CRIMINAL ORGANISATIONS CONTROL BILL 2011

Rescission of Consideration in Detail Vote — Standing Orders Suspension — Motion

On motion without notice by **Mr R.F. Johnson (Leader of the House)**, resolved with an absolute majority —

> That so much of standing orders be suspended as is necessary to enable the following motion to be moved forthwith —
>
> > That the vote passed by this house yesterday on the amendment moved by the member for Mindarie to clause 57 of the Criminal Organisations Control Bill 2011 be, and is hereby, rescinded.

Rescission of Consideration in Detail Vote — Motion

On motion by **Mr R.F. Johnson (Leader of the House)**, resolved —

> That the vote passed by this house yesterday on the amendment moved by the member for Mindarie to clause 57 of the Criminal Organisations Control Bill 2011 be, and is hereby, rescinded.

Consideration in Detail

Resumed from 28 February.

Clause 57: Circumstances in which control order may be made —

Debate was adjourned after the clause had been partly considered.

Mr J.R. QUIGLEY: I move —

> Page 45, lines 18 to 23 — To delete the lines.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 58: Conditions of control order —

Dr A.D. BUTI: I move —

> Page 46, line 19 — To insert —
>
> > to achieve the purpose of the legislation

Amendment put and negatived.

Clause put and passed.

Clause 59 put and passed.

Clause 60: Form of control order —

Mr J.R. QUIGLEY: This clause deals with the form of the actual control order to be made. I draw the Attorney's attention to clause 60(1)(c)(ii) and (1)(d). It is envisaged that in the control order there will be a brief statement of the basis upon which the control order is made, "stating the details of the declaration under which that organisation is a declared criminal organisation". I am mindful of paragraph (d), which is a caveat on the publication of that which is to be regarded as criminal intelligence. Sans that, what is it envisaged that this control order will have in it? Will it be the whole basis upon which the application was made, in summary?

Mr C.C. PORTER: What would be specified on the face of the control order is which of the grounds in clause 57(2) the control order was granted pursuant to. Does that answer the member's question?

Mr J.R. QUIGLEY: Apart from the ground, would there be any factual finding that supports that ground, or would it be just the ground?

Mr C.C. PORTER: There would be reasons for the decision, which are obviously subject to judicial review. They would contain that sort of information. The control order itself—the document—would not.

Mr J.R. QUIGLEY: Does this differ from the declaration, because the reasons for the declaration do not have to be put forward on the face of the declaration, do they? I might be corrected on that.

Mr C.C. Porter: I think clause 15 deals with the notice of declaration.

Mr J.R. QUIGLEY: That is on page 16.

Mr C.C. PORTER: The member will see that clause 15(2) states that the declaration notice must —

(a) state that the organisation specified in the notice is a declared criminal organisation …

(b) state that the designated authority's reasons for making the declaration are publicly available on the register; and

(c) set out a brief explanation of the effect of Part 3 …

That is the control orders section.

Mr J.R. QUIGLEY: But they are not on the face of it. If we go to the reasons, they are on the register, but, on the face of it, there are no factual assertions.

Mr C.C. Porter: Not on the face of a control order, no.

Mr J.R. QUIGLEY: On the face of the declaration order.

Mr C.C. Porter: It depends how you would characterise those things that are required in clause 15(2)(a) to (e). They are less in the order of the reasons and more in the order of describing the nature and extent of the declaration. However, clause 15(2)(b) does state —

The notice must —

…

(b) state that the designated authority's reasons for making the declaration are publicly available on the register;

Mr J.R. QUIGLEY: Yes, that is what I said.

Mr C.C. Porter: So there is a reference, yes.

Mr J.R. QUIGLEY: It references them without actually stating the reasons on the face of the order —

Mr C.C. Porter: Correct.

Mr J.R. QUIGLEY: — as opposed to the control order, which will have them on the face of it.

Mr C.C. PORTER: No. The control order will have on the face of it the basis, under clause 57(2), upon which the control order was given, but, of course, the difference is that the designated authority that makes the declaration is obviously not a court. The control order is given by a court, so it will have the control order, with certain limited information on its face, and the court will provide its reasons for giving the control order, just as any court making any decision will provide reasons.

Mr J.R. QUIGLEY: I was just querying that which the Attorney's answers will reference later when dealing with proposed section 221E. I now take the Attorney to clause 60(1)(h), which states —

if paragraph (c) applies, set out an explanation of the circumstances in which the order —

That is, the control order —

might cease to have effect …

Is it just by revocation? What are the other circumstances? I am just wondering under which circumstances the control order might cease to have effect under section 25(2). Is it only the expiration of the declaration?

Mr C.C. PORTER: Obviously, a control order could come to an end in a number of ways, member. That deals with one of them, as I read that. If a declaration has been revoked or has expired, the control order will need to set out an explanation of the circumstances in which the order might cease to have effect. So the control order will need to stipulate that if the original declaration is revoked or expires, the control order becomes of no effect; the control order ends. It is a formal notification procedure so that the person subject to the control order knows that the control order will end with the end of the original declaration. There are, of course, other ways in which a control order could be modified or revoked, but that is just dealing with the nexus to the declaration.

Mr C.J. TALLENTIRE: I note that paragraph (f) says that a control order will —

state that the names of persons who are controlled persons are listed on the register kept under section 113;

I know it is the usual practice to provide extra details when there is a risk with someone's name. It could be Mr Steve Jones. Because of the likelihood of there being multiple Steve Joneses in the community, the address is always given. I am concerned about the logistics involved and the feasibility of maintaining a register that accurately reflects the addresses that people have, especially acknowledging that people who are involved in criminal organisations will be cagey about revealing their addresses. They will also be fairly itinerant in nature.

So I think there are all kinds of difficulties about making sure that that register is accurate, yet I can see that it is essential to the presentation of the control order. I look forward to a response from the Attorney on that one.

Mr C.C. PORTER: Probably the member has provided his own response in his question. He is right; it is part of the mechanical operation. Clause 60(1)(f) requires that a control order must state that the names of persons who are controlled persons are listed on the register kept under section 113. So the control order is required to direct people to the existence of the register, and then, as the member has noted, the register is to be kept by the Commissioner of Police. There must be details of each declared criminal organisation and the name of the organisation, details of the declaration, the reasons for the designated authority's decision and the personal details of each person who is a controlled person. That takes us back to the definitions section, I think, for "personal details"—that is, clause 3.

It states —

> ***personal details***, in relation to a person, means —
>
> (a) the person's full name; and
>
> (b) the person's date of birth; and
>
> (c) the address where the person is residing; and
>
> (d) the address where the person usually resides, if that is different from the address referred to in paragraph (c);
>
> and
>
> (e) the person's business address;

It will be incumbent on the Commissioner of Police to keep that register accurately and fulsomely in the knowledge of the definition of personal details. The commissioner can keep the register in any form he thinks fit, but its contents are required to meet strict requirements under the act. I think the member pointed out that that may not always be terribly easy; nevertheless, that is one of the requirements under the act. If a person has gone through a process whereby earlier there was a declaration and later there was a control order, that person has obviously ultimately turned up to court for the second stage, the permanent control order, so the police will know some significant amount about that person. One would presume that they will know enough to meet the requirements of the register, but that will not be easy in all circumstances.

Clause put and passed.

Clause 61: Explanation of control order —

Dr A.D. BUTI: This clause is about trying to ensure that the respondent to the control order receives an explanation about their obligations under the control order. There is no doubt there is a commonsense threshold of reasonable steps under clause 61(2) and clause 61(4) states it should be taken as far as practicable. That is a commonsense approach but it is of course a low threshold. Turning over to page 50, clause 61(5) states that failure to comply with that low threshold would not invalidate the control order. I have some trouble with that. The government has set, as I said, a commonsense approach, but it is a low threshold. It will not take much to take reasonable steps—it does not have to be successful, only that reasonable steps are taken—as far as practicable. I am sure the Attorney General cannot guarantee—no-one could guarantee—that there may be an occasion on which a Commissioner of Police or their delegates take no steps at all, but that will not invalidate the control order. I find that quite absurd. The legislation sets a low threshold and although that threshold may not be met, it will not invalidate the order. The proposed section does not require that a successful explanation be given or contact successfully made with the respondent; the steps simply have to be taken, and if those steps are not taken, that still does not invalidate the control order. I have problems with that.

Mr C.C. PORTER: I take the point the member made; I am not sure, though, that it is entirely fair to describe what is in that proposed section as a low threshold. I say that by way of comparison. I do not have a copy of the Restraining Orders Act to hand, but there is a range of circumstances in which a person will become the subject of an order and may not be present in court at the time. There is quite literally a range of circumstances in which that would happen and many of those orders will place pretty serious obligations on the person who becomes the subject of the order. It is actually I think a fair summary to say that it is unusual in the empowering instruments, the acts that allow for those types of process, for them to make a requirement like this at all, let alone of the type that is in this legislation. I am just thinking of a few examples. I am pretty sure from recollection that there is something equivalent to this in the Bail Act; that there is a requirement that people have bail explained to them. Again, that does not invalidate the grant or non-grant of bail or any later breach of the bail condition if it can be shown that that explanation was imperfect, which is the same situation as with this legislation. But in a whole

range of instruments—I think the Restraining Orders Act is probably an example—there is nothing that requires, even in circumstances that are ex parte, for an explanation to be given. Therefore, this is imperfect but it tries to find a balance between providing an explanation and having an incredible amount of legal argument taken up by a person who may breach a control order about whether the explanation or the attempt to explain it to them was sufficient. Therefore, it is a protection that does not exist in some other similar processes, but I think it is warranted protection here. However, I agree with the member that it does not take that extra step of allowing for the invalidation of a control order because of an insufficient or unsuccessful explanation.

Dr A.D. BUTI: I thank the Attorney General for his explanation; however, there are also differences between this piece of legislation and some of the ones he cited. Under this piece of legislation, a control order can be made against someone who has not in themselves committed any offence as such. They have not committed an offence but they are a member of a criminal organisation, which, under this act, will now become an offence, but they have not in the traditional sense committed an offence. Therefore, it is not the same as maybe a restraining order or bail application. I am not arguing that the attempt to explain the control order has to be successful. I think this proposed section should be in this act because in the history of this institution, this act goes further than most pieces of legislation that have come before this house. Therefore, it makes sense that the Attorney General has introduced this provision for the explanation of a control order. Surely, the Attorney General's motivation to do so was that he felt that respondents should receive an explanation of their obligation and, surely, we should be motivated to ensure that respondents comply with the control order. It would be difficult to comply with a control order if the respondent does not even know that they are subject to a control order. Surely, therefore, it is not asking too much that a Commissioner of Police or his officers or delegates take reasonable steps to explain a control order—not to succeed in their explanation of the order, but just to explain it. By having clause 61(5), which states that if they do not comply with the reasonable steps, it will not invalidate the order, one must wonder what the purpose of the proposed section is in the first place. The Attorney General must have been motivated by a view that because of the consequences to respondents subject to this control order, their obligations should be explained, and we would of course agree with that. Surely, therefore, in the same section there should not be a provision that basically in many respects makes that irrelevant.

Mr C.C. PORTER: I take the point and I am quite open in saying to the member that this is an extra protection but it is administrative in the sense that a thoroughgoing compulsion, which would invalidate a control order, for the explanation would, in the view of the government, mean that an enormous amount of time and energy would be taken up in discussing whether this or that explanation was reasonable. That type of hearing would always be oath-on-oath and about what was said and how it was said. Perhaps the member might take some comfort from the fact that a breach of a control order has to be found beyond reasonable doubt by a court. Of course, if a person had a credible explanation that they faced a situation in which the police commissioner did not undertake what is requested of them in section 61, which is to provide an explanation, the person who was in breach could quite easily and likely successfully argue mistake of fact as a defence under the code that they honestly and reasonably held the belief that they could do what they were doing that would otherwise constitute a breach. Therefore, a failure by the police commissioner to do what is requested of him in section 61 will always raise the very significant risk that at a later hearing for a breach of control order that deficiency becomes a pretty substantive defence for the person who is alleged to have breached the control order.

Clause put and passed.

Clause 62: Commencement and duration of control order —

Mr C.J. TALLENTIRE: My concern with clause 62 relates to the important act that has to take place whereby a person who is the subject of a control order is advised as such. A control order does not come into effect until a person is served with the order. However, it could be that a dangerous criminal is at large, but for some reason the authorities are having trouble finding or locating that person and therefore the order will not be served. I think the probabilities of an order not being served are quite high because people, aware that they are under investigation and knowing that they are involved in all sorts of criminal activities, will be very evasive and therefore difficult to find. Therefore, clause 62(1)(a) and (b) creates an additional motivation for people to remain at large and avoid any contact with authorities to avoid the issuing of a control order. I do not see how we manage to safeguard against that situation in this legislation.

Mr C.C. PORTER: The short answer is that we have not. The only alternative—albeit I accept absolutely what the member for Gosnells says—is that someone is prosecuted for the breach of a control order in circumstances in which they simply did not have, as a matter of fact, knowledge of the control order. In circumstances such as that, we have entered into a balancing exercise and weighed the danger that the member has spoken of with the danger that attaches to the potential prosecution for a breach of an instrument that restricts a person's liberty and

that, if successfully prosecuted, is likely to further restrict a person's liberty. We have just struck that balancing exercise in favour of the person who is the subject of the control order in those circumstances.

Mr C.J. TALLENTIRE: I totally support the idea of protecting people's civil liberties but wonder whether there are some circumstances in which the risk posed by a particular person is such that there really does need to be a separate category whereby the order could be issued without the person being present or physically receiving a copy of that order. I do not think it is too difficult to imagine the sorts of circumstances in which someone may be in that category, but at the moment it seems that we are not prepared to accept that such people could be at large in our community.

Mr C.C. PORTER: I accept that those sorts of people could be at large. This is a powerful piece of legislation. It does have restrictive effects on people's liberty if they become subject to a control order. The state is holding itself to a high standard, and to receive the law enforcement benefit potential of the control order, the police will have to locate the person who is the subject of the control order and serve them. We considered that, on balance, the alternative of people who, not knowing that they are the subject of a control order, breach that order only to be prosecuted for something that they did not even know that they should not be doing, was a very heavy-handed step to take. We have just struck the balance in that way. But I accept absolutely what the member says—namely, that there are risks involved in doing it this way.

Clause put and passed.

Clause 63: Successive control orders permitted —

Dr A.D. BUTI: By way of clarification, Attorney General, subclause (2)(a) states —

> the interim control order or control order (the ***new order***) cannot come into force until the existing order expires;

My question is: can one use the revocation provisions in, I think, clause 70 of this bill to bring the original control order to an end immediately so that the subsequent control order can come into force because the subsequent control order may have greater conditions and be —

Mr C.C. Porter: I think that is the idea.

Dr A.D. BUTI: Is it?

Mr C.C. Porter: Yes.

Dr A.D. BUTI: Okay.

Clause put and passed.

Clause 64: Appeal against making or refusal of control order —

Dr A.D. BUTI: By way of clarification once again, subclause (2)(b) states —

> with the leave of the Court of Appeal, on a question of fact or a question of mixed law and fact.

Subclause (3) continues about an appeal on a question of law. Does this include a situation in which an appeal can be made with regard to a clause 61 failure to take reasonable steps to explain the order? Could that be grounds for appeal?

Mr C.C. Porter: No.

Dr A.D. BUTI: Could the Attorney General explain some examples of grounds for appeal?

Mr C.C. PORTER: Appeal lies in all cases on a question of law. If an interpretation of a provision that is legally incorrect is applied, that would be the basis for an appeal; that is, the interpretation of a provision that formed the basis for a decision to grant a control order would give grounds for appeal as of right, being a question of law. Questions of mixed law and fact are sometimes difficult to separate from questions of law, and the member referred to "with the leave of the Court of Appeal". In the case of mixed law and fact, it is the question of whether someone is a member, which does not entirely rely upon some misinterpretation of one of the provisions of the bill that define membership, but also involves some kind of argument about what the person did and their history—their criminal history and their associative history and so forth. If, as in a number of other appellate situations, we are arguing what is truly and strictly a question of law, a misinterpretation, or a misapplication of the act, there is an appeal as of right—an appeal, with leave, for a mixed question of law and fact, of which there may be many different types.

Dr A.D. Buti: Thank you.

Clause put and passed.

Clauses 65 to 71 put and passed.

Clause 72: Notice of variation or revocation —

Mr J.R. QUIGLEY: There is a mandatory requirement that the commissioner list control orders on his website. I should not say "his", because we may have a female commissioner one day. However, there is no mandatory requirement in the bill that requires the commissioner to list notices of variation or revocation on the website. I am wondering whether we can insert a mandatory requirement for the commissioner to keep the register up to date by listing the variations and revocations.

Mr C.C. PORTER: As the member points out, the police commissioner is compelled to place the control order on his website in a public fashion. If there is a revocation of the control order, there is no control order and so there is no compulsion. However, with a variation, I would argue that the logical interpretation of the intersection of those two provisions is that if a control order is varied and the commissioner is required to place the details of a control order on the website, the commissioner is ipso facto required to place on the website the new conditions of the control order—or the control order as varied, because, once varied, that is simply a control order with new terms.

Clause put and passed.

Clause 73: Orders available against 16 and 17 year olds —

Ms A.S. CARLES: Clause 73 in division 4 refers to these provisions being applicable to 16 and 17-year-olds. I wonder whether the Attorney General has sought the advice of the Commissioner for Children and Young People on the effect of these provisions on children and whether children are guaranteed legal representation.

Mr C.C. PORTER: I do not believe that the children's commissioner was consulted separately on that provision. I am not certain that we have received any submission from the children's commissioner on that provision, but I do not want to say that as a matter of absolute fact because I cannot recall whether we have, and, of course, this bill has been out for some time. That is not to say that what I think the member is implying would not be the case; that is, that the Commissioner for Children and Young People probably would not be overly enthusiastic about these provisions. I will give an explanation of them. They are provisions that the government thought long and hard about. Where laws such as these have been used successfully in other jurisdictions—in the United States and Canada—at first instance it was often the case that juveniles of any age were not included in the scheme, and that provided an incentive for the criminal organisation groups to involve juveniles, because they could not become subject to control orders and thereby were unable to be prosecuted for a breach of a control order. I think it is fair to say that that was the basic experience in other jurisdictions. So this is obviously applicable and restrictive potentially of a juvenile's movements and liberties, but it is also taken as a mechanism to try to not engage in and create a structure in which there is an incentive for criminal organisations to involve juveniles in a courier fashion or to pass messages or indeed to engage in criminal conduct.

Ms A.S. CARLES: Can the Attorney General please say whether children have the right to legal representation? And if they cannot afford that right, will the state fund their representation if they are charged under these provisions?

Mr C.C. PORTER: In every proceeding in this state in a court a child receives representation, and there is no reason to believe that these proceedings will be any different. So, I can say to the member faithfully that children will be represented.

Mr J.R. QUIGLEY: I have a short, crucial amendment to move to clause 73, which the Attorney General could probably have anticipated, and that is this —

The SPEAKER: Are you moving this amendment?

Mr J.R. QUIGLEY: I wish to move an amendment to clause 73(1) —

> Page 56, line 16 — To insert after "(1)" —
>
> > With the exception of Part 10 of this Act which does not apply to persons under the age of 18 (juveniles)

I wish to insert those words and I will sign that amendment.

The SPEAKER: If you could provide a copy, that would be excellent, if it has been signed.

Mr C.C. PORTER: Before the member speaks to that, just by way of background explanation, I obviously might see the point of what the member for Mindarie is trying to achieve there. The question I asked my advisers

was whether, if the member were to move that sort of amendment, it might be better moved in the context of part 10. Because the member is seeking to not have part 10 apply to juveniles, it seems to me that what he is seeking to achieve is that a juvenile could be the subject of a control order under the Sentencing Act but could not be the subject of mandatory sentencing under the act. Is that about the effect of it?

Mr J.R. Quigley: Mandatory sentencing or the other onerous provisions.

Mr C.C. PORTER: On confiscations?

Mr J.R. Quigley: In relation to juveniles.

Mr C.C. PORTER: I can inform the member on the perception with respect to mandatory penalties.

Mr J.R. Quigley: And new section 221C—all of those.

Mr C.C. PORTER: In clause 181, on page 133, new section 9E states —

> Section 9D does not apply to an offender who, at the time of the commission of the offence, was under 18 years of age.

However, new section 9D refers to minimum mandatory sentences. For the member's information, the Sentencing Act already contemplates that minimum mandatory sentences would not apply to a person under the age of 18, even if that person had met all the other conditions—that is, was a member of a declared criminal organisation, subsequently committed an offence and so forth. So that is the case. However, the confiscation proceedings would potentially apply to a child—I think that is correct—as would the other provisions the member mentioned. I also foreshadow that we have determined by virtue of that clause to try to strike a balance, slightly different from the one the member for Mindarie is proposing, and I would not be minded on the part of the government to support the member's amendment. However, I notify him, at least for his own comfort, that mandatory sentencing provisions do not apply to children.

The SPEAKER: Before we can go any further, I am just going to seek some clarification from the member for Mindarie with respect to the amendment he proposes. I am going to read it back to him because he may wish to clarify something for us that will be very helpful. With respect to what he has put in quotation marks on the actual insertion that he proposes—"With the exception of Part 10 of the Act which does not apply to persons under the 18"—there is actually a word missing before the numerals "18". I am presuming the member means "the age of 18" or "18 years of age".

Mr J.R. Quigley: Yes.

The SPEAKER: We just need to clarify that for everybody. Thank you, member for Mindarie.

Mr J.R. QUIGLEY: Thank you, Mr Speaker.

In response to the member for Fremantle, the Attorney General used a crucial word. He said that the experience in the United States and elsewhere, especially in the United States and perhaps under the Racketeer Influenced and Corrupt Organizations Act, was that if criminal groupings were outlawed, they would simply seek to control—language used by the Attorney General with which we concur—juveniles to act on their behalf. The reason I agree so wholeheartedly with the Attorney General is that of course at that age juveniles are susceptible to control, and their will can be not as much overborne as their thoughts controlled and fashioned by organised criminals who are not without wit and guile in trying to control people. Part 10 of this legislation has mandatory sentencing with a caveat upon it that it will not apply to children or juveniles under the age of 18 years. But other provisions in part 10 relating to bail will be affected by this legislation and will affect the rights of the child. Confiscation proceedings are already harsh but under this legislation will become harsher. I said at the outset of my speech that Labor is not ideologically opposed to part 10. The reason Labor is not ideologically opposed to it is for the very reason that the Attorney General of Western Australia identified yesterday; that is, we are passing legislation to deal with the one per cent of the population who are avowed anarchists, who put themselves apart from the rest of the community and who say, "We have both the horsepower and the guile to put aside the rest of the community in the pursuit of our own ways." We are therefore not ideologically opposed to part 10. However, as I said, part 10 deals with more than mandatory sentencing and it deals with new section 221E, which we will come to later and which I say carries with it the seeds of the destruction of the legislation for reasons that I have expressed before and will seek to express more clearly again today. But that is a side point.

The provisions of part 10 are not contained in legislation, or have not been contemplated by legislation, in any other state. This will no doubt make our part 10 the toughest regime in Australia. We say that part 10 should not apply in any measure to juveniles. Juveniles will still be juveniles between the ages of 16 and 18 years who are susceptible to having their minds fashioned by criminals; sometimes these criminal organisations appear wrongfully to be some sort of celebrity organisation or something to aspire to. This happens not just through

their own efforts, but through the media and the movies that young children are exposed to, whereby the heroes are organised criminals. When they are then set upon by these organisations to do things for and on behalf of the organisation, they are susceptible. We say that those children should not be excepted from the provisions of the control orders, nor from the considerable penalties that attach for offending or breaching.

Dr A.D. BUTI: I am thoroughly enjoying the member for Mindarie, who is in full force at the moment, so I would like to hear a bit more from him.

Mr J.R. QUIGLEY: We say that part 10 in many respects is the real grunt of the legislation. I cannot believe that the mere making of a control order will be the end of it for people who have for years been living this lifestyle; that is, that they will say, "I've got a control order. See you, gang; I'm out of here. I'll never see you again and never communicate with you again." I cannot believe that that will necessarily flow. But as controlled person after controlled person faces up to the provisions of mandatory sentencing for offences that do not even carry a term of imprisonment under the Criminal Code, they will nonetheless be sent to prison by reason of this—children excepted. In many respects, part 10 is the real grunt of the legislation. If criminals who commit any offences that carry only a fine as a maximum penalty are in furtherance of the activities of criminal organisations, they will go to prison. This will more surely lead to the curtailment of those criminal activities than the issuing of a piece of paper that states, "Don't speak to Joe again."

We should except children from the operation of this really harsh regime in a number of pieces of legislation—the Criminal Property Confiscation Act, the Bail Act and the like; we think with regard to children it is a bridge too far on an ideological ground. As I said at the outset, we have not taken an ideological exception to any of this. If the Attorney were to say on another day during debate on another bill, "Ha, ha! But you acceded to mandatory sentencing in the Criminal Organisations Control Bill. Labor is changing its position from its intransigent opposition to mandatory sentencing", we would say that for every rule there is an exception, and the Attorney General identified the hard-core, entrenched anarchists in this community for whom there has to be an exception to our ideology. But, we say that, given that children are still subject to control orders and to the harsh penalties for breaching a control order, they should be excepted from the operations of part 10 of the legislation insofar as part 10 is designed to amend a whole lot of other legislation. We should leave children out of that regime. The Attorney General can control and punish children—he can do all sorts of things to them—but we say that he should not part 10 them. That is a shorthand way of saying it.

Mr C.C. PORTER: First of all, I am not quite sure how intransigent Labor's position is on mandatory sentencing. Quite a few people are spending time in Western Australian prisons under a three-year mandatory penalty for people smuggling, which is not providing an enormous deterrent effect in my personal observation. It is a slightly different issue. I know that there are federal–state divides sometimes on policy matters. I understand what the member is doing.

Mr J.R. Quigley: And one opposed by the Chief Justice stridently, as you would be well aware.

Mr C.C. PORTER: Imputing a position such as that to the Chief Justice is probably going a little further than was reflected in his speech. I read his speech and he pointed out something with which I would wholeheartedly agree—that is, if there is merit to mandatory sentencing, it is when it provides a deterrent effect, and that is not obvious in the situation of people smugglers. I think as much is borne out by the facts.

In any event, there seems to be no disagreement about the correctness of a control order applying to children. The member does not have a difficulty with that. He has a difficulty with the extra provisions that appear in part 10. There are three extra provisions: one relates to mandatory sentencing, the second makes a slight change to bail and the third deals with confiscations.

Mr J.R. Quigley: And the Criminal Code.

Mr C.C. PORTER: Yes, and the Criminal Code offences. They are the four. The provision relating to mandatory sentences does not apply to children. In the second provision relating to bail, the bill before us seeks to insert proposed sections 221E and 221F, I think, into the Bail Act's schedule of serious offences. However, that does not deprive children from the standing position and benefit they enjoy under the Bail Act that they enjoy the presumption in favour of bail being granted. Although it moves those two serious offences into the schedule of the Bail Act that deals with serious offences, it does not change the fundamental position for children on bail; that is, they are presumed to receive the benefit of it. That then leaves the existence of those offences and whether or not children should be charged with them. The government maintains its position that a child above the age of 16 and under the age of 18 should be able to be charged with that offence if all the elements of the offence are present and provable. Finally, the government's position on the confiscations element of this bill is the same as that for the control order elements. I take the member's point that children can sometimes be easily

led on these matters. However, if there is not an attempt to make children subject to the confiscations provision that attaches to a person who is a member of a declared organisation or to control orders —

Mr J.R. Quigley: They are not going to put their property in children's names.

Mr C.C. PORTER: Indeed. In the government's view, that will create an incentive with the control order situation to use children as members of the organisation to undertake its activities or, indeed, to use children as the repository of crime-generated property. However, I understand the point that the member is making. I think that only two of the issues are live ones, but no doubt the member will put his amendment. I just foreshadow that it will not be accepted by the government.

Dr A.D. BUTI: Clause 73(1) states —

> … 16 years of age but are under 18 years of age … in the same way that it applies to persons who have reached 18 years of age.

Presumably, a control order that is instigated against a 16 or 17-year-old will be put on the website by the Commissioner of Police.

Mr C.C. Porter: Yes.

Dr A.D. BUTI: I know we have not got to it yet, but I think I need to mention it now. Clause 76 mentions that nothing in this division will have an effect on the application of the Children's Court of Western Australia Act or the Young Offenders Act. I do not have those acts in front of me, but I presume the Young Offenders Act prevents the publication of juvenile criminal convictions. I think that is the correct act; I am not 100 per cent sure.

Mr C.C. Porter: That is right, but this is a civil order, though.

Dr A.D. BUTI: Yes, I know. I understand that a person who is under a control order has not actually committed a crime. However, if a person breaches a control order, the person will commit a crime. But it is a bit perverse. The Young Offenders Act prevents the release of the names of persons who have actually committed a crime. Sixteen or 17-year-olds who are under a control order have not committed a crime, yet their names are published on a website, and that will, of course, have a major effect on their reputation. That just seems slightly perverse. I am wondering why it was necessary to not have an exception for 16 and 17-year-olds so that their names cannot be released on the website. The Attorney may say that we need to put the names of these people on the website so that others will know that they are under a control order and then they will not be susceptible to having contact with them. I understand that. But it still seems a bit perverse.

Mr C.C. PORTER: I think different things are sought to be achieved, and I consider that we have pointed out what is sought to be achieved here. The purpose of having the names of persons subject to control orders on a website and identified by the population at large is to enable the population at large to avoid contact with those people. That was a consideration that the government had in the drafting of this legislation, and again we place greater weight on that outcome. The member has described the comparative situation as perverse—when a child subject to a civil order has their name published, but a child who has committed a criminal offence does not. But we are seeking to achieve different things. Of course the question arises: what do we generally achieve by notifying the world at large that a child has committed a criminal offence? In some circumstances, there may be something to be achieved. But it is certainly not the case that it is comparable to a civil order, when we are actually trying to achieve something positive by the publication. But at least in this case there is a rationale for publication, which is not always existent when a criminal offence has been committed.

Mr C.J. TALLENTIRE: I have serious concerns about the inclusion of clause 73. From my reading of this clause, it means that the whole of the act will apply to children who are 16 to 18 years of age in the same way that it applies to adults. It seems that the justification for that are these Fagin-like circumstances, if we think back to Dickens' *Oliver Twist*, in which criminal organisations could in fact use children to pursue their illegal activities. When we think that through, if children are being used in that way, it is because children are being abused. That is a societal problem. I do not think children should be treated in the same way that adults who have made the choice to act in a criminal way would be treated. It is a very different case. I think it is an unreasonable and unfair way to treat people who just by a misfortune of birth have found themselves in a family that has an inclination towards organised crime. I hear what the Attorney General has said about part 10 and proposed section 9E, which states —

> Section 9D does not apply to an offender who, at the time of the commission of the offence, was under 18 years of age.

However, I have trouble reading that in connection with clause 73. Clause 73 makes it clear that this act will apply to persons who have reached 16 years of age but are under 18 years of age. I think reconciling those two

things is very difficult. There is a need for greater clarity in the legislation, otherwise we really are allowing a group of young people who, as other members have said, are vulnerable to being led astray, vulnerable to peer pressure and their desire to conform—all those things to which young people are susceptible—to be visited upon in a way that will probably entrench them as lifelong criminals. I do not see this as a means of helping to save them from a criminal life. This kind of approach, in which an order is placed on them, will mean that they are labelled as members of an organised crime gang. It is something that they may wear as a badge of honour at some stage as well. It entrenches in their mind that that is their destiny. We really need to reconsider this clause and clarify what we mean, because to just say that under part 10 of the bill there is some exemption for people under 18 years of age does not sit logically with clause 73.

Mr M.P. MURRAY: I also have a concern that for people in this age group this could be seen as a badge of honour in their formative years, when they think, "Now I have achieved notoriety by being put on the list and I am up there with the big boys." I certainly have seen that happen with some kids, and when they grow a bit older they wish they had never put themselves in that position. So I do have concerns about what is going to happen by naming and shaming, because in some cases it certainly will not be shaming; it will be: "Guess what I have achieved." We had the Rebels bikies in town for a while, and the way they started to control some of the young people in town was just terrible. I am talking about that age group. They thought it was really big time to hang around the clubhouse and do antisocial things and be part of the bigger picture. To enable them to have their name attached to any outlaw gang would certainly, to me, be the wrong way to manage them in the future. So I just say that I am concerned about that.

Mr C.C. PORTER: I thank members for their comments. No doubt the member for Mindarie will move his amendment soon. Can I just say that this place feels a bit Dickensian at times. That image of child criminals fitting the bill of the Artful Dodger and twirling umbrellas and singing songs is one that we all have in our minds when we talk about the involvement of children in criminal organisations and enterprises and gangs. The reality of the situation, though, to take on board the point that the member for Collie–Preston has made, is that it is not inconceivable that some misguided juveniles could see a control order and the listing of their name on the register of control orders as a badge of honour. But that would be a very high price for them to pay for that badge of honour. The ultimate sanction against a juvenile is that they will be a criminal if they breach the control order; and, also, it limits their movements. It is not inconceivable, and I would imagine it is highly likely, that these control orders will form something of a welfare tool. If a juvenile does end up the subject of a control order, that juvenile will be squarely in the sights of all the welfare agencies of government.

I will tell the member why this is important and why the government is doing it. It is not merely to be nasty or to provide opportunities for children to big-note themselves. We need look only at the recent serious offences associated with known members of outlaw motorcycle gangs in Western Australia, and I will give members a few examples. Paul Hugo, member of the Gypsy Jokers, found in possession of 439 grams of methylamphetamine on 12 April 2011 and charged with Misuse of Drugs Act offences, is likely to be declared a drug trafficker if convicted. Ralph Kometer, president of the Kalgoorlie chapter of the Gypsy Jokers, and Austin Doig, member of the Gypsy Jokers, found in possession of 1.36 kilograms of methylamphetamine on 25 November 2010 and charged with Misuse of Drugs Act offences, will be declared drug traffickers if convicted; and also found during the search of the residence was a .30 calibre M1 carbine weapon and 420 rounds of ammunition. Jarrod Peter Haines, member of the Rebels outlaw motorcycle gang, found in possession of 780 grams of methylamphetamine, was charged with possession with intent to sell and supply, and convicted. Ronald Mark Scott, president of the God's Garbage outlaw motorcycle gang, Perth chapter, and Toby Amoore and Kingsley Ware, members of God's Garbage, were charged with extortion for events. All three were convicted of demanding property via oral threats. Steven Milenkovski, president of the WA chapter of the Comancheros bikie gang at the time, was found in possession of 2.6 kilograms of methylamphetamine and charged under the Misuse of Drugs Act. One thing that is common recently to almost all of those is methylamphetamines. All of the criminal intelligence points to the fact that outlaw motorcycle gangs are the primary source of the manufacture of methylamphetamines and the transport of those not merely across borders but, more generally, inside the state of manufacture. The experience recently, as I understand it, in South Australia was that if a person is manufacturing large amounts of methylamphetamines, or crystal methylamphetamine, they do not want to be caught with those amounts, which limits one's ability to distribute. What was occurring in South Australia is that the natural juvenile tendency that occurs at times to form gangs and to behave poorly whilst in that company was being manipulated and utilised by outlaw motorcycle gangs in forming connections with gangs of youths, including people between the ages of 16 and 18, and using them as a distribution point for methylamphetamines.

We have considered that this is a firm piece of legislation in its application of juveniles but it must necessarily be so based on the best criminal intelligence we have as to how outlaw motorcycle gangs interface with young

groups of juveniles who, no doubt, have welfare issues at hand and are being manipulated and utilised. If we extract that cohort of juveniles from any sanctions under the legislation, we provide a greater incentive for that form of interaction between outlaw motorcycle gangs and juveniles. We differ on a point here. No doubt the member for Mindarie will put his amendment, but to explain the government's position, it is not simply a matter of being tough, firm or nasty; there is a rationale behind this.

Mr J.R. QUIGLEY: I thank my parliamentary colleagues for their contributions, some of which technically raised issues a little beyond the amendment I moved, as the Attorney General would appreciate. We on this side of the chamber recognise the truth of what the Attorney General just said and that is why as a party, despite individual concerns that different members may have, we do not oppose a regime that would result in control orders brought against 16 and 17-year-olds. What we do oppose, however, is the extra step and the applicability of part 10 of the bill to juveniles, notwithstanding the Attorney General's explanation. It is that narrower point that the amendment I have moved seeks to address, not the wider point as to whether juveniles —

Mr R.F. Johnson: You have not moved the amendment yet.

Mr J.R. QUIGLEY: Yes; I have moved it.

The ACTING SPEAKER (Mr A.P. O'Gorman): The amendment has been moved.

Mr C.C. Porter: It was so long ago now I have forgotten!

Mr R.F. Johnson: It seems like a lifetime ago!

Mr J.R. QUIGLEY: Not if you're as old as we are, Leader of the House! A lifetime is a long while; this is only a short while.

Mr R.F. Johnson: It seems a lifetime on every clause in this bill.

Mr J.R. QUIGLEY: I would like to say, in response to that, Leader of the House —

Mr R.F. Johnson: You don't have to respond to me.

Mr J.R. QUIGLEY: No; I do. We on this side of the house appreciate these clauses not being guillotined. I recall that another party of a different complexion in power in New South Wales guillotined just about every clause and punched it through the Assembly and Council in 24 hours. It was all torn asunder by the High Court, but this is such important legislation —

Dr A.D. Buti: Don't give him any ideas!

Mr R.F. Johnson: I can assure you we will not guillotine any clauses, but we note there is some filibustering, without a doubt, on some of the clauses. If you oppose a clause, vote against it, by all means.

Mr J.R. QUIGLEY: They are interesting interjections, but we have not gone to every clause. I will limit it to saying that we are just speaking to the amendment that seeks to exclude the operation of part 10 in its entirety to juveniles. The Attorney General has given his explanation; there is nothing more I can add.

Amendment put and a division taken with the following result —

Ayes (25)

Ms L.L. Baker	Mr J.C. Kobelke	Ms M.M. Quirk	Mr P.B. Watson
Dr A.D. Buti	Mr F.M. Logan	Mr E.S. Ripper	Mr M.P. Whitely
Ms A.S. Carles	Mr M. McGowan	Mrs M.H. Roberts	Mr B.S. Wyatt
Mr R.H. Cook	Mr M.P. Murray	Ms R. Saffioti	Mr D.A. Templeman *(Teller)*
Ms J.M. Freeman	Mr A.P. O'Gorman	Mr C.J. Tallentire	
Mr J.N. Hyde	Mr P. Papalia	Mr P.C. Tinley	
Mr W.J. Johnston	Mr J.R. Quigley	Mr A.J. Waddell	

Noes (27)

Mr F.A. Alban	Mr M.J. Cowper	Mr R.F. Johnson	Mr C.C. Porter
Mr C.J. Barnett	Mr J.H.D. Day	Mr A. Krsticevic	Mr D.T. Redman
Mr I.C. Blayney	Mr B.J. Grylls	Mr W.R. Marmion	Mr M.W. Sutherland
Mr I.M. Britza	Dr K.D. Hames	Mr J.E. McGrath	Mr T.K. Waldron
Mr T.R. Buswell	Mrs L.M. Harvey	Mr P.T. Miles	Dr J.M. Woollard
Mr G.M. Castrilli	Mr A.P. Jacob	Ms A.R. Mitchell	Mr A.J. Simpson *(Teller)*
Dr E. Constable	Dr G.G. Jacobs	Dr M.D. Nahan	

Pairs

Mr T.G. Stephens	Mr P. Abetz
Mrs C.A. Martin	Mr V.A. Catania

Amendment thus negatived.

Clause put and passed.

Clause 74: Notification of orders against juveniles —

Mr C.J. TALLENTIRE: I will continue with the theme, being this issue of the plight of juveniles who are in these situations. Clause 74 relates to the notification of orders against juveniles. In his response to discussion on clause 73, the Attorney mentioned that other agencies would be made aware of a juvenile who was the subject of an order. We could have all the social services agencies assisting a young person who is in this situation. Even though we say that the chief executive officer of the department of the public service principally assisting the minister in the administration of the Children and Community Services Act 2004 would be advised of the notification, I think we need more detail about what would occur. Advice would be given but what measures would be triggered by a juvenile being the subject of an order that needed to be clearly spelt out? I think that should be in this legislation in some way. Perhaps it appears elsewhere and the Attorney can advise me where.

Mr R.F. JOHNSON: I am standing in for the Attorney General because he has been in this chair for a very long time—in fact, all morning, all last night and all yesterday afternoon—and it is only appropriate that he have a break when it is needed, which is the normal course of events.

Several members interjected.

Mr R.F. JOHNSON: I listened very carefully to what the member for Gosnells had to say, and I certainly will not bother with the interjections of the members for member for Collie–Preston and Albany because they are normally nonsense. I believe that the Attorney General answered all the concerns raised by the member for Gosnells under the previous clause.

Mr C.J. TALLENTIRE: I am a little surprised by the response of the minister who is deputising. I think the Attorney just touched on this issue and probably intended to go into it in much more detail. He indicated that there would be some access to other services but we need clarity on how those services would come into play. At the moment the chief executive officer of the department of the public service is principally assisting the minister in the administration of the Children and Community Services Act. I think we need much more than that. This is a very serious situation. This is one of those occasions when investment in an intervention program at this stage can make such a huge difference to the eventual outcome.

Mr R.F. JOHNSON: The advice I have been given is what I understood to be correct anyway. What would happen in this case is what would happen in all cases; that is, advice and notification to children's services would be given and it would deal with the situation in the way it normally deals with situations such as this.

Mr C.J. TALLENTIRE: I do not understand why we do not have more detail. Things are almost going on at arm's length here. We are saying that there would not be an automatic referral to the minister. I think that is probably what should be contemplated. It is an automatic referral to the minister with responsibility for the administration of the Children and Community Services Act. Why are we putting this intermediary of the CEO of the department of the public service in place?

Mr C.C. PORTER: The instructions that I have from my advisers are that the ordinary and standard processes under the Children and Community Services Act would apply. I am not quite sure why there would be a need to amend those specifically in relation to this legislation.

Mr C.J. TALLENTIRE: I can see that we have a mechanism for eventually having a referral but it is eventual; it is not immediate. This intermediary of the CEO of the department of the public service is involved. Why can the referral not be automatically to the minister with responsibility for those social services agencies and the legislation involved?

Mr C.C. PORTER: That is a question of theory rather than practical outcome. Although this would be a high-profile matter—my own office generates 12 000 pieces of correspondence every year—even if something is framed as going directly to the minister, as a matter of practice that is going to come through a departmental head in that fashion. As a matter of practice, we probably would not be achieving much by doing that. The member could rest assured that if a juvenile aged between 16 and 18 became the subject of a control order, that would be fairly high up on the agenda of the departmental head who would be required to give notice to the minister. That news would flow somewhat more quickly than other pieces of correspondence. I understand what the member is trying to do but I do not think it would make any practical difference.

Clause put and passed.

Clauses 75 to 77 put and passed.

Clause 78: Other standard conditions —

Dr A.D. BUTI: I probably should have raised this earlier. This clause deals with the issue of receiving funds et cetera with regard to a declared criminal organisation under the act. In other provisions such as clause 100 there are grounds by which one can overcome the prima facie offence. Is the Attorney General seeing this clause as a whole to impose an absolute liability or is it just a normal liability with the excuses or possible defences as shown in clause 100? From the general reading of most of these clauses, I would have thought the general thrust of the purpose of the legislation is that most of these provisions would be seen as strict liability; for example, if one receives funds, one has breached one's control order. As we know, strict liability or even absolute liability is generally something that the criminal law does not advocate. Of course drug importation is an absolute liability and there are a number of absolute liability clauses in other drug offences. The whole sports drug doping regime is based on an absolute liability. If a prohibited substance is found in the bloodstream or a urine sample, one is found prima facie to have contravened the doping legislation.

Quite a famous WA case, the Maynard case, which is a horseracing case that was heard in the Supreme Court, frowned on the issue of absolute liability. It said that unless the legislation expressly provided for an absolute liability or strict liability offence, the court would not read it as such. I am a bit confused. Part of the legislation, as clause 100 would indicate, shows that this is not a strict liability. The purpose of this legislation and the reading of a lot of the clauses would indicate that it is a strict liability. Most of the offences are strict liability. As the Attorney General stated in response to my question about the need to explain, if we allow room to manoeuvre, it would impose additional layers of argument that can be argued before a judge, which I am sure is not what the Attorney General envisaged with this piece of legislation. Just for clarification, what level of liability are we dealing with? If it is not absolute strict liability, it really counters the response I received relating to my concern about the explanation provision in clause 61.

Mr C.C. PORTER: The terms "strict liability" and "absolute liability" are used in a slightly different context, and it is possibly easier to identify them by exception. For instance, nothing in the offences that appear at clause 102 would lead me to characterise that as a strict or absolute liability offence. Clause 78 sets out standard conditions for a control order. In subclause (1)(a) a controlled person must not receive funds from, make funds available to or collect funds for or on behalf of a declared criminal organisation. At clause 102 it is an offence for a controlled person to give funds to or get funds from or for a declared criminal organisation, and a controlled person commits an offence if the person receives funds from or makes funds available to a declared criminal organisation. In either of the circumstances, whether it is a breach of the control order—that is, we are arguing they have breached the condition—or an individual, a controlled person, is being prosecuted under 102, I fail to see how clause 102 is much different from most other criminal offences. The prosecution would have to prove the elements of the offence beyond reasonable doubt. Just looking at it here and now, we would have to prove that a controlled person received funds from or made funds available to a declared criminal organisation, that there was a transaction with the funds, that the person was a controlled person and that the funds went to or from a criminal organisation. So all of those things would have to be proved to the appropriate standard and all of the defences under the code that might have application are available. There is nothing in this clause that says that this or that defence is not available. When things start to look more like strict or absolute liability offences—for instance, the Prostitution Act itself excludes certain defences from being applicable to the offence of allowing a person under the age of 18 to be employed as a prostitute; the provisions in this bill do not do that—it might be argued that it was a mistake of fact or that there is not sufficient evidence available to prove beyond reasonable doubt any one of the elements of the offence; and it might be argued that it was an accident. There might be any number of defences that the accused could avail themselves of, so I would not characterise these as pushing up towards the structure of a strict liability offence.

Dr A.D. BUTI: We have it on record that it is not absolute strict liability, which is fine; but in the Attorney General's answer to my question about notification, he said that this will not invalidate that clause. Surely, by

allowing that room for the police force to utilise this—in the sense that if the police commissioner does not take reasonable steps to explain the obligation to the respondent—that will increase the possibility that a respondent can use the defence provisions in clause 100 to overcome a breach of the control order because they can reasonably show that they did not know they would commit an offence. Even if clause 100 is not relevant, just in the general view that this is not a strict liability or absolute liability crime, if it can be shown that the person does not know that they are subject to the control order, that will provide a defence. Surely, therefore, it is incumbent on the government to ensure that the police take all reasonable steps to ensure that the respondent knows their obligations under the control order, and if they do not take reasonable steps, there should be some consequence. The consequence could be absolutely significant if it could be used as a defence to the charge, vis-a-vis the consequence under the explanation clause. If that was grounded in a more positive manner, it may remove possible grounds for a respondent to overcome any prima facie breaches of the control order.

Mr C.C. PORTER: What I said earlier was that if the police commissioner failed to notify someone of the terms of the control order, as they are encouraged to do under the relevant provision, they run a risk. The risk is aptly demonstrated in clause 100(2). If we look at the non-association offences contained in clause 99, we see that it becomes a defence to those non-association offences for the accused to establish that he or she did not know and could not reasonably be expected to have known that the other person with whom he or she associated was a controlled person; it is a defence to a charge under those clauses for the accused to establish that the association is in accordance with the terms of the exemption; and earlier in subclause (1) for the purposes of the application of clause 99(1) and (3) to an accused to whom the interim control order relates, the forms of association set out in clause 101 are to be disregarded if the accused proves that all the associations were reasonable in the circumstances. It might be argued that a person never knew, because it had never been explained to them that they were the subject of a control order and they were not to do this or that or associate with this or that person, and that it was reasonable in the circumstances that they did what they did not know they were not supposed to do. That is the risk someone runs if they fail to do what they are encouraged to do.

Dr A.D. BUTI: I totally agree with the Attorney General, which is my point about clause 61: it is because a person has increased the risk that they run—that is, by having a provision in clause 61 that states that failure to comply with this clause does not invalidate a control order. I would have preferred the Attorney did not include that. Personally, I would have preferred something stronger, but it would have been better not even to include that clause, because it could be seen as an implied encouragement, or at least neutral, as to whether the police commissioner should take all reasonable steps to ensure that the respondent knows of their obligations.

Mr C.C. PORTER: I take the point the member is making, but again it was in a circumstance of trying to balance competing interests. There remains an incentive for the police to inform a person subject to the control order of the existence of it and its terms. They are encouraged by the legislation to do that. A failure to do that does not invalidate the control order. We might have a situation in which someone argues a defence under clause 101 that it was reasonable in all the circumstances for them to have associated because they were not dutifully informed by the police of the existence of a control order over them or the conditions of it, or it might be a situation in which there was no notification but the prosecution can prove absolutely that the person knew they were the subject of a control order by a witness who was not in the employ of the police commissioner testifying that they told the person and the person clearly knew. In that case, we tried to strike that balance whereby the failure under clause 63 would not just invalidate the existence of a control order. I take the point, but it was a balancing exercise.

Clause put and passed.

Clause 79 put and passed.

Clause 80: Condition prohibiting controlled person from carrying on prescribed activity —

Dr A.D. BUTI: I have a point of clarification on subclause (1)(h). I presume that greyhound racing comes under the Racing and Wagering Western Australia Act?

Mr C.C. Porter: I am also acting under that assumption, not being a huge punter myself.

Dr A.D. BUTI: Fine. That act lists a number of occupations in the racing industry: owner, trainer, jockey, apprentice jockey, track work rider, driver of harness racing horse, and also other persons associated with racing. Would that include anyone who has any connection to the racing industry, such as commentators, people who provide feed, vets et cetera?

Mr C.C. PORTER: It needs to be a person who, subject to the Racing and Wagering Western Australia Act, is required to be licensed. I do not know whether commentators are required to be licensed. Obviously, these are potential non-standard conditions that a court may determine to engage in. Obviously, they are directed at the fact that sometimes nefarious people have been involved in gambling.

Clause put and passed.

Clause 81 put and passed.

Clause 82: Surrendering things that cannot be possessed under order —

Mr J.R. QUIGLEY: Subclause (1) reads —

> If an interim control order or a control order prohibits the person to whom the order relates from possessing any substance, article or thing … it is a condition of the order that the person must, within 24 hours after the order comes into force, deliver the prohibited item to the custody of the Commissioner of Police at a place specified in the order.

Subclause (2) states —

> The person is taken to have complied with the condition referred to in subsection (1) if he or she lawfully disposes of possession of the prohibited item before the expiry of the period referred to in that subsection.

This suggests to me that the person can dispose of the item other than to the Commissioner of Police. If we are talking about a licensed weapon that the person has to surrender to the Commissioner of Police, they can sell it. Is it contemplated by that clause that, before the commissioner can get his hands on it, the person can dispose of it to a third party?

Mr C.C. PORTER: I believe that is the correct interpretation, so long as they dispose of it lawfully. Depending on what the item is, there might be any number of requirements for the lawful disposal of it. There are only certain ways a person can lawfully dispose of a firearm, for instance. It cannot just be left at the green waste verge collection. I think it is the case that the person who has the prohibited item, and is required to hand it over to the police commissioner within 24 hours, would not have to do that if they could show they have lawfully disposed of the item. Whatever the item is, the lawfulness of the circumstances will differ. They will have to prove it.

Mr J.R. QUIGLEY: I am troubled with that clause a bit if there is an obligation to hand objects over to the Commissioner of Police but they do not have to if they can otherwise get rid of it.

Mr C.C. Porter: The purpose of it is to make sure the person who is the subject of the control order does not have the thing. Whether the thing ends up in the possession of the police commissioner or it is properly disposed of, the outcome is achieved.

Mr J.R. QUIGLEY: Thank you.

Clause put and passed.

Clause 83 put and passed.

Clause 84: Dealing with things surrendered or seized: firearms and weapons —

Mr C.J. TALLENTIRE: This clause places an onus on the state to keep in safe custody a firearm that perhaps was the property of someone who has been deemed to be a member of a criminal organisation. If we are confident that that person is a member of a criminal organisation, I am not sure that they really need to have that firearm ever restored to them so long as they are a member of that criminal organisation anyway. Why should the state be encumbered with the responsibility of having to keep safe and go to the expense of storing a firearm for someone we have determined is a member of a criminal organisation? Would it not be better to simply have the firearm destroyed and, therefore, reduce the number of firearms in our society? I think it is unreasonable to expect the state to go to the expense of and take the responsibility for the storage of firearms.

Mr C.C. PORTER: The answer I believe is to do with some earlier concepts the member raised around the ability of a person to truly reform after at some time being a member of a declared criminal organisation and then becoming the subject of a control order. Allowing for that possibility, as the member mentioned earlier, if a person has truly reformed, denounced their membership, commenced to live a law-abiding life and surrendered a thing, firearm or not, rare though those circumstances may potentially be, they should be entitled to have that thing, firearm or not, returned to them subject to their lawful using of it. I take the point the member for Gosnells raised. We considered on balance it might be somewhat harsh, given the possibility of reformation, to take items from the person permanently.

Mr C.J. TALLENTIRE: I agree with the Attorney. We have to leave it open for people, and of course we want people to reform themselves, but that would not preclude them from eventually becoming a firearms owner. We are talking here about saving the state from having to look after a particular firearm for an extended period with all the costs and risks associated with that storage. I do not think it would be unreasonable to seize a firearm and

destroy it. Let us hope that the person then sees the error of their ways and becomes a reformed citizen and then, after a certain delay, they would be entitled to apply for a firearms licence and become a licensed gun owner. But they would in fact have to buy another gun. I do not think that is unreasonable. As the Attorney says, we want people to reform themselves, but I do not think we should encumber the state with the expense and responsibility of extended storage of guns that are, after all, quite replaceable items.

Mr C.C. PORTER: Based on that logic, all items that have been seized pursuant to the control order and held are replaceable items—gold bars, guns, cash, whatever it might be.

Mr C.J. Tallentire: Those are easier to store.

Mr C.C. PORTER: I think the member is delineating, for reasons separate from the process at stake here, between firearms and other things that are not firearms. I understand why he might do that, but the principle we are applying is that if a person is required to give up property pursuant to the existence of the control order and the reasons for that control order genuinely and truly fall away, they should be allowed to have that property back. Yes, we will put the state to some expense to hold whatever property it may be, but there is no particular reason to treat firearms differently from any other single piece of property.

Mr C.J. Tallentire: I think that is a problem. I do not think firearms should be considered as just another piece of property. They are extremely dangerous items and should be treated differently.

Mr C.C. PORTER: Given time is now running short, it may be something we will consider during the break.

Dr A.D. BUTI: If a state were to take possession of the firearm and then return it to the respondent when the control order is no longer in force, will the state also be liable if the firearm is destroyed or lost? Will compensation be paid to the respondent for the lost firearm?

Mr C.C. PORTER: The state is responsible when it takes ownership of a thing for a period for its safekeeping. I think there might be a clause in the legislation that reverses that general position. Clause 169 covers protection from liability for wrongdoing. The answer is: that clause will mean that the state would not be responsible.

If the member for Gosnells were minded to make an amendment at a time later to the effect that "the thing is to be returned unless it is a firearm", that is something the government will consider.

The ACTING SPEAKER (**Mr A.P. O'Gorman**): I understand the Attorney General has invited a possible amendment. If we vote on the clause, the amendment cannot be added unless the clause is reconsidered.

Mr C.C. Porter: An amendment of that nature might be put in the other place, which we can organise, so we can put the clause.

Debate adjourned, pursuant to standing orders.