 hours, to issue or serve on the person the notice;

There is no equivalent provision in other legislation.

Clause put and passed.

Clause 45: Police powers in relation to dispersal notices that have been served and issued —

Mr R.S. LOVE: There are a couple of things in clause 45, Attorney General. Clause 45(1)(c) specifies —

> to comply with a requirement of the officer under paragraph (a) or (b) for a reasonable period specified by the officer that does not exceed 24 hours.

Can the Attorney General explain why 24 hours was chosen to be the limit to that "reasonable period"?

Mr J.R. QUIGLEY: I refer to a police officer who comes across two people and believes on reasonable grounds that a person is consorting with a named person in a public place—that is, someone who has been named on an existing dispersal notice. The person is the subject of a dispersal notice, so when the police come across that person, they may require the person to leave the place specified by the officer. That is like a move-on notice to get away from the other person—get out of this bar, nightclub or classroom—or to go a reasonable distance from the place or part of the place specified by the officer. If the police are at a hotel and they see two people they reasonably suspect, under a dispersal notice, they can say, "Get out of this bar and go to another part of the hotel—just get away from him." This is all aimed at breaking up immediate associations, where they could be talking about criminal offences. The member took me to subclause (1)(c), which reads —

> to comply with a requirement of the officer under paragraph (a) or (b) for a reasonable period specified by the officer that does not exceed 24 hours.

All the police officer will be doing is seeking to break up the immediate company. If the police want them to stay permanently apart for years, they will go to their commander and get an anti-consorting notice. This clause is a rapid response. They go to a hotel, see two people who they reasonably suspect yadda yadda yadda and they say, "You! Get out of the front bar and go out the back to the beer garden", or something like that: "You do not go near this person for 24 hours." By limiting the dispersal notice to such a tight period, we further reduce any likelihood of this matter succumbing to a constitutional challenge. That is because of the very limited interference with the person—it is for only 24 hours.

Mr R.S. LOVE: Subclause (2) points the police officer to the defence provisions in clause 43 and suggests that if the officer is satisfied that the circumstances referred to in the clause would give the person a defence to a charge under clause 42(1), then clause 45(1) will not apply. Could the Attorney General explain how that will work in the field? An officer will have to assess whether it is reasonable in the circumstances that the motorcycle gang members are sitting in a tow truck together before they exercise these dispersal notice powers. What is the criteria for, or the thinking behind, how the police officer will assess the situation on the ground? Will that, of itself, lead to a situation in which particular police officers may be encouraged to be lenient with some of these notices in all circumstances, because they will say that it was clear they were working together as tow truck operators and not hatching up some crime or occupying a space contrary to a dispersal notice?

Mr J.R. QUIGLEY: Clause 45 obviously says that if a person has a defence under clause 43, they could not be guilty and will not have committed an offence.

Mr R.S. Love: If the officer feels that, they will not exercise their police powers.

Mr J.R. QUIGLEY: After the dispersal notice is issued, they will not exercise their police powers if the officer believes they have a valid defence under clause 43. I refer the member to clause 43(1) and (2), which both end with the caveat that the contact has to be "reasonable in the circumstances" in the case of family members or "necessary in the circumstances" in relation to occupation. If the police officer sights the tow truck driver and feels that the person had no other option but to be in that particular tow truck with that particular driver, the police will likely conclude that the person has a defence under clause 43(2)(b) that it "was necessary in the circumstances" for him to be there, so they will not exercise their police powers. Similarly, if they enter a wedding celebration and there are family members present who are restricted persons, it is up to the police to decide whether the proximity of the two people, being members of a restricted organisation, "was reasonably necessary" or they could have stayed further apart. It is a judgement call. Obviously, we do not want the police putting the community to the expense of charging people and going to court when there is an obvious defence to the charge. As I said before, it will be up to the accused person to discharge the burden of proof to prove they were a family member and it was reasonable in the circumstances; and, in the case of the tow truck driver, which relates to an occupation, that it was absolutely necessary to be in that person's company.

Clause put and passed.

Clauses 46 and 47 put and passed.

Clause 48: Parliamentary Commissioner to monitor exercise of powers —

Mr R.S. LOVE: Under this clause, the Parliamentary Commissioner for Administrative Investigations, commonly known as the Ombudsman, will monitor the exercise of powers under the legislation. The Attorney General briefly touched on this in the second reading speech, but could he explain why he chose this path rather than having the Corruption and Crime Commission oversee the exercise of these powers?

Mr J.R. QUIGLEY: During the drafting of the bill, consideration was given as to which oversight body—the Corruption and Crime Commission or the parliamentary commissioner—would be best placed to undertake the monitoring function of the bill. The government's view is that the parliamentary commissioner is the more appropriate oversight body to undertake this role. The monitoring role is set out in part 4 of the bill and the primary function of the parliamentary commissioner will be to scrutinise the powers conferred on the police under the unlawful consorting scheme. In carrying out this role, the parliamentary commissioner must scrutinise police records. The member will notice that under clause 53, there has to be a register of dispersal notices. The parliamentary commissioner will go back to the record of notices to see whether police powers are being exercised appropriately. Of course, the parliamentary commissioner will have to put in a report each year, and the minister will table that report each year. This will ward against the abuse of these powers, as happened in New South Wales when consorting laws were first introduced over there and any officer could issue an anti-consorting notice. They were issued mainly against not organised criminals but low-hanging fruit—poor Indigenous people who had committed two break-ins and indictable offences were hit with an anti-consorting notice. Thousands of these were issued. They were issued against young people who were not members of organisations. They were issued against poor people who were hanging out together. They were issued against Indigenous people in great numbers. They all felt this would be a cute idea to break up the associations of these people. This legislation is aimed at something far more serious—that is, organised crime. That is why there had to be two indictable offences for an anti-consorting notice.

The other matter that weighted against the Corruption and Crime Commission was that the CCC's primary obligation is the investigation of serious misconduct or criminality. Serious misconduct is defined under the CCC legislation as an offence carrying more than two years' imprisonment. If my memory serves me correctly, the member for Moore is on the committee for the oversight of the CCC, so he would know that with the crime and misconduct function, together with the unexplained wealth function, the CCC has quite a lot on its plate. The Ombudsman will not be investigating any wrongdoing, but checking the records to make sure they are being used appropriately and that thousands or even hundreds of people from regional areas do not become subject to this provision. That was never this Parliament's intention. The Minister for Police will be the minister accountable for bringing forward this report.

Mr R.S. LOVE: The Attorney General mentioned the roles of the Corruption and Crime Commission. He did not mention that it has a role in investigating organised crime, under the act. It seems curious to me that, when we are dealing under this legislation, in part not in full, with organised crime or organisations that have links to various activities that would be characterised in that way, the decision was made to ignore the CCC in these circumstances. Was consultation carried out with the Corruption and Crime Commissioner in coming to this decision? Who was consulted, or was it purely a decision made by the Attorney General, his department and cabinet?

Mr J.R. QUIGLEY: Thought was given to it more than consultation with the Corruption and Crime Commissioner. I take the member's point about serious crime, organised crime and the function of the CCC. It is to investigate those criminals. This provision is aimed at monitoring police conduct rather than the criminals. This is to make sure that police notices are issued in an orthodox way, that the register is kept, and who the subject of these notices are. It is an oversight of the police; it is not looking at serious misconduct. However, under section 28 of the Corruption, Crime and Misconduct Act, if, during the course of this monitoring, the Ombudsman comes to suspect that there is serious misconduct afoot—something that carries more than two years—it would be sent to the CCC for investigation. For example, in monitoring the police's documentation—this is a way out–there example because it is quarter to 10 at night but I am not casting aspersions on the police—if the Ombudsman came along and said that the police had altered a notice or fraudulently issued a notice, that would be serious misconduct. That particular notice would be sent to the CCC for investigation of serious misconduct. The function is to monitor the police issue of these notices because that was not happening initially in New South Wales. There were thousands of notices. It is not to investigate the police. If it was to investigate the police, it would be sent to the CCC. It is just to monitor the process, including how many notices have been issued et cetera. I am repeating myself because it is late, but if, in the course of that, they come across some serious misconduct, they will flick it over to the CCC.

Mr R.S. LOVE: I thank the Attorney General for the answer. In fact, a very large part of the CCC's activities are actually monitoring police activities in a whole range of ways, so again I find it a little strange that this path has been taken. Two organisations are now playing a part in monitoring the roles of police; the parliamentary commissioner and the CCC are both monitoring aspects of police performance and duties. It is interesting that it has occurred. I accept the reason that the Attorney General has given, which was basically that the government made that

decision, but on the face of it, this seems to be quite a strange choice. What extra resources will the parliamentary commissioner need to be able to undertake this activity?

Mr J.R. QUIGLEY: We all know from reading the paper what an active ICAC New South Wales has. We have just seen a Liberal Premier resign because of an Independent Commission Against Corruption inquiry. We know what a powerful ICAC it has. New South Wales, which had this anti-consorting law first, chose the Ombudsman. The Ombudsman put in a report exposing the thousands of consorting notices, which is far from what the Parliament intended. We chose the parliamentary commissioner. During the course of the preparation of the bill, there was consultation with the Parliamentary Commissioner for Administrative Investigations, otherwise known as the Ombudsman. He has his own budget and makes his own submission to ERC, through me, of course, as the Attorney General and obviously subject to scrutiny during estimates. The parliamentary commissioner, we believe at this time, has adequate resources and if he does not, he will ask for more.

Dr D.J. HONEY: One of the comments the Attorney General made in response to the Deputy Leader of the Opposition was that the Corruption and Crime Commission is very busy and may not have the resources to carry out these powers. What resources does the parliamentary commissioner have to carry out these activities? I would have thought that her office is extremely busy as well. Will any additional resources be provided to that office?

Mr W.J. Johnston: The parliamentary inspector is a man.

Mr J.R. QUIGLEY: I was just going to say that but I did not want to interrupt the member. I have a couple of little points. Firstly, the parliamentary commissioner at the moment—the Ombudsman—is a man, Mr Chris Field, who appears here at estimates. Secondly, I do not agree that I said the CCC did not have the resources to do it. I said that, to my recollection, the CCC's function is to investigate serious misconduct. In this function, no-one is suggesting it is looking at serious misconduct. It is just looking to see how many notices have been issued and against what sort of people the notices been issued against. The member for Cottesloe and other members of this chamber, when this report is tabled by the Ombudsman, will be able to see whether the intention of this Parliament, as expressed in this chamber this evening, is being honoured or abused.

Dr D.J. HONEY: The Attorney General made the comment, in response to an earlier question by the Deputy Leader of the Opposition, that the CCC was busy doing other things, or words to that effect. I assume that enforcing this bill will take some resources. Will the parliamentary commissioner have additional resources to carry out this function or will the parliamentary commissioner be expected to carry out that work with the resources that he already has?

Mr J.R. QUIGLEY: In relation to the first comment, I never said at any stage that the CCC could not look at it because of a resource issue. I said that it is busy working on serious organised crime and unexplained wealth. We want it to concentrate on the main game. The Ombudsman will merely oversight the process to make sure it is not being abused.

As for resources at the Ombudsman's office, the Ombudsman was consulted during the preparation of the bill and indicated that at this stage he has sufficient resources. If more resources are required, I will take it to the Expenditure Review Committee and we will see the outcome in the budget. The opposition will also have the opportunity to examine the Ombudsman in estimates next May or June to see whether he has sufficient resources to do this.

Clause put and passed.

Clauses 49 to 52 put and passed.

Clause 53: Commissioner of Police to report on use of police powers to Parliamentary Commissioner —

Mr R.S. LOVE: This clause identifies that the Commissioner of Police must keep a record of various things and report on the use of police powers to the parliamentary commissioner. It refers to a register that must be kept. Will that register be open to public scrutiny or just to the parliamentary inspector? Will the register be available continually, how quickly must it be updated and how often will the parliamentary commissioner be expected to acquaint himself of what is on the register?

Mr J.R. QUIGLEY: There will be an IT solution for this register. The police have allocated $290 000 to start building the register. All police powers under this act, be they dispersal notices or anti-consorting notices, have to be recorded in the register. Police will know what their duties are in relation to these notices. At the end of their shift, police will type into the register what they have done with the notices. This will not be open to the public. This is part of police intel. It will be available on an ongoing basis to the parliamentary commissioner and reported on to this Parliament by the Minister for Police.

Clause put and passed.

Clauses 54 to 56 put and passed.

Clause 57: Protection from personal liability —

Mr R.S. LOVE: There is a bit of legal jumble on the back of this clause. Can the Attorney General outline whether these protections for personal liability could be open to challenge in a court? How would the Attorney General see that being resolved if the court were to recommend changes to these protections?

Mr J.R. QUIGLEY: This clause almost mirrors the provisions in section 137 of the Police Act which provides that if an officer is acting in good faith in the performance of their police duties, not in the performance of other duties, they will be protected. This was litigated in quite recent times in the case of Cunningham and Atoms, the two law professors who were repeatedly tasered outside the Esplanade Hotel. They came along as good Samaritans to help someone who had fallen drunk, I think—he may have been pushed—into a bush outside the Esplanade Hotel. Cunningham and Atoms were coming home after having a meal, I believe. They helped the fellow out of the bush and, in the process, were set upon by police. They were arrested, put in a paddy wagon and tasered for their troubles. When it went to court, the officer gave evidence that Cunningham and Atoms were in trouble. During cross-examination of the officer, CCTV footage from a business, which was obtained by the defendant, was produced to show that the first officer's story was perjury. The police prosecutor immediately dropped the prosecution. Cunningham and Atoms then introduced proceedings for the tort of assault, false arrest and false imprisonment. We all know that they were awarded over $1 million because they could overcome the bar of saying that it was not in good faith. In fact, section 137 of the Police Act refers to when an act is done without corruption or malice; in other words, done without bad faith. Clause 57 will really offer the officers the same protections under this bill as they would have under the Police Act.

Mr R.S. LOVE: Clause 57(4) refers to premises where there might be insignia and the removal of the insignia. We spoke about the situation whereby another building might be damaged by removing something from a swinging crane or something along those lines. Does this mean that the officer who authorised the action is liable in tort to a personal claim? I would have thought that would have been something aimed at the organisation. This clause reads as though the officer himself or herself is potentially liable to a claim in the performance of their duties. Can the Attorney General explain exactly how this will operate?

Mr J.R. QUIGLEY: I certainly can. If an officer acting in good faith employs an agent to remove a sign with a cherry picker and something next door is damaged, there will be no prohibition against the next-door neighbour recovering damages to his building merely on the basis that the officer was acting in good faith. As to the department's liability, this is an area of some contention because it involves vicarious liability.

Mr R.S. Love: The police officer is not personally responsible?

Mr J.R. QUIGLEY: An action might be brought against the police officer in the course of their duty, but I have no doubt that any sensible plaintiff would also plead the department, because they would not know what money the officer would have. The pleading would say, "Officer X, first defendant; police department, second defendant", but the plaintiff would not have to show that the officer was acting in bad faith.

Mr R.S. LOVE: Why is it not clear that the officer is not personally liable, because, from what the Attorney General is saying, they could be jointly sued along with the department, or the department might become liable if the officer is found to be liable? Why not make it clear that the agency is the person or the entity that is liable rather than the officer in the simple performance of their duties?

Mr J.R. QUIGLEY: If they have done it without malice, without corruption, they are not liable in tort to the person or business that they were aiming at—that is, a member of a relevant organisation. But, nothing requires or prevents a third party, whose premises have been damaged, from recovering damages. There are competing cases as to whether the department is vicariously liable; in other words, in some cases it could be said that the officer, as the holder of independent office of constable, is not an employee. There are others that say that in the twenty-first century the police officer should be regarded as an employee.

Clause put and passed.

Clauses 58 to 61 put and passed.

Clause 62: Review of Act —

Mr R.S. LOVE: This section refers to the review of the act. Subclause (3) states —

> The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

Why would it take 12 months for the review to be undertaken? Would that be a normal period of time in which to undertake a review and to report back to Parliament?

Mr J.R. QUIGLEY: One reasonably expects that it will take less than 12 months given the nature of the register that has to be kept. However, if irregularities on the register require further investigation, it might take longer than 12 months to review the operation of the act. We did not want to put down, say, six months and for the review to not be completed in those six months, because the minister would be in defiance of the legislation for not tabling

a report within six months. The important thing is that there is a statutory requirement for review to commence three years after. This should please members of the other house who love review clauses and usually put them in at three years. There we have it. I often put them in at five years and the other place amends them to try to get it down to three years. I say, "Okay, we'll go with three years and give them a reasonable time to prepare the report", because the report will be on not just what the police did on this or that occasion; the report will have to completely review the operations of the gang crime squad, the organised crime squad and all the people who avail themselves of the use of this particular legislative device—that is, consorting and dispersal notices.

Clause put and passed.

Clause 63 put and passed.

Clause 64: Schedule 2 amended —

Mr R.S. LOVE: This clause is under the headings "Part 6 — Other Acts amended", "Division 1 — *Community Protection (Offender Reporting) Act 2004* amended". Clause 64 states —

> **Schedule 2 amended**
>
> In Schedule 2:
>
> (a) delete the item relating to …

The preamble of the explanatory memorandum states —

> This clause amends Schedule 2 of the *Community Protection (Offender Reporting) Act 2004* by deleting reference to the offence at section 557K(4) of The Criminal Code and replacing it with reference to the offence of consorting contrary to a consorting notice in clause 17(1) of the Bill. This reflects the removal of the offence of consorting between convicted child sex offenders from The Criminal Code and insertion into the unlawful consorting scheme in this Bill.

What will be the staging of this in terms of the application of this measure? Offence provisions under section 557K of the Criminal Code will fall away and be replaced with a reference to "consorting contrary to a consorting notice in clause 17(1) of this Bill". Can the Attorney General explain the timing of these changes and whether every offence mentioned, which is known under this particular provision, will move automatically to the other provision—clause 17(1)?

Mr J.R. QUIGLEY: This amendment is to ensure that anti-consorting notices and convictions for anti-consorting notices under this bill will be a reportable offence under the Community Protection (Offender Reporting) Act 2004. Under 557K of the Criminal Code, the breaches are reportable offences. We want to make sure that under this Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill, the new anti-consorting offences are reportable offences. We want to make sure that the new scheme in this legislation is also a reportable offence under the Community Protection (Offender Reporting) Act 2004.

Clause put and passed.

Clause 65 put and passed.

Clause 66: Section 557J deleted —

Mr R.S. LOVE: This refers to other acts, and will amend the Criminal Code by the deletion of section 557J. Can the Attorney General explain why it is necessary, strictly speaking, to remove 557J from the Criminal Code? Will this bill provide an adequate catch-all provision to ensure that drug traffickers, who will not be mentioned any more due to deleting section 557J, will be kept from consorting?

Mr J.R. QUIGLEY: We are bringing all anti-consorting provisions together under the one legislation, which is before the chamber at the moment, the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. The member will be aware that anti-consorting notices issued under that have to be put onto a register—we have been through all that—which the Parliamentary Commissioner for Administrative Investigations can examine. In relation to section 557J, the police have not kept a register of drug traffickers. I think that is further up the chain. The courts have not advised the police of every declaration, so there is no register of drug traffickers. There is no anti-consorting notice in relation to drug traffickers—none. We are brightening up the system by bringing it into this legislation. I thank the member for his question because this will strengthen the proceedings in relation to sections 557J and 557K. The anti-consorting notices are now much stronger.

Clause put and passed.

Clause 67: Section 557K amended —

Mr R.S. LOVE: This will amend section 557K of the Criminal Code. Can the Attorney General outline how many people have been charged under section 557K of the Criminal Code within the last year? Will this number differ due to the amendments proposed in this clause?

Mr J.R. Quigley: I distracted myself then. I only need the last part of the question again.

Mr R.S. LOVE: How will this change in legislation impact the number of people affected by the restrictions?

Mr J.R. QUIGLEY: I think we went through this before. I recall that since 2016, in the last five years, there have been only 20 attempted prosecutions—only 20 in five years, which comes out at four a year. When we figure the number of sex offenders there are in Western Australia, four a year is a very, very small number. Of those 20 in five years, only eight were convicted because of the requirements of section 557K. We are now down to fewer than two convictions a year, with over 3 500 registered sex offenders in Western Australia. There have been fewer than two convictions a year for consorting. I am glad the member asked this question because it once again gives me the opportunity to disabuse the member's alliance partner, the Liberal Party, for its utterly misleading, irresponsible and disgusting attack on the new anti-consorting legislation by saying that this will weaken the regime against child sexual offenders, republished today by the Leader of the Liberal Party. I notice that the highly misleading and dishonest little video that he put out today received only one "like" and one re-tweet. I assume it was someone in his office who wrote the damn thing. This is very important. I have said before: where the Liberal Party and the Leader of the Liberal Party fall into error is when they say that this bill will be scrutinised by Hon Nick Goiran in the other place. There is where they will go wrong. Hon Nick Goiran is someone who serially—in other words, repeatedly—misstates the law regularly. I do not say that lightly. I said that the other day in relation to the Ministerial Expert Committee on Electoral Reform when Hon Nick Goiran asked: where is the statutory source of power? Ministers can get anyone in to advise them, they do not need a statutory source of power. Hon Nick Goiran said that the whole MEC report was ultra vires because it was functus officio. This is not functus, this is him becoming bumptious. That was absolutely ridiculous.

We will look at section 557K and see where the Liberal Party and the member for Cottesloe have totally misled the public in saying that the new legislation will weaken the regime against anti-consorting notices for child sexual offenders and, might I say, member for Cottesloe, and to the chamber, changes brought about at the request of police to give them more muscle against child sexual offenders. Section 557K states in part —

> (1) In this section, unless the contrary intention appears —
>
> ***child*** means a person under 18 years of age;
>
> ***child care centre*** means …

I refer now to section 557K(4), which the Liberal Party cites time and again. If it keeps on citing it, its numbers might be reduced from two to one! It could take a nosedive. Let us have a look at the law. Section 557K(4) of the Criminal Code states —

> A person who is a child sex offender and who, having been warned by a police officer …

The police do not need to give a warning before issuing an anti-consorting notice.

Mr P. PAPALIA: I would love to hear more from the Attorney General.

Mr J.R. QUIGLEY: We go back to clause 9(1) of this bill. Is the member for Cottesloe listening or is he playing on his computer there? Clause 9, "Issue of unlawful consorting notice", states —

> (1) An authorised officer may issue a notice (an ***unlawful consorting notice***) in respect of a person (a ***restricted offender***) if —

It goes through those —

> … 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 first way that we are giving more strength to anti-consorting notices in relation to child sex offenders is that there will no longer be a necessity, member for Cottesloe, for the prosecution to prove that on a prior occasion to the issue of an anti-consorting notice under section 557K, the person has first been warned by a police officer. They do not have to do that. We are into them earlier in the process. I will go on in section 557K(4). The police officer has to warn the person —

> (a) that another person is also a child sex offender; and
>
> (b) that consorting with the other person may lead to the person being charged …

They have to go through all this warning process. That is what the Liberal Party wants to stick with. This convoluted process does not give the police bite on the child sex offenders straightaway, like clause 9 of this bill does. No, member for Cottesloe. I tell the member for Cottesloe what: he should take the *Hansard*, read it closely, and then he will be able to give Hon Nick Goiran a legal lesson. He will be able to go and say, "Hon Nick Goiran, do you realise that the police no longer have to issue a warning to a child sex offender before they can issue an anti-consorting notice? Did you know that?" Hon Nick Goiran will say, "No, I didn't know that! I was too busy stacking branches. I can't do everything!"

The police must warn the person that the other person is also a child sex offender, and that consorting with that person may lead to them being charged. They have to do all this. I will go on. It may lead to the person being charged who habitually consorts with the other person. Then the police have to go to the next stage. They cannot just hit them because they are in their company and consorting. No, we have made it stronger. I know the Liberal Party wants this old section, which is weak against child sex offenders. I know that, because it keeps on putting out these misleading videos saying "Keep it with 557K; keep it hopeless against child sex offenders!" That is what it is saying; that is its subliminal message. I cannot wait for the member for Cottesloe to get to his feet when I sit down in one minute and 58 seconds and explain himself. The police have to prove not just that they were in company with that person, but that they were habitually consorting. What does that mean, member for Cottesloe? You have not put that on your video! It means time and again, they are consorting before we can prosecute them. We do not have to do this under the new consorting legislation. No wonder the police wanted this new legislation!

I know what the member for Cottesloe is about. He has no policies in this space. He has tried for years to try to bring in some laws to repress the outlaw motorcycle gangs. There he is, sitting at his desk sombrely saying, "We were all for disrupting bikies, make no mistake", on his video this afternoon. He said "We're all for disrupting bikies, but did you realise that the Labor legislation weakens anti-consorting notices against child sex offenders?" That is what I call a tableau of lies. Someone in my party asked me: what is a tableau? A tableau is a montage of disagreeable things, and lie after lie after lie by the Liberal Party is most disagreeable. You have 27 seconds to prepare your response to this, member for Cottesloe. Twenty-three—smarten up! Sharpen that pencil. In 21 seconds, I will sit down, and the member for Cottesloe can tell this chamber why section 557K is stronger than clause 9 in the new anti-consorting notices, like he misleads the public. He has to do it in five, four, three, two, one. Over to the member for Cottesloe.

Dr D.J. HONEY: Thank you very much. I am pleased to respond to the Attorney General. If we look at division 2 of the bill, titled "Unlawful consorting notices", and we look at the issue of an unlawful consorting notice, clause 9(1) states —

> An authorised officer may issue a notice (an ***unlawful consorting notice***) in respect of a person (a ***restricted offender***) if —
>
> (a) the person has reached 18 years of age; and
>
> (b) 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;
>
> and
>
> (c) the officer considers that it is appropriate to issue the notice in order to disrupt or restrict the capacity of relevant offenders to engage in conduct constituting an indictable offence.

The point I made to the Attorney General in my second reading contribution was very straightforward.

Mr J.R. Quigley: Wrong, but straightforward.

Dr D.J. HONEY: You bang on and on and on; you can listen for a little while. If we go to section 557K(4) of the Criminal Code, we see there —

> A person who is a child sex offender and who, having been warned by a police officer —
>
> (a) that another person is also a child sex offender; and
>
> (b) that consorting with the other person may lead to the person being charged with an offence under this section …

Then it goes on to refer to "habitually consorts". That section means that if a police officer sees two child sex offenders consorting, that officer can immediately go up to those people and warn them that they need to stop. That is what they can do. Under the Attorney General's law, they cannot do that immediately. They have to go through clause 9(b)(i), "has consorted, or is consorting", and then —

and

(c) the officer considers that it is appropriate to issue the notice in order to disrupt or restrict the capacity of relevant offenders to engage in conduct constituting an indictable offence.

We know there are hurdles to that as well, and we know that the officer will be held accountable for that decision by a more senior officer. The simple truth is—the Attorney General can respond to this—that under the existing law, an officer can immediately go up to these people. They do not have to have any suspicion whatsoever—none whatsoever. They do not have to have formed any view in their mind. They simply have to know or suspect that those two people are known child sex offenders, or, in this case, is a child sex offender. If the person is a known child sex offender, the police officer can go up and say, "You must not do this; you must stop it now." It does not require any of those other factors. That is what it is doing. It is putting a hurdle in the way of the police officers being able to simply go up and say, "We do not want child sex offenders consorting at all." They do not have to meet the requirement —

and

(c) the officer considers that it is appropriate to issue the notice in order to disrupt or restrict the capacity of relevant offenders to engage in conduct constituting an indictable offence.

How the Attorney General can say that is not a greater hurdle is utterly beyond me. He bangs on, carries on and makes his offensive comments in this place about me and others. The simple truth is that there is no test applied at all. The only test is that the officer knows that they are two child sex offenders, whereas the regulation that the Attorney General is putting in will put an additional hurdle in the way of that. That is what we are saying, and that is why the Attorney General's comments are disingenuous.

Mr J.R. QUIGLEY: Either the member is absolutely misleading this chamber by saying that there is no other test in section 557K, or he cannot read. Either way, I am so angry at the way the Liberal Party tries to mislead this community and tries to undermine this important legislation. I cannot ask you to read it again. You have had a go. They must not have very good literacy down your way in Cottesloe. The opening words of 557K(4) are that a person who is a child sex offender who has been warned by a police officer that the other person is a child sex offender—here comes the test—and that consorting with the other person may lead to the person being charged with an offence under this section. He forms a belief that there is going to be an offence. What can he do when he forms the belief that a person is going to commit an offence? Warn him: "Don't do it, sunshine!" That is all he can do. But I know Liberal Party members think that a warning is enough—well, we do not. Hit them with an anti-consorting notice. If they breach the anti-consorting notice, they will get 12 months in prison or a $24 000 fine.

For you to say that the police do not have to form a view that any other offence is going to be committed is just absolutely wrong. You are confecting an argument to deliberately undermine this legislation. You are two-faced! You say to the camera, on video, "We're for legislation that disrupts bikies." Your word was "bikers". But, you say that this new legislation undermines consorting notices in relation to child sex offenders—you could not be more wrong! Do you think that the police requested this because they wanted to go easy on child sex offenders? Give us a rest! This is going to become law. It is going to become better law and I accept that you will remain in ignorance of it, but that is why there are only two of you here.

Dr D.J. HONEY: You can be as offensive as you like, Attorney General. You specialise in being offensive in this place and making offensive comments. It undermines your credibility in this place. The simple reality is if a police officer —

Mr J.R. Quigley: You're wrong!

Dr D.J. HONEY: You should learn to read.

If a police officer sees two child sex offenders together, that police officer can immediately go up and warn those two people that they will commit an offence —

Mr J.R. Quigley: Wrong!

Dr D.J. HONEY: — if they continue to consort. That is not wrong because that is what the bill states.

Mr J.R. Quigley: He's got it wrong.

Dr D.J. HONEY: That is what the bill states; it is not wrong. As we go further on, the Attorney General is hanging his hat on the issuing of the notice, and, as I have made very, very clear in this place, in the great majority of cases, and in the great majority of police work, the ability to warn people stops people from committing an offence. The great majority of policing is not prosecuting people; it is warning people that they cannot do something. In fact, it does not have to be an either/or. In this bill, the Attorney General could have said that a police officer can simply go up, without forming any view whatsoever about the intent of those child sex offenders, and tell those two people not to consort. The Attorney General could also have included the new provisions in the way that a consorting notice is issued. They are not mutually exclusive. A police officer does not have to form an opinion that those two people are about to commit an offence.

Clause 9 states —

> and
>
> (c) the officer considers that it is appropriate to issue the notice —

Point of Order

Ms M.M. QUIRK: I have sat here with some patience for some time, but I do believe that the member for Cottesloe is repeating himself ad nauseam. I refer to standing order 97. Repeating the same argument is not overly helpful, frankly, to any of us.

The DEPUTY SPEAKER: Thank you, member. Yes, there is no point of order. But the —

Mr J.R. Quigley: Look, I'm just going to —

The DEPUTY SPEAKER: No, Attorney General. The Leader of the Liberal Party still has the call.

Mr J.R. Quigley: I didn't realise he had the call. I thought he sat down.

The DEPUTY SPEAKER: No. He is just about getting towards the end of it.

Debate Resumed

Dr D.J. HONEY: I sat for the point of order, as I should. Thank you very much, Deputy Speaker.

Clause 9 includes the "and", but I will not read through the whole paragraph lest I bore the member for Landsdale. The simple truth is that it is a higher test for the officer to engage and disrupt those two individuals. The Attorney General can say that the officer may do it, but they have to do it, and that is the straightforward point. At the moment, an officer has to have no opinion other than knowing that two child sex offenders are meeting.

Mr J.R. QUIGLEY: I am going to get the *Hansard* of the member's last contribution. I am going to have my staff—what do you call it when you put plastic on it?—laminate it, and I am going to put it in my drawer. The next time the member comes to this Parliament over dangerous sex offenders and judges letting them out and all that, I am going to read back to him his view of what the management of child sex offenders is; that is, it is sufficient to give them a warning—a little finger wagging and a warning. Do not come back into this chamber again and criticise the judiciary. Do not come back into this chamber again, like your limp-wristed performances when you come in here and you criticise the judiciary for the harsh treatment of child sex offenders, when you say the majority of child sex offenders just need a warning. You are living in the land of nod—just need a warning!

I am going to conclude my contribution. I am not going to make a further contribution after this because of the hour of the night, but I am going to read the very high praise for this legislation that I received from a lawyer. The then shadow Attorney General, the Liberal, Hon Michael Mischin, during debate on this in the other place, said that the proposed scheme goes much further than the existing laws and corrects some of the problems with the current regime. The only existing laws in relation to consorting are sections 557J and 557K. He said the proposed scheme goes much further than the existing law and will "correct some of the problems with the current regime"—that is, correcting the problems with section 557K. Mr Mischin went on —

> The regime that is proposed by the government seems to be a sensible one …

He was a prosecutor before he came to the Parliament, was he not?

Dr D.J. Honey: He was.

Mr J.R. QUIGLEY: Yes, well, he seems to be a sensible one. Noting that the expanded scope of people that the new consorting laws offence applies to, Mr Mischin said that the legislation will have a very broad and good effect. He got up there and he praised this legislation and said that it was very good. So what was your response? You put him at number 6 on the ticket so he could not show his face in the Parliament again.

The DEPUTY SPEAKER: Thank you, Attorney General. Leader of the Liberal Party, I will just give you a little bit of guidance. This is not going to be the same as the previous two contributions or I will sit you down. Thank you.

Dr D.J. HONEY: No, it is not going to be the same as the previous contribution.

Attorney General, I have not contended at any stage that there should not be prosecutions of child sex offenders, and for you to say that to this place —

Mr J.R. Quigley: You said it already!

Dr D.J. HONEY: — is misleading in the least. What I have said very clearly is: the ability of officers to warn them simply gives officers an additional arsenal to do that.

Mr J.R. Quigley interjected.

Dr D.J. HONEY: You can verbal all you like. You can be personally insulting all you like, but you are misleading this Parliament and the people inside it.

Clause put and passed.

Clause 68: Schedule 1 clause 4 inserted —

Mr R.S. LOVE: I will just add a bit of a circuit-breaker for a minute because this a very complex discussion that deals with the difficult nature of certain sex offenders. The discussion that we have heard up to date is because we want to see an outcome that makes it more difficult for these types of people to cause problems. This is why am concerned, Attorney General. Clause 68, "Schedule 1 clause 4 inserted", deals with transitional provisions for the Criminal Law (Unlawful Consorting and Prohibited Insignia) Act. New clause 4(2) of schedule 1 says —

> A police officer cannot give a warning under section 557K(4) of this Code during the transitional period.

Can the Attorney General explain to me why he said earlier in debate on clause 1 that section 557K(4) would still be in operation, yet in this particular circumstance we see that it is impossible for a police officer to give a warning under that section of the Criminal Code during the transitional period when it still exists in law?

Mr J.R. QUIGLEY: Those who have already received a warning could still be prosecuted during the transitional period. A warning under section 557K will go on during the transitional period. However, no new notices can be issued under section 557K; they are going to run out at the end of three years, unless new notices are issued under the new act. At the start I was right: after we pass the legislation, section 557K will be alive, and those who have already been subject to it can be prosecuted under it, but no new warnings can issue. But if a warning is issued and a person continues habitual consorting after the commencement of this act, they can be prosecuted under section 557K provisions. However, no new 557K warning can be made; it would have to be a section 9 notice, which is tougher, stronger and more certain.

Clause put and passed.

Schedule 1 put and passed.

Schedule 2: Identified organisations —

Mr R.S. LOVE: This is a list of the identified organisations that will be captured under the act. Can the Attorney General explain how future organisations, or changes to the list, will be captured? For instance, if a new bikie gang enters the scene, changes to this legislation will need to go through Parliament. That seems to be quite a difficult process, given the demands of time and the fact that there might not be a sitting for some time. How will this legislation operate to ensure that organisations do not somehow just add a hyphen or something else to their name so that they are no longer an identified organisation?

Mr J.R. QUIGLEY: It is a matter of statutory interpretation. If an identified organisation changes its name but has the same or similar members, the same or similar structure and engages in the same or similar activities as the named organisation in schedule 2, it will be considered to be the same organisation. Adding an extra "L" to "Hells" will not change it; the organisation will still be captured. In circumstances in which a truly new organisation forms—that is, new members, a new structure and a new constitution—and there is evidence to support the basis of including the new organisation, such as having the same characteristics described in the *Report by way of justification of the provisions of part 3 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021*, which has been tabled, there will need to be an amendment to schedule 2 to include the new organisation. The reason for this is that we might have a government of a different complexion or stripe—I am not now talking Liberal or Labor—that wants to include an organisation of a political nature. We could not have them being roped in without the authority of this Parliament. A new organisation could be included only if and when this Parliament agreed to include a new organisation. But an organisation that has merely changed its name to try to evade the legislation will still be the same organisation if it is made up of the same or similar members, has the same or similar structure and engages in the same sort of activity, like outlaw motorcycle gangs do, and it will be captured by this legislation as it stands. I would hate, for example, a political party, a trade union organisation or a business organisation to slip into this harsh regime without the authority of this Parliament, and I am sure it will never be given.

Mr R.S. Love: I think governments have tried before.

Mr J.R. QUIGLEY: They have. Sir Robert Menzies tried it with the Communist Party. He failed.

The government is trying to shut the door so that it is only organised criminals who will be the subject of this legislation.

Dr D.J. HONEY: On that, Attorney General, if it is done by way of regulation, could that be subsequently disallowable if it was a regulation change, so that Parliament would still have some oversight of it if another organisation was included or an organisation excluded?

Mr J.R. QUIGLEY: That is quite true, member. I did think about that. As the member knows, something is tabled in the other place, and then I think a member has 21 days to move a disallowance motion, so they have to be vigilant.

Something could get tabled and with things going on, it could be missed, so it could become a proscribed organisation by default almost. What if a political party, like the Communist Party—well, there is no Communist Party anymore.

Dr D.J. Honey: It's changed its name.

Mr J.R. QUIGLEY: What? Has it become the Liberal Party?

Seriously, it could include people in here. It is the harshest legislation. Some of those vegans who demonstrate for animal welfare et cetera have a voice and something to say, so long as they do not trespass and interfere with businesses. We would not want them included because it could sort of fetter their implied freedom of speech on a political matter. We wanted it to be more deliberative so that members would have to come into this chamber and justify why a new organisation should be subject to the harshest anti-consorting regime in Australia.

Mr R.S. LOVE: The list contains 46 organisations that are named in the justification report from the police.

Mr J.R. Quigley: And the Australian Crime Commission.

Mr R.S. LOVE: Yes. A process led to their inclusion on the list and therefore their inclusion in the schedule. If there was a change and an organisation was added, would the Attorney General anticipate that there would be a similar justification process? Would that have to be put before the Parliament for that organisation to be included in a similar way to the report that was presented in the lead-up to this legislation?

Mr J.R. QUIGLEY: In a word, yes. The reason is Unions NSW v New South Wales, whereby the High Court said if we have a fetter on political free speech, we have to justify it and it has to be reasonable and proportionate. If we brought another organisation within the ambit of this legislation, we would not want it to be challenged constitutionally. It first must pass muster in this chamber that members are satisfied there has been a discussion about these organisations, which there has been, and that the Parliament considers it reasonable and appropriate. Just indulge me for a moment while I count. I have counted down this list because I was interested to read a four-page spread in Saturday's *The West Australian* that depicted outlaw motorcycle gangs as a family loving self-help group for older white Australian males who liked to ride motorbikes and have a beer. But when I look at the document that was put before the Parliament, I see that nothing could be further from the truth than what was depicted. The organisations referred to in that article—Coffin Cheaters, Comanchero, Hells Angels, Lone Wolf, Mongols and Rebels—have between them racked up 47 major convictions for offences involving drugs, firearms, burglary and assault. They are not just a self-help group, are they? They are entrenched criminals. I counted 47 convictions after briefly looking at that briefly. We would not want to include any organisation in this legislation that was not shown to be an entrenched criminal organisation.

Schedule 2 put and passed.

Title put and passed.

House adjourned at 10.53 pm