

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

*Second Reading*

Resumed from 14 October.

**MR M.J. FOLKARD (Burns Beach)** [5.35 pm]: I rise to speak to the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. Some members of this house did not want to talk to this bill in this chamber for some sort of fear about our bikies. I can say that we do not need to fear these individuals and my speech will reflect that.

This bill is probably the most comprehensive and toughest set of reforms in Australia. It represents a change in the approach to organised crime and I think it is a really positive way forward. From now on, we will have a whole-of-government approach to fighting organised crime. In the past, we have been reliant on the justice system and police force to deal with this particular aspect of society, but it takes a community to deal with organised crime.

Everyone knows that in a past life I was a police officer. When I say that it takes a community to deal with organised crime, I will give an example. I was stationed at Kalbarri as the officer in charge. One Friday night, a group calling themselves the “Confederate Gentlemen’s Social Club” rode into town. Members probably remember them by another name; they are known as the Rebels bikie gang. They fronted into town in vast numbers. Unfortunately, I was the only officer on duty in town at that particular time. When you are the only police officer and you realise that you have 70-odd bikies in town, it is a very lonely space. On their arrival, I managed to reach out to some of my colleagues in the midwest–Gascoyne and about 30 officers were coming to back me up, but in the short term I had to deal with the Confederate’s social club. They managed to drop in on one of the taverns in town. No sooner than they had arrived in town, they started misbehaving.

We saw that the Kalbarri community is fantastic in its recent response to the cyclone. That community loves its coppers—I am not sure what they thought about me, but anyway. I remember heading into town and across to the tavern. There would have been about 70 or 80 locals in town. I found the sergeant at arms in the pub and said to him, “Mate, you got to take your boys and head out of town.” I remember him turning to me and saying, “There’s only one of you.” He was right, but I looked across the bar and about 60 or 70 of our community members were looking back at him. I remember saying, “Mate, look over there. Every one of those people is one of my mates. It’s about time you left.” This gentleman did not want to draw attention to the group and so he decided to back down and leave; so be it. Over the next five minutes, he packed up all his colleagues and they headed off to a centre just outside of town. That is one of the dealings that I had with our outlaw motorcycle gangs.

This bill has three aspects to it. One part is the unlawful consorting scheme, which I think is brilliant. The second part is the prohibited insignia scheme, and the last part is the dispersal notice scheme. It would have been very handy to have those powers when I was dealing with them. Why is there a need for this? It is because bikies believe that they are above the law. They think they are the “1%ers”. They wear that on the badges on their colours and often it is tattooed on their various body parts—their arms, chest or wherever. They do not think that our laws and values apply to them. They think they are above the law. I have no time for them whatsoever.

The bikies have such a perverse set of values that they think violence is the way to deal with everything. I will mention a couple of recent incidents. Back in May 2021, a Rebels gang member named Jason Kemp was bashed in one of our prisons. I am not sure what that was about, but that was just the prelude because a Comancheros member named Ray Cilli organised the murder of Alf Eades in one of our prisons. He organised six fellow inmates to beat poor Alf to death. He took a long time to die from his head injuries. Ray Cilli does not even have the courage to stand up to the offences he organised. He is hiding in Thailand as we speak. I do not need to dig deep. This is something I know from my past life. This is public knowledge. I will table the document that speaks about it.

[The paper was tabled for the information of members.]

**Mr M.J. FOLKARD:** Rebels bikie Nick Martin was assassinated at Perth Motorplex by a soldier of fortune sniper. The assassination was ordered by “the Baker”. The gentleman who is referred to as “the Baker” is on the public record. He was kicked out of the Rebels and the Comancheros OMCGs and is now a patched member of the Mongols. They refer to him as “the Baker” because his name is Mr Pye. That is just recent. Well done to our local coppers who dealt with that particular operation.

In my own electorate, there was a gunfight at the Mindarie Marina involving Comancheros member David Kinneen, who was arrested after a high-speed chase. I shudder to think how many lives that individual put at risk during the high-speed chase. I know that because I used to conduct high-speed chases. Because of where the gunfight occurred, with a number of families around, a poorly aimed shot or a ricocheting bullet could have potentially hurt a completely innocent person. These people do not care about the community. We know about the Milperra massacre when several bystanders were killed in that incident. Mr Kinneen was arrested and charged with various motor vehicle offences, and I am sure that he will spend time behind bars.

**Extract from Hansard**

[ASSEMBLY — Tuesday, 9 November 2021]

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Mr Mark Folkard; Mr Paul Papalia; Dr David Honey; Mr David Scaife; Dr Jags Krishnan; Mr Paul Lilburne; Ms Margaret Quirk; Mr Shane Love; Mr John Quigley

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Our OMCGs are responsible for the meth trade in Australia. It sits at their feet, 100 per cent. Studies show that in the Australian community, over \$15 billion of profit is made from our drug industry, and a significant amount of that goes to outlaw motorcycle gangs. In the last Parliament, I had the privilege to sit in King's College and listen to Professor David Nutt, who is an expert on drug use in the United Kingdom. During the lecture, he said that Australia is recognised as the highest consumer of meth in the world, and the bikies are responsible for all of it. I can hear members say, "What?" Back in 1970, the Hells Angels, which was a baby gang of drunken idiots in New South Wales, went to America, and one of them brought back the recipe for how to cook meth. There are two methods for cooking meth. The method they brought back was used to cook meth in significant quantities in the eastern states. That eventually reached all around Australia. Before commercial quantities were starting to make their way into Australia, there were small cooks. I remember in my policing days when we used to find a meth lab on a daily basis throughout Perth and regional WA. If someone could get Sudafed, a cook could make the equivalent weight in meth within 20 minutes in the boot of a car. I remember finding a car cook right beside a primary school. The toxic chemicals in meth scare the people from our chemical labs, and I mean scare them. All it would have taken was for a vessel to break open beside the primary school and I shudder to think what would have happened.

In the last 18 months, 210 kilos of meth have been seized by our police in Western Australia. The majority of it comes from over east. It is concealed and welded into vehicles and embedded in trucks, then transported. One seizure of 175 kilos was found in trucks, and another 30 or 40 kilos was found on top of that. I know of seizures in the northern suburbs near my electorate that have led to a significant interdiction of organised criminals. The police have seized in excess of \$50 million in cash. Taking money off bikies hurts them. Although \$50 million is nothing but a drop in the ocean compared with \$15 billion, I can assure members that it hurts them. Every dollar that we can take off these individuals, the safer our communities can be, because it stops the bikies from making and bringing more drugs into our community.

The consorting scheme in this legislation is interesting. There are a lot of myths out there about consorting laws. I will talk about a few of them. Before a consorting law can be triggered, someone must be found guilty of an indictable offence, so it is not at the street level; someone must be doing something very serious to trigger that. There is a myth that the new consorting laws will affect anyone who is a member of an outlaw motorcycle gang, including their kids. That is not the case. The proposed legislation will apply only to criminals convicted of a serious offence and who continue to associate with other criminals for a criminal purpose. That means it will stop them from associating with one another. Organised crime cannot take place if someone is standing there by themselves; it is not organised.

Another myth is that not all outlaw motorcycle gang members are bad; they are just guys who love to ride their motorcycles. What a load of nonsense. Outlaw motorcycle gangs are criminal enterprises. They have some of the best business plans that anyone could find at Harvard University coming out of that particular arena. When gang members wear their colours it intimidates communities. When a gang rides into a small community, the seniors run and the mums and dads pick up their kids and clear the streets. Gangs are fearsome, and wearing their colours creates that persona. A myth out there is that outlaw motorcycle gangs are not a problem in WA—I disagree! Have a look at the media articles that have been written in the last 12 months in Perth. We have had assassinations and murders in our prison system—the list goes on. For some members who may not remember, there was the bombing death of Dan Hancock. People in this chamber may not be aware that as part of that inquiry, two other homicides were identified that no-one knew about. It was through good policing that they were discovered.

In this environment, some people are scared that their civil liberties will come under threat if we approve these laws. I disagree with that. Gang members gave up those rights when they started selling amphetamine and methamphetamine to our kids and when mental health services started to feel the weight of the madness that meth has brought upon our community. The best way to deal with an OMCG bokie is to stand six inches in front of their face because they hate that they are then not perceived as the most powerful person in their community.

The proposed legislation strikes a balance between individual rights and the protection of the public. Unless you are convicted of a serious crime and you are over 18 and continue to commit crime, you will not be affected. There is a myth out there that police time would be better spent dealing with crime. Crimes like burglary, stealing and armed robberies are often ice-related. During COVID, the burglary rate in our community fell significantly because our meth-heads could not get hold of drugs, and the resulting crime statistics for burglaries and petty theft fell through the floor. As scary as it might sound, a significant amount of our criminal activity and antisocial behaviour is driven by drug use. There is clear evidence that outlaw motorcycle gangs are involved in the importation and distribution of drugs. Just because their criminality has not directly affected our crime statistics does not mean that they are not contributing to our crime rates. We need to ensure that the community feels safe.

Wearing a patch does not make a person a criminal. If you are not a criminal involved in an outlaw motorcycle gang like the Rebels, Comancheros, Mongols or Bandidos, they are not interested in you.

[Member's time extended.]

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**Mr M.J. FOLKARD:** One of the key selection criteria of an outlaw motorcycle gang is that a person has to commit an indictable offence. Therefore, to say that they are not criminals—I whistle!

Another myth is that not all motorcycle gang members are bad and that it is a police–media beat-up. Never have I heard such horrible words, but that is a common myth out there. The activity of outlaw motorcycle gang members ranges from public nuisance through to high-level organised criminal activity involving some of the most significant criminal syndicates operating in Australia. Outlaw motorcycle gangs are involved in violence, murders, shootings, drug manufacture, distribution and intimidation. The reach of our OMCGs is not restricted by state or national borders—in actual fact, they don’t give a toss about them!

Criminal activities conducted by outlaw motorcycle gangs are often facilitated by the involvement of both legitimate and illegal businesses—absolutely! They wash significant amounts of sums of their ill-gotten gains through legitimate businesses—tattoo parlours to name but a few. Another myth is that outlaw motorcycle gangs should be welcomed as long as they behave themselves and that police are overreacting. Tell that to the people who they have killed! Tell that to the lives of our children they have destroyed through the importation and usage of meth.

Outlaw motorcycle gangs are significant players in controlling the importation and distribution of drugs—I have said that once; I will say it again and again—especially speed and ice. Their business model involves serious violence and drug trafficking. They are consistently trying to expand their numbers; hence, they wear their colours everywhere they go—hence the tattoos.

Another myth is that these laws are unconstitutional and they will stop people from having contact with their families. In 2014, the High Court ruled in a 6–1 majority that the New South Wales consorting legislation was valid. The High Court accepted that it is reasonable and appropriate to serve the legitimate end of the prevention of crime. Our laws will have defences for consorting. Being with family members, seeing a lawyer, probation officer or doctor, going to work or training or gathering for religious or lawful political protests are seen as defences in this bill.

The third part of this piece of legislation refers to prohibited insignia and will stop outlaw motorcycle gang members from wearing their colours. People will say, “They have tattoos on themselves, which are their signatures.” I will tell members a story about what these individuals have done in the past to people who have tried to break away from the gangs. In Northam, out in regional WA, when I worked as a young constable, I remember a bikie coming into the station. Actually, he did not come into the station; we received a call from the local hospital. We went there and found him. What had happened was 10 of his other so-called gang members had taken to this fella and tried to skin him with a potato peeler. They were trying to remove his gang colours from his arms. We sat down with this fella and listened to his story. He had fallen in love with a lovely woman and he chose to hand back his colours and leave the gang environment. This woman must have been something very, very special. As a result, he handed his colours in and about three months later the gang found him at one of the local pubs and they took to him. In that process, they found a potato peeler and they carved off the colours from both his forearms—horrible as it might sound. I ran into that gentleman probably about five years ago. I remember speaking to him and he recognised me and we had a bit of a laugh over old times and swapped stories. I said, “Do you have any regrets?” He goes, “I have a wife. I have three wonderful children.” He had no regrets whatsoever. These people are monsters. Do not ever think the wiser.

The dispersal notices are another positive step going forward into the environment that we are dealing with. Does it mean much? It just gives our police force another tool when dealing with these individuals. Anytime that we can put the onus back on them, to empower police to absolutely give these individuals a bit of what for, is good. The dispersal notices will be brilliant. It will be something that a police officer can drop on a gang member at the drop of a hat. I think that is outstanding because anything we can do to give gang members a hard time, particularly when they are doing their runs, has some merit and I wish I had had it previously.

I can remember, as a young copper, I worked out at Wyalkatchem. I was relieving out there, and, again, I was a single officer, by myself. I can remember one of the two girls who were working in the bar came running upstairs and said, “Mark, Mark, help, help!” I said, “What’s up?” She said, “Listen, there are four bikies downstairs in the bar and they’re absolutely running amok.” I asked her what they were doing. They were reaching across and grabbing alcohol from behind the bar and not paying for it, and they were attempting to fondle the poor ladies behind the bar et cetera. So I got in my van and drove it around to the front of the pub. The Wyalkatchem Hotel is an old pub. It has old four-foot solid walls. I remember walking in and casting my eye over them. There were only four of them. Again, it was another lonely day of country policing. I remember looking across and seeing a patched gentleman sitting at the bar, and there were three young noms. For those who do not know, a nom is a young fellow who is trying to earn his colours. I remember that one of them was quite tall—a bit of a lad. He was probably full of—pardon my language—piss and vinegar. I walked in and I remember looking up at him and thinking, “This is going to get interesting.” I said, “Righto, boys; it’s time to go.” He turned around and looked at me and said, “What are you going to do about it?” I said, “Mate, let’s not misbehave.” He took a swing at me, but I ducked the swing. I remember grabbing him by the scruff of his collar and running him to the door and thinking to myself, “This is going to get

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really interesting, because if he starts kicking off in the back of the van, it's only me there", which is what would normally happen. Hand on heart, to this day I remember that I tripped and he went sailing into the door frame and I knocked him out. He dropped like a bag of spuds. I picked him up and I got him round to the back of the van. I remember throwing him into the back of the van and locking it. It was a real cold winter's night, and that will have some bearing on this yarn.

Back in those days, we did not have things like tasers, pepper sprays, ballistic vests and all the luxuries that the officers carry now. What we did have was a good old-fashioned nightstick. I walked around to the front of the van.

**The ACTING SPEAKER (Ms K.E. Giddens):** Member, I am curious about the end of this, but I am afraid that, given the time, I will have to vacate the chair until the ringing of the bells.

*Sitting suspended from 6.00 to 7.00 pm*

**Mr M.J. FOLKARD:** I have only a couple of minutes to go. I will finish off this yarn and let someone else have a go.

**Dr D.J. Honey:** We will extend your time if you like.

**Mr M.J. FOLKARD:** It is fine, thank you.

I remember coming out of the bar, and in the old days we used to carry our batons in the doors of the car. I went back inside the hotel and it was a case of looking at the other three: "Well, mate, I've got a big stick now; time to get out of here." They left, and went storming out en masse. I said to the barmaids, "You lock this place up and lock it up tight", which they did, and I walked outside. I said earlier that it was a very, very cold winter's night. Wyalkatchem is about an hour and a half's drive to Northam—the nearest 24-hour lock-up—and this bloke was going to have a stay. I can tell members that it was very, very cold sitting in the back of the old-style utilities with a cage on the back at night. By the time we got to Northam, all the fight was out of this particular gentleman. I remember him getting out of the van shaking like a leaf. I took him inside and we started processing him. I am not a man without compassion, so I found him a cup of tea and warmed him up, and he apologised as he left the station.

As I said, these individuals need to be dealt with with a firm hand, and I suggest the laws that our good Attorney General has put together are some of the finest in the country. This will not stop bokie behaviour. If members think this is the panacea to what is out there, they are dreaming. This is a \$15 billion industry, and it takes a community to deal with organised crime. This government is introducing a monumental change that I do not think is being considered anywhere else in Australia. It takes a community to deal with organised crime, not just ourselves. I think the way that our Attorney General has put together these fairly simple and concise laws will make the situation far better and productive going forward and will empower our police to give these individuals that they encounter as hard a time as possible. With that, I commend this fine piece of legislation to the house.

**MR P. PAPALIA (Warnbro — Minister for Police) [7.05 pm]:** Unusually, as I am not the lead speaker on this bill, I rise to speak on the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. I am keen, however, to place on the record the commitment by not only myself, as the Minister for Police, but also the Western Australia Police Force to work in a collegiate fashion with the Attorney General and his agency on legislation and measures to disrupt and dismantle organised crime in Western Australia. This is essentially the first tranche of a range of measures that will be introduced into Parliament in coming months that will empower police like never before to make life very uncomfortable for outlaw motorcycle gangs in Western Australia.

As the Attorney General no doubt mentioned during his second reading speech, this law itself and the other measures that we will be introducing are in response to an approach the Commissioner of Police made when we were in caretaker mode. He referred to the experience of Western Australia during those early days of lockdown last year and again more recently, when we witnessed the impact of being able, for the first time, to significantly disrupt the supply of methamphetamine to Western Australia. Most of it comes from overseas, derived from overseas importation through the eastern states and delivered to Western Australia. What we saw, particularly during March and April last year, was a massive drop in the volume of traffic across the borders. That, coupled with the use of intelligence and technologies, enabled us to much more effectively intercept the delivery of methamphetamine in WA. As a consequence, we also saw a huge reduction in both the consumption of meth and the consequent crime associated with people seeking out resources to fund their habit. We saw commensurate drops in crime with an almost inverse increase in the intercepts, but also significant drops in usage, as confirmed by subsequent sewage testing. The intent or the request by the Commissioner of Police was that we try to replicate that impact. We are never going to close the borders forever. Despite some people's desire to continue this safe environment forevermore, we will have to open, but we can introduce a range of measures to enable a similar capacity to intercept the delivery of meth into the state.

We know from experience during the COVID lockdowns that those who import meth into Australia and then try to sell to Western Australians do not have their own distribution methods on the ground; they do not have people on

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the ground. Cartels, mafia, triads and other organised crime groups from overseas do not have people present, so they use outlaw motorcycle gangs as their distribution technique. We knew from intelligence, but confirmed it very clearly from some significant intercepts during the lockdowns, that they are the ones who distribute for those overseas organised crime syndicates. If we make it very uncomfortable for the distribution network, we can achieve that same outcome of disrupting the supply.

The Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021 will introduce an unlawful consorting scheme, a prohibited insignia scheme and a dispersal notice scheme. We heard the member for Burns Beach and the Attorney General reflect on those powers. The legislation will make things very uncomfortable for outlaw motorcycle gangs, once it passes through the Parliament. I hope for and look forward to fulsome support from the opposition and other parties in both this house and the other place so that these laws are introduced as soon as possible. I hope they are not delayed by unnecessary procrastination, as occurred around some of the other bills considered in the other place. It would be really good if the opposition saw fit to prioritise this bill passing both this place and the other house and receiving royal assent as rapidly as possible, so that we can get out there and start disrupting organised crime.

I would also like to say and convey to the public—we said it when the Attorney General and I announced this law—that we will be introducing other legislation. We will give other powers to the Western Australia Police Force to ensure that it has a range of measures available to it. Some of them, coupled with this legislation, will ensure that WA is a very, very uncomfortable place to be a member of an outlaw motorcycle gang. I hope people contemplate whether it is something they want to pursue. The idea of removing the opportunity for marketing through the insignia elements of this legislation is a good thing. It will reduce the attractiveness of outlaw motorcycle gangs and obviously reduce their opportunities to intimidate the public. I hope that those people in the community, particularly young men, who might be contemplating this pathway will consider the benefits as opposed to the very soon significant disadvantages associated with being in one of these organisations. They will become subject to all these laws. If they receive an anti-consorting direction, they will be subject to the powers associated with that direction. An unlawful consorting notice could mean that they commit an offence should they consort with their fellow gang members. It will mean that they will not be able to wear the colours and paraphernalia they might have been attracted to wearing in the first place. The dispersal notices will ensure that there is really no opportunity to engage in things like a run, which at other times might have been an appealing aspect of joining a gang. These laws will make it not very attractive, and we will make it even less attractive with some of the other powers that we will introduce into Parliament, hopefully, before the end of the year, with a view to them passing through the Parliament in the early part of next year. As a result, by the middle of next year, our police, who are very focused on this task and know who the people are that we are talking about, will be afforded every power they need to disrupt and dismantle organised crime networks.

We hope that, with luck, we can begin to replicate the impact we saw during the COVID-19 lockdown when there was the most extraordinary drop in crime, a drop in the usage of methylamphetamine, a reduction in presentations at hospitals associated with meth use and all the benefits associated with a change in environment, the likes of which I do not think anyone had seen before in such a short time frame. The Commissioner of Police has been in policing for some 45 years and said he has never seen anything like that—a more than 40 per cent reduction in crime—in such a short time frame.

In Western Australia, what drives crime is methylamphetamine, and what drives methylamphetamine distribution is the outlaw motorcycle gangs. This legislation is the first of a range of measures that we will introduce to disrupt that connection—break that nexus—and make WA a safer place.

**DR D.J. HONEY (Cottesloe — Leader of the Liberal Party)** [7.14 pm]: I rise to make a contribution to the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. I cannot help but respond to the deliberate provocation by the Minister for Police in relation to this legislation. I am not the lead speaker on this bill, might I say; the Deputy Leader of the Opposition is the lead speaker on this bill and will present our position on it. I will not oppose this bill, but I wish to discuss some aspects of it. In relation to the comments about this bill going through Parliament, the other side had ample opportunity to put this bill through in the last Parliament. It was not held up by us in the upper house at all. It sat on the table in the upper house and was not debated or prioritised in the 16 priority bills, so the Attorney General should not come in here and try to create a false impression in this place, with the aid of the police minister, that this was held up by us in any way whatsoever. It was not prioritised by the Attorney General in the other place. I will go through the detail to educate the Minister for Police because, clearly, he is not aware of the facts.

It is an interesting bill. Certainly when we go through the background covered by the Minister for Police and the Attorney General in his second reading speech, there is no doubt that outlaw motorcycle gangs are a scourge in our community. As I have mentioned in other debates in this place, I have been shocked by the extent to which outlaw motorcycle gangs have proliferated in Western Australia over the last few years and the brazenness of their attacks. An assassination of a person at the Motorplex in front of families with children was incredible and a terrible first for Western Australia. It certainly represented a new dimension of brazen lawless behaviour in our society. We have

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seen other retribution attacks in our community. When I drive out into the country and around the city, I increasingly see large motorcycle groups that are not recreational gangs; they are motorcycle gangs riding in formation, and they are quite intimidating. Obviously, as was mentioned before by the member for Burns Beach, they are extremely intimidating when they turn up in small communities in great number. It is deliberately intimidating on their part. There is no doubt that we have seen a proliferation in the number of not just the gangs, but also the members of outlaw motorcycle gangs. Certainly we on this side are very keen to support the government in its attempts to tackle this and encourage the government to tackle this, because it seems that crime associated with outlaw motorcycle gangs is getting worse.

As has been mentioned—I will not go through it in agonising detail—the bill will introduce three reforms aimed at disrupting and restricting the capacity of offenders to engage in criminal activity through criminal association and communication between people who are offenders and have been convicted of a crime. The scheme will apply broadly to a relevant offender—there is a list of what relevant offenders are—that includes people who are guilty of an indictable offence, a child sex offence or the new offences under this bill of displaying an insignia in a public place or breaching a dispersal notice. The prohibited insignia scheme will specifically target criminal organisations such as outlaw motorcycle groups, their affiliate gangs or street gangs. There are 46 identifiable organisations. The Attorney General may have explained this in his second reading speech, but I guess I am always concerned when there is a highly prescriptive list in legislation and wonder whether it would be possible to have it in a regulation or some other mechanism. I am sure he can explain it to me. It is not a criticism, just a question, because it is a scheduled addendum to the bill. I am sure other groups will come up, and will we have to bring in an amending bill every time? I am sure the minister has done this for a good reason, as he is a very learned legislator, but I was interested in why that was not done by regulation rather than appending it as a schedule. I would appreciate a response to that. In other areas, when there is a list that may be variable, it is done by regulation. I am very happy. I have come to Parliament for many reasons, and one of them is to learn. I am always happy if the minister can inform me about those things. I am certain that list of identified organisations has been worked through, with the police providing the intelligence required.

I turn to the dispersal notice scheme. That specifically targets criminal organisations and empowers the police to issue and enforce dispersal notices aimed at disrupting consorting in public places. I am sure that would be a very effective mechanism, particularly when large groups descend on a small community. I assume that was one of the reasons for that, and I am sure there are other reasons. A person who fails to comply with the direction in relation to unlawful consorting issued by the police, displays a prohibited insignia or breaches a dispersal notice is going to commit an offence. It is a very serious penalty: 12 months' imprisonment, potentially, and a fine of \$12 000. Businesses will attract a \$60 000 fine for displaying insignia.

I will go through some of the issues raised by the bill. As I said, the bill did not go through the fortieth Parliament. That bill was read for a third time in the Legislative Assembly on 23 June 2020.

**Mr P. Papalia:** It is not the same bill.

**Dr D.J. HONEY:** If the minister will let me finish.

The bill was received by the Legislative Council on the same day, but it progressed only to clause 6 during Committee of the Whole House. The key difference between the 2020 bill and this one is the introduction of the prohibited insignia scheme and the dispersal notice scheme. They were not contained in the original bill. Some other clauses have been introduced. We were told that there would be a table explaining those differences and changes between the bills. The opposition was told in the briefing that we would be provided with a table to explain those differences, but as late as today that had not been provided. We would be very grateful for that table. It is a large bill, and the opposition is keen to understand whether it has identified all those differences.

There is a specific defence for trade union members, and that was raised during the debate on the 2020 bill. It seems that in some areas members of outlaw motorcycle gangs also have a role in some unions, and the government wants to make sure it does not interfere in union activity. We have a question. It would be good if it could be explained why that provision is needed, because as the member for Burns Beach outlined very clearly, people in outlaw motorcycle gangs are not ordinary citizens, and they are not ordinary union members. As the Deputy Speaker knows, and as I have said in this place many times, I have a great deal of respect for the important role that union conveners and stewards play in workplaces. I would say that pretty well in every case that I dealt with union officials I found them to be people who were interested in doing things in a proper way. That seems inconsistent with being a member of an outlaw motorcycle gang, so I am not sure why the bill would allow people meeting for trade union activities to override the concern about the consorting of members of outlaw motorcycle gangs. As I said, I thought the member for Burns Beach gave a valuable contribution. He outlined in some good detail, and obviously from experience given his previous role before he came to Parliament, that these are not ordinary, good people. As I say, I have great respect for the people who put their hands up and act in more senior union roles. They are overwhelmingly ordinary, good people, but that does not apply to people involved in outlaw motorcycle gangs, and other gangs for that matter.

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I turn to the dispersal notice scheme. As was pointed out in the second reading speech, this is a novel bill, and it seeks to take enforcement against outlaw gangs, including outlaw motorcycle gangs, to a new level. I am interested in advice about whether there could be successful legal challenges to some of those more novel aspects, but I certainly understand the logic behind the dispersal notice scheme.

Another area of the bill I am interested in is that the oversight of the reforms will be done by the Parliamentary Commissioner for Administrative Investigations, not the Corruption and Crime Commission. When the CCC was originally set up, one of the specific areas it was set up to deal with was the problem of outlaw motorcycle gangs and whether police were complying with the laws properly. There is a check and a balance in the bill. I appreciate that there has been an attempt by the government to make sure there is not overreach or an abuse of these powers. The government will build in oversight. Why is that being done by the parliamentary commissioner rather than the CCC, as outlined by the bill?

I turn to stakeholder engagement and consultation. Our shadow Attorney General, Hon Nick Goiran, talked to other organisations and when he spoke to the Law Society of Western Australia, it said it was not consulted by the minister about this bill. That is clearly a respected group. I have heard the Attorney General in the past refer to consultation with the Law Society. I am interested in the level of consultation with relevant organisations that occurred on this bill.

There are areas that concern us on this side and they are in clause 9 under division 2, “Unlawful consorting notices”. It appears that the ability of police to deal with registered child sex offenders who are consorting will be diverted because of this bill. That was said in the briefing. Police obviously already have powers to deal with registered child sex offenders who are consorting. We were told that the wording in this bill will make it harder for the police. It will be a higher hurdle, if you like, for the police to move on registered child sex offenders who are meeting. I did not attend the briefing, but our shadow Attorney General was told in the briefing that this higher threshold will mean that in the future, police will be able to intervene in perhaps only five per cent of situations in which they can currently intervene and, in effect, the police will have to have a reasonable belief that there is consorting occurring for illicit purposes before they can intervene. It concerns me that there is in the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021 an apparent watering down of the ability for police to deal with child sex offenders. I will be interested to hear the Attorney General’s response to that. Why is that being done, and what impact will it have? I am certainly no expert in this field, but I take a keen interest in public affairs and it is not uncommon to hear about paedophile rings. It actually shocks and surprises me that there are cases in Australia and Western Australia of these online groups sharing the most horrendous abuse material and the like. I would have thought that we would not want to see any watering down of the ability for the police to intervene in situations in which registered child sex offenders are meeting and getting together. I understand that this is not a purely black-and-white situation and that there are subtleties.

[Member’s time extended.]

**Dr D.J. HONEY:** For example, I was speaking to someone about this issue and they said that there are sex offenders who are genuinely trying to reform, and part of that process is that they meet in therapy groups in which there may be more than one offender, but these are people who are genuinely making an effort to reform and that is part of the process they go through to reform. However, it would seem to me that there are exceptions in this legislation that the police are allowed to consider. If that was the government’s consideration, it could include that sort of activity in the list of exceptions. In any case, it is my concern that there appears to be a watering down of the law.

We will get the chance to go through that during consideration in detail, and I am sure that the Attorney General will respond to it in his reply to the second reading debate contributions. The Leader of the Opposition will speak in detail, but we believe that much more needs to be done about outlaw motorcycle gangs. There seems to be clear evidence that their activities are increasing significantly and that they are becoming more brazen in their behaviour. The member for Burns Beach outlined very clearly that the illicit drug trade is, in very large part, fuelled by outlaw motorcycle gangs. Anything the government can do to disrupt that trade and the activities of those gangs will be very worthwhile and something that we on this side of the house will support. Thank you.

**MR D.A.E. SCAIFE (Cockburn)** [7.33 pm]: I rise to make a contribution to the second reading debate on the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. This is yet another bill brought before the house by the Attorney General, who I previously described as a prolific legislator. The Minister for Police suggested that there might be other words applicable to the Attorney General, but I —

**Mr P. Papalia:** Outstanding!

**Mr D.A.E. SCAIFE:** Outstanding, I am sure, is exactly the word the Minister for Police had in mind, and he is an outstanding Attorney General. This legislation is part of the Attorney General’s and the government’s agenda to ensure that we crack down on organised crime, which is, as we have heard from a number of members, behind many

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completely unacceptable and outrageous activities in our community, whether it is engagement in the illicit drug trade or, as we have seen in more recent times, acts of violence that are brazen and rise to the most extreme examples.

The bill includes three key reforms. The first is the unlawful consorting scheme, which is designed to disrupt the capacity of organised crime, which in Western Australia is particularly represented by outlaw motorcycle gangs. The second is the prohibited insignia scheme, which criminalises the display of the insignias of particular proscribed organisations. That is important because, as we heard from the member for Burns Beach, these organisations, whether outlaw motorcycle gangs or other elements of organised crime, trade very much on their reputation and the fear that instils, and on the fact that they belong to groups that can intimidate other people in our community. The third reform is the dispersal notice scheme, which will empower police to require suspected members of identified organisations to cease associating and communicating in public for seven days.

I raise those three reforms for the reason that I will later touch on the need to tackle organised crime through a variety of strategies. It is not sufficient to adopt only one strategy when it comes to dealing with organised crime. The people engaged in these enterprises often do so in quite sophisticated ways. Increasingly, we have seen them adopting the use of technology, with encrypted messaging devices and other methods of communication that are difficult for the police and other law enforcement agencies to intercept. They also have connections with international organisations and sophisticated networks. It is important, from that perspective, that we are not simply playing whack-a-mole and using just one strategy only to find that it addresses only one problem and another problem arises elsewhere. We have to take a coordinated approach and use a suite of strategies to crack down on organised crime.

I have been spurred to speak to this bill because of the impact of bikie activity on my community in Cockburn. Members have alluded to the shocking murder that was carried out at the Perth Motorplex in Kwinana in December 2020. I have not been to the Perth Motorplex for many years, but I drive past it regularly. It is just off Rockingham Road, not far from my own house in Yangebup. I often pass it as I drive down to the Minister for Police's electorate to the good suburb of Port Kennedy to visit my parents-in-law. As my wife and I have driven past it lately, I have thought myself that it is almost unthinkable that there was a professional assassination carried out essentially in the backyard of my local community. That is evidence of how sophisticated these outlaw motorcycle gangs can be. This was a professional hit, carried out in front of families, children and thousands of people, using sophisticated weaponry and sophisticated skills.

But the history of bikie-related activity in Cockburn goes back further than that incident in December 2020. There has been a long history in the City of Cockburn, over the last decade, of activity relating to the Rebels Motorcycle Club. In the early 2010s—I think around 2012 or 2013—the Rebels established a clubhouse on Port Kembla Drive in Bibra Lake. That clubhouse was used, essentially, surreptitiously. It was listed as being used as a factory, but it was converted into a heavily fortified clubhouse. It was only through a tip-off from, I believe, the organised crime squad that the City of Cockburn became aware in around 2014 that the facility was being used as a Rebels clubhouse. Over the next several years, there was a quite significant dispute between the City of Cockburn and the Rebels Motorcycle Club about the use of that facility. It dragged through the State Administrative Tribunal for a number of years. During that time, threats were made to various officials at the City of Cockburn. I know, for example, that the Mayor of the City of Cockburn received a phone call to tell him that there would be a protest in the form of a group of bikies sitting in the coffee shop opposite the council chambers while one of the meetings took place. The mayor, who is a very good man and still the Mayor of the City of Cockburn, played down the significance of that phone call in the media, but it is quite clear to me that that was intended as a threat to him. It is simply disgraceful behaviour for these people to not only engage in the many activities that they do, but also quite openly attempt to intimidate a public official.

I want to give members an idea of why the City of Cockburn fought that issue so passionately. At the time, of course, some of these spokespeople for the Rebels Motorcycle Club included the former president of the Rebels Motorcycle Club, Nick Martin, who was recently deceased in the event at Kwinana Motorplex. I would like to take members to a description that Mr Martin and one of his associates Peter Antunovich give of their activities. Mr Martin and Mr Antunovich openly gave this description to the State Administrative Tribunal in a separate planning dispute. I am quoting from the case of *Antunovich v City of Stirling* [2011] WASAT 90. The decision states —

Mr Nickolas Martin and Mr Peter Antunovich are, respectively, the president and a member of an outlaw motorcycle club. In about April 2008, Mr Martin erected a masonry street wall measuring approximately 2 metres in height along the street boundary and part of the side boundary of his residential property located on a low density residential local road. Mr Martin did not obtain development approval for the wall.

Paragraph 2 of the decision is the critical part —

Mr Martin and Mr Antunovich explained to the Tribunal that their 'lifestyle' involves a risk of being shot in a drive-by shooting. Indeed, earlier this year, Mr Martin was shot through an opening in the metal gate at the front of his property. Mr Martin and Mr Antunovich said that while they accept that there is a risk that they will be shot, they are concerned for the safety of their families. Mr Martin explained that he built



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the wall to protect himself and his family from being shot. Mr Antunovich said that, had the wall not been in place when Mr Martin was shot earlier this year, ‘the shooter may have stood more open to the property and sprayed the property [with bullets]’.

That is a description from the State Administrative Tribunal of Mr Martin and Mr Antunovich’s personal explanation of the lifestyle that they engage in and that they thought was acceptable to inflict on other members of the community. The mealy-mouthed explanation that they were concerned for their safety of their families is just absurd in that context. Plainly, they were knowingly exposing not only themselves and their families but also members of the community to the risk of drive-by shootings. I suggest to members of outlaw motorcycle clubs that, in those circumstances, they do not need to build a wall; they need a change in lifestyle. It demonstrates a change in lifestyle is needed and it is not enough to simply go around making promises and building walls and doing whatnot.

I also want to take members to an article in the *Cockburn Gazette* of 21 February 2017 entitled “Bibra Lake: Rebels Motorcycle Club promises no anarchy at new clubhouse”. The article says —

A chapter of the Rebels Motorcycle Club based in Bibra Lake has promised there will be no *Sons of Anarchy*-style drama over the coming two years after a recent win for the group.

The club is free to continue operating a clubhouse at a factory unit on Port Kembla Drive after the City of Cockburn approved a temporary “change of use” for the site on February ...

That was the resolution to the dispute to which I referred earlier. We have here a promise from the Rebels Motorcycle Club that it will not be causing any kind of problems in our local community. We can imagine the absolute disbelief that that was met with by local residents. I refer to a story from earlier this year. In fact, it is from 11 March 2021, two days before I was fortunate to be elected to this place. This article from Seven News is entitled “Bikie gangs WA: Police raid Rebels clubhouse after Mongol’s Port Kennedy house shot at”. The article says —

Police have raided a Rebels bikie gang clubhouse on Thursday night in response to a shooting at a house in Port Kennedy belonging to a member who defected to another gang.

The Port Kennedy home of former Rebel Steven Bennie was fired at in the early hours of Thursday morning.

The article continues —

Late on Thursday afternoon, police used an electric saw to cut their way into the Rebels’ Bibra Lake clubhouse, a heavily fortified factory unit on Port Kembla Drive.

It goes to show how completely hollow this bizarre public relations exercise from the Rebels Motorcycle Club turned out to be. A promise was made, “Do not worry; we are only an outlaw motorcycle gang, but we will not cause any problems in your community”, and only a couple of years later, a professional assassination of the president of the Rebels Motorcycle Club was carried out at Kwinana Motorplex and the police had to use an electric saw to cut their way into the heavily fortified clubhouse in Bibra Lake. It is completely unacceptable that these people believe that they can openly and blithely operate in our communities. I will always stand up against these sorts of organisations. They are not welcome in Cockburn. They are not welcome in any part of Western Australia.

I refer to an email that I received a couple of months ago from Mr Charles Matheson, a constituent who lives in Coogee. This is a message that I want to relay to the Attorney General because on 27 September this year, Charles wrote to me and he asked, essentially: what is the Attorney General doing about outlaw motorcycle gangs? He said that we have heard these promises that something will be done about it, but he has not done anything yet. I shot an email straight back to Charles and I said to him, “Charles, do not worry; I know that the Attorney General has our back on this. He is working furiously to make sure that we have the best legislation in the country to stamp out outlaw motorcycle gangs.” I want to thank the Attorney General for proving me right only a couple of months later. I want to say, on my part, that this bill and this speech is for Charles. Thanks for raising the issue with me. Here is the Attorney General and the McGowan Labor government delivering for the people of Western Australia to tackle the scourge of outlaw motorcycle gangs in our community.

I have alluded to the need to use a variety of strategies. In closing, I want to talk about how these anti-consorting laws are an important part of the suite of strategies that we must use. Anti-consorting laws are not new; they are not new internationally, and they are also not new in Australia. Jurisdictions like New South Wales have had anti-consorting laws for many years. They were used relatively successfully from as far back as the 1950s to disrupt the drug trade. However, over time, those laws fell out of use because they could not adapt to changes in technology and the resources that were available to police and to organised crime. For example, I quote from a report of the Parliamentary Joint Committee on the Australian Crime Commission from September 2007 titled *Inquiry into the future impact of serious and organised crime on Australian society*. In that report, the committee of the commonwealth Parliament said —

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Presently, for example, the NSW consorting laws require a person to be booked ‘seven times in six months’ to prove an ‘habitual association’ or consorting offence. This might require a dozen police to attend court to prove the offence, which would be a tremendous drain on resources.

That is an example of how, if these laws are not updated and brought into modern times, they will fall out of use as a tool in the fight against organised crime.

In that respect, I want to commend the Attorney General for bringing forward a bill that deals with these anti-consorting laws in a modern way. It is based on the latest research and the latest approach to tackling organised crime. This has been done at the same time as a range of other measures. That obviously includes the anti-insignia provisions in this bill.

[Member’s time extended.]

**Mr D.A.E. SCAIFE:** The reason the anti-insignia provisions are important is that, as I said at the outset, motorcycle clubs trade on their reputation in order to get their way. They do not actually have to engage in criminal offences or violence in order to intimidate the communities that they move into. They use their reputation of having committed offences and acts of violence. That is also highlighted in the report of the Parliamentary Joint Committee on the Australian Crime Commission. The report refers to the importance of reputational violence to the triads in Hong Kong and quotes the following from the submission to the inquiry from Professor Rod Broadhurst —

These gangs, both in the Chinese context and also here, operate entirely on the intimidation of that reputational violence. That brand name—as we academics sometimes like to call it—the brand recognition of wearing a Hell’s Angels jacket, a Coffin Cheaters jacket or whatever, has the same equivalent intimidatory effect as does the wearing of a triad tattoo and so on.

The report goes on to say —

Reputational violence allows organised crime groups to easily ‘slip from protection to extortion, to infiltration of legal businesses’. Gang or group membership goes to the heart of reputational violence and is therefore a potentially legitimate area for law and policy makers to address when designing responses to organised crime.

The anti-insignia provisions in this bill are designed to prevent outlaw motorcycle clubs and other organised criminal organisations from using their brand and their insignia as a way of not only building their network and community, but also intimidating others in the community.

That highlights very well the fact that this government has taken a suite of approaches. We have the anti-consorting and anti-insignia provisions in this bill. The government has also taken a strong tough-on-crime approach in other legislation that has been brought forward by the Attorney General. I refer in that respect to the High Risk Serious Offenders Act 2020 and the Criminal Law Amendment (Uncertain Dates) Act 2020, which are pieces of legislation that will also ensure that we are cracking down on organised crime.

I am proud to be part of a McGowan Labor government that has boosted the gang response squad and provided it with extra police officers to ensure that the police have the resources and powers needed to disband outlaw bikie gangs systematically and methodically in this state.

In addition, I know that in the past the government has looked into the types of diversionary programs that can be entered into. These programs provide opportunities to intervene and divert people, particularly young people who are finding their way into these organisations, to more productive activities. I would certainly like the government to look into that further in the future to ensure that young people who may be naive or looking for guidance or mentors in their lives are not misdirected by people who intend to trap them in a life of crime and violence. I commend the Attorney General and the government for bringing this bill forward. It has my wholehearted support. I commend the bill to the house.

**DR J. KRISHNAN (Riverton)** [7.56 pm]: I rise to commend the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021 to this house and make a short contribution.

In 2006, when I moved to this country, the practice that employed me gave me a car to use for the first month, but I eventually had to buy my own car. The only time I could look for a car was on a Wednesday evening when the car yards were open. I had roughly \$12 000 in cash, with the hope that I could get a good price if I had cash to pay up-front for the car. I went out to the Maddington area to look for a car, but, unfortunately, I did not succeed in buying a car. I had taken public transport to get there, with the hope of driving home in my newly bought car. After I had finished searching for a car, it was about nine o’clock at night. I had cash in my bag, and I had to catch public transport again, because that was not the era of Uber or Ola, and I could not find a taxi. As I was walking, I found a gang in the park. I get shivers down my spine even now when I think of that moment. I was so scared to cross them. I had to reroute, and I got lost but was able to find my way back, and I finally made it home, with a deep sigh of

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relief that I had not gotten into trouble. The following day, the staff told me that I had done the right thing by not going past that gang, because I would have been in trouble.

A few years later, I was having a conversation with my colleague, who is a GP. He is a very kind-hearted person. He has helped a lot of foster kids. He shared a story about how one of the foster kids had been forcefully injected in a skate park and eventually ended up being a drug dealer, and then went on to be put behind bars. I can still see the pain on his face when he shared his experience with me. In the past year or so when I have been doorknocking and talking to the residents of Riverton, very frequently I hear about petty crimes that disturb people, particularly seniors. They feel a sense of insecurity when that happens. When we look carefully at all the crimes that I have been describing, one way or another they are linked to outlaw motorcycle gangs. It is with the intention of protecting the community that the McGowan Labor government and the Attorney General have had the courage to stand up and act to minimise or prevent these crimes from happening in the community. It is our responsibility as lawmakers to provide the best protection to the people of Western Australia by implementing whatever law possible to keep these offenders away.

The Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021 is the most comprehensive and toughest in a series of crime reform packages to ever be introduced in the history of Western Australia. I am proud to contribute to the second reading debate and to say that with the passing of this bill, we will see a reduction in crime as we work towards the betterment of the community.

This bill will implement three key reforms: the unlawful consorting scheme, the prohibited insignia scheme and the dispersal notice scheme. The unlawful consorting scheme will make it difficult for offenders to meet and grow their group of criminals and hopefully this will eventually result in a reduction in crime and disturbance to the general public.

I turn to the prohibited insignia scheme. Sometimes fear is naturally in us. People try to make use of that fear and multiply its effect by showing strength and power in their uniform, by wearing a logo on their clothes or in a tattoo that they exhibit, which is very intimidating. The bill will prohibit insignia from being publicly displayed in public places so it will not cause fear in the people of Western Australia.

I turn now to the dispersal notice scheme. If the police want to act, they need the required powers to spring into action with confidence. The McGowan Labor government has introduced this bill to provide police with the power to disperse offenders who are gathered together and causing trouble for normal people.

As other members have stated in their contributions, the bill provides for various fines if people breach these laws. It is important that we take into consideration that we need to stand up to crime, no matter the form of crime. In the interests and wellbeing of Western Australians, and to make Western Australia a better place to live, we need to bring in laws to minimise crime and to not allow criminal gangs to grow further. I commend this bill to the house. I thank you for the opportunity, Madam Acting Speaker.

**MR P. LILBURNE (Carine)** [8.04 pm]: I rise this evening to fully support the legislation that is before this house this evening, being the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. I am very proud to be part of the McGowan Labor government and to witness the amount of legislation that the Attorney General is generating in this house for the betterment of our Western Australian communities into the future. On 4 October this year, the McGowan Labor government introduced this bill into this house with the intention of making it more difficult for outlaw bikie gangs and criminal organisations to have an impact on our community. I acknowledge the previous speakers and their contributions. Their comments about and support for this bill are to be highly commended.

The three key reforms are the unlawful consorting scheme, the prohibited insignia scheme and the dispersal notice scheme, which will work together to reduce the impact and incidence of criminal activity in this state. In particular, I have a very deep interest in the public harm caused by dreadful chemicals such as methylamphetamine and others. The public harm element is of particular interest to me as the member for Carine. I will now address my concerns.

In researching my contribution to the house this evening, I reduced my speech to three articles. The first is a WAtoday article of 20 March 2021 by Marta Pascual Juanola. It reads —

Just before 8.45pm on December 12, 2020, a single bullet tore through the air at the Perth Motorplex, in the city's south, amid the roar of spectators and revving engines.

Shot from a high-precision rifle, it zoomed across the bitumen tracks, grazing the body a five-year-old boy and hitting former Rebels bikie boss Nick Martin in the chest, before striking the arm of former Bandidos member Ricky Chapman, who was sitting behind him.

Martin collapsed as panicked spectators scrambled to flee the speedway, fearing —

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**The ACTING SPEAKER (Ms A.E. Kent):** Sorry to interrupt, member for Carine. If a matter is before the courts, you need to be careful how you phrase things in this place.

**Mr P. LILBURNE:** Thank you.

Another area of particular interest to me is the effect of these outlaw bikie gangs on the community. My main area of concern is community wellbeing, which, in the past, has been affected by the activities of these gangs. That was the main thrust of the *WAtoday* article—that fear had been generated in our community. That is something that the McGowan Labor government will not tolerate, and that is reflected in this legislation.

The second article is a discussion paper from the IZA Institute of Labor Economics, which is titled *How do mass shootings affect community wellbeing?* The article states —

This paper provides evidence on the harmful spillover effects of mass shootings on community wellbeing. Our analysis of individuals living in 47 counties that experienced mass shootings from 2008 through 2017 shows that a mass shooting reduces the probability of having excellent community wellbeing by 27 percentage points ...

Although a large number of medical studies already demonstrate that shootings and other violent events inflict psychological damage on survivors, the study by the IZA Institute of Labor Economics shows that this damage extends to other adults in the community, even those who may not have been present at the shooting location. That is my main area of concern—the impact on the community’s wellbeing.

The third article I refer to is by licensed psychologist Kathy Wu, PhD, assistant professor of psychology at Delaware Valley University, Doylestown, Pennsylvania. She wrote recently —

“Children, like adults, often cycle through feelings of shock, anger, sadness, fear, and helplessness when they learn that people are dying unexpectedly and brutally at the hands of someone wielding guns. However, due to less-developed communication and emotional processing skills, children express their thoughts and feelings differently from adults.

Children experience these things. They will have increased nightmares, intrusive thoughts, abrupt changes in their mood, and changes in their play behaviour. They may start acting out shootings, or mimicking dying or other aspects of shootings. They may also report aches and pain in their bodies following a traumatic experience, such as the shooting at the Perth Motorplex that evening. Kathy Wu’s article continues —

Children who are especially distressed or anxious may exhibit regressions in their development, such as increases in bedwetting, clinginess, and tantrums.

...

“Mass shootings certainly contribute to heightened societal anxiety. And in a state of heightened anxiety, it becomes much harder to focus on the facts and create effective solutions. When we’re afraid, we tend to distract ourselves, fight with each other, or avoid the problem all together. Therefore the challenge of every community is to figure out how to keep communicating with each other and to create reality-based solutions to prevent ... shootings.”

The last article I would like to refer to is titled “Decades of bloodshed: A time line of WA bikie gangs’ history of violence” that appeared in *The West Australian* of 12 December 2020. It states that in October 2000 —

Gypsy Joker Billy Grierson shot dead at Ora Banda, near Kalgoorlie. A year later, in September 2001, former senior police officer Don Hancock killed in suspected retaliation car bombing. Gypsy Joker Sidney Reid convicted of crime.

...

**May 2004**

Kevin (Mad Mick) Woodhouse shot four times while waiting outside the Bayswater aquatic centre. Johnny Montani was charged over his murder but later acquitted.

In a scarily similar scenario in October 2008, *The West Australian* reported —

A sniper shot at Mercanti and other Finks as they rode their motorcycles in Wooroloo. The bullet missed Mercanti and hit another bikie in the shoulder.

The pattern goes on throughout *The West Australian* article.

We have an Attorney General, a Premier and a Minister for Police who are doing their very best to confront this insidious group. I commend the bill to the house.

**MS M.M. QUIRK (Landsdale)** [8.14 pm]: I have been asked to talk on the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021 due to my previous career, almost last century—in fact, certainly before I came

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to Parliament—when I was regional counsel for the then National Crime Authority. My knowledge is somewhat antiquated, but I can certainly make some observations about outlaw motorcycle gangs. I have to say that in my day, there were significantly fewer outlaw motorcycle gangs. I can remember about nine. Members will see in the schedule to this legislation a list of 46 outlaw gangs. Clearly, I was good at my job and they are missing me! They are the 7 10 Crew, 77 Crew, Bandidos, Black Power, Black Uhlans, Bros, City Crew, Club Deroes, Coffin Cheaters, Comanchero, Connected Crew, Descendants, Devil’s Henchmen, Diablos, Finks, Foolish Few, Fourth Reich, Gladiators, Gods Garbage, Gypsy Joker, Hells Angels, Highway 61, Highwaymen, Huns, Immortals, Iron Horsemen, Life and Death, Lone Wolf, Mobshitters, Mongols, Mongrel Mob, Nomads, Odin’s Warriors, Outcasts, Outlaws, Phoenix, Raiders, Rebels, Red Devils, Renegades, Rock Machine, Satan’s Riders, Satudarah, Southern Independence, Vigilantes and Vikings, to name a few. The first observation I make, of course, is that there has clearly been an escalation in OMCG activity and it is clear that we need to take whatever measures we can to rein in their impact on the community and their criminal activities.

Law enforcement focuses on outlaw motorcycle gangs because they are typically engaged in conduct such as illicit drug importation and distribution. A worry for Western Australia in particular is that that typically is methamphetamine. They are also involved in the trafficking and distribution of illicit firearms, money laundering, extortion and intimidation, tax evasion, and, of most concern, violent crime.

Traditionally, it has been difficult for law enforcement to investigate OMCGs because there is a code of silence. They typically take the fifth—in other words, when extrajudicial organisations such as the Corruption and Crime Commission call bikies in under its special powers, it is confronted with a refusal by witnesses to answer questions about the activities of their particular club. They also are known to fortify premises. Their culture is certainly a very closed one so that the infiltration of undercover officers or informants, or the willingness of informants to assist law enforcement, is hugely problematic. Academic research seems to suggest that the modus operandi of outlaw motorcycle gangs has evolved and that some younger members are coming in who are more focused on violence. Some of the larger clubs have links with counterparts overseas, in Canada or Scandinavia. In fact, some Australian clubs have exported overseas, but I will talk about that shortly.

The younger recruits have a greater propensity for violence, and that is, of course, a matter of concern. There are some contested propositions amongst academics as to whether OMCGs constitute organised crime or whether they do not fall within the true definition of organised crime. Whatever is the case, they certainly make an impact on our community and need to be the subject of high police scrutiny and vigilance.

The Australian Institute of Criminology brought out a couple of papers recently that are worthwhile in studying the changing culture within outlaw motorcycle gangs, and the effect on members who in fact leave those gangs. The findings are —

... the recruitment of increasingly violent and criminally inclined new members and the need to develop flexible support for those who want to leave clubs.

...

“This study has provided first hand insights from former members that show how some clubs are changing. They described how their former clubs were recruiting younger men who are more prone to violence, attracted by the gangster image, and who are looking to join clubs to get rich quick. There is a real culture change in some clubs, with more conflict and less loyalty between members. And this is having a real impact on the members who are leaving ...

...

This research has shown that cultural changes within some OMCGs are leading many former members, some of whom have been members for decades, to question their involvement in club life. But leaving clubs has consequences, including violence, and former members described many negative effects of being a member.

The profile of OMCGs is evolving and there is quite a degree of mobility between clubs. I think this movement makes things problematical for enforcement, in particular when gathering intelligence and knowing who is who and in what particular club. In the *Trends and issues in crime and criminal justice* paper issued by the Australian Institute of Criminology in February 2020, it observes —

Outlaw motorcycle gangs ... occupy a prominent place in Australia’s organised crime landscape. They have been identified by law enforcement as having high levels of involvement in methamphetamine production and distribution, illicit firearms trafficking, tax evasion and money laundering, as well as serious violent crime.

...

**Extract from *Hansard***

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OMCGs originated in the United States in the 1940s and quickly embraced the identity of ‘one percenter’ motorcycle clubs, which were not registered with a mainstream motorcycle association and which operated as ‘outlaws’ outside of the law and societal norms ...

The study goes on to say —

Recent studies comparing OMCG members with non-members have shown that OMCGs recruit individuals with a greater propensity for crime, particularly violent crime, and that joining a gang leads to further offending, including profit-motivated offending ... and ... found the average total lifetime cost to the taxpayer of offending by OMCG members, based on both crime and prison costs, was \$1.3m.

In other words, on a purely economic basis, we deserve to focus on OMCGs. The paper goes on to say —

... the crimes of the Hells Angels, Outlaws, Bandidos and Pagans motorcycle gangs ... finding a high degree of involvement in ongoing criminal enterprises, including the supply of drugs and weapons, as well as both planned and spontaneous acts of violence towards other gang members.

The results of the study found —

The size of gangs and chapters varied considerably ... one quarter of gangs had 25 or fewer members, while one in three had more than 100 ... There was an average of 12.2 chapters per gang ... A small number of gangs ... had only one chapter, 44 percent had between two and five chapters, 23 percent had between six and 15 chapters, and 21 percent had more than 15 chapters. Chapter size also varied, with the largest proportion (37%) having five or fewer members known to law enforcement, two in five ... more than 10 members, and one in 10 more than 25 members ...

In other words, there is great variation between clubs; therefore, it is dangerous to make some generalisations. The article goes on to say —

Gangs also varied in their reach, based on the presence of chapters in multiple states and territories. More than half of all gangs ... had a chapter established in more than one jurisdiction. —

Again, that proves problematical for law enforcement and requires good cooperation between state and federal police —

Fifteen percent had chapters in two jurisdictions, 15 percent in three jurisdictions, and nearly one in four ... had a chapter established in four or more jurisdictions.

This is, I think, interesting —

The age profile of gangs varied: while some gangs had a relatively young profile, others were significantly older. The average age of members ranged from 33 years to 58 years. Many of the larger gangs (with more than 100 members) had younger members. In many gangs with younger members, a greater proportion were prospects. The average age of prospects ... was nine years younger than that of non-office bearers ... and 10 years younger than that of office bearers ...

The study then canvasses —

While the prevalence of offending at the group level—be it chapters or gangs—is very high, this does not directly address the question of whether OMCGs are criminal organisations, or whether they are groups with some members who are involved in criminal activity ...

That debate is very much still alive within academic circles. It concludes by saying —

Consistent with findings from overseas ... the current study demonstrates the diversity that exists among Australian OMCGs in gang and chapter size, member age and offending profiles. Chapters vary significantly in size, ranging from a handful of members to much larger groups. They also vary in the age profile of members. While chapters comprise members of different ages, some chapters are dominated by younger members, with others comprising mostly older members. The offending profiles of chapters also vary. While a small number of chapters account for a disproportionate amount of recorded crime, some chapters have not had any members apprehended by police for recent offending. Gangs also vary in their propensity for violent and organised crime, as well as the extent to which senior leaders are involved in criminal activity.

...

In fact, recent profit-motivated offending—comprising both short-term instrumental offences and ongoing criminal enterprise—was as common among OMCG members as violent offences. While it is difficult to compare rates of offending in different populations, the prevalence of any offending ... was substantially higher among OMCG members than among men reported in a recent NSW birth cohort ...

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In other words, the study proved, as a matter of evidence, that certainly OMCG were more criminogenic than the average person they compared within a control group. The paper continues —

It is evident that OMCGs attract members with a propensity for committing violent and organised crime, and facilitate further offending among their members ... it is of particular interest that the evidence presented here suggests that OMCG members, chapters and gangs are indeed frequently involved in offences associated with organised crime ...

Further, those gangs with the highest prevalence of organised crime-type offences were among those with the highest prevalence of violence and intimidation offences ... OMCGs can use violence to enable organised crime offending in a number of ways, including in territorial disputes, in building the reputation of the gang or in extortion ...

As I said, that report came out last year and it is certainly worth close examination because it establishes that one size does not fit all, OMCGs vary quite significantly and their modus operandi has evolved.

The other problem for law enforcement is crimes such as tax evasion or money laundering when many of these outlaw motorcycle gangs have legitimate businesses, so it is very hard for law enforcement to separate funds acquired legitimately from those acquired through illicit activities such as drug distribution. Provisions such as those introduced by the Attorney General in Western Australia to deal with unexplained wealth are very helpful in that regard to be able to disaggregate funds that, on their face, look as though they are legally acquired but in fact are not. Some businesses in this regard are favoured because they enable those illicit funds to be hidden. In some jurisdictions, when OMCG members are released from prison on parole, they are not permitted to carry on certain activities by way of employment because they are seen as being notoriously connected with money laundering. For example, activities involving tattoo parlours, tow trucks, motor mechanics and a number of others are banned in some jurisdictions for employment for parolees. As I said earlier, the profile whereby more members are transferring from one club to another I think causes problems for police intelligence and that is certainly something that needs closer examination.

[Member's time extended.]

**Ms M.M. QUIRK:** Since I have been in Parliament, I have visited Canada and had discussions with the Royal Canadian Mounted Police about its activities in relation to outlaw motorcycle gangs. In fact, I visited a prison in Alberta where there was significant warring between different clubs within the prison and the prison had in fact been locked down for, I think, 48 days straight when the prisoners were not able to leave their cells. The impact of outlaw motorcycle gangs and their links both overseas and interstate require particular attention.

I am a fan of so-called Nordic noir television and movies. A very interesting paper was produced also by the Australian Institute of Criminology, which is *Scandinavian approaches to outlaw motorcycle gangs*. It was interesting that Scandinavia has a much more holistic approach to the prevention of crime by outlaw motorcycle gangs and, more importantly, which is the last point I want to talk about, transition for members outside their clubs. The paper outlines the significant violence that occurred in the 2000s between various bikie groups and how those gang laws influenced the approach to outlaw motorcycle gangs.

I will conclude by talking about the *Handbook for preventing and fighting crime from one percenters and criminal motorcycle gangs* produced in 2014 by the Norwegian police. I will not say it in the original language, but that document outlines Norway's anti-OMCG strategy and defines the actors involved and their legal powers. Sweden has a similar handbook, and they both focus on creating a united front against the expansion of OMCGs by encouraging cooperation between local and national authorities. Local businesses, schools, social security departments, child welfare services, fire brigades and construction and land use planning departments are some of the organisations and public services that are expected to unify and coordinate their efforts to combat OMCGs in concert with the police, tax authorities, customs agencies, vehicle registration offices and welfare services.

In essence, the Norwegian handbook describes a multi-agency approach that makes a range of legal tools available. Municipal interventions available through planning and building regulations, alcohol legislation, catering regulations, electrical legislation, acquisition regulations and others can all be used to ban the wearing of visible patches. Although there is no general ban on wearing patches, Norwegian law allows private actors, such as restaurateurs and bar owners, to deny patched OMCG members entrance to their premises. If a bar owner refuses to cooperate with police, the municipal authorities have the power to revoke their alcohol licence. The handbook suggests that police and municipal authorities act in partnership to reach common goals.

In Denmark, there has been a focus on tax laws, which it fairly unoriginally describes as the "Al Capone model". Denmark has focused on looking at gang-related financial crimes like extortion, tax evasion, social security fraud and the infiltration of legitimate businesses. According to annual Danish police reports, the police have developed a sophisticated approach to organised crime that seeks to unite short and long-term goals. The goal is to coordinate

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local and national activity in an intensified and progressive front. This is done with teams that act in interdisciplinary projects led by a steering committee, with the participation of the national police, the prosecutor general, the public prosecutor in Copenhagen, the public prosecutor for serious economic and international crime and the Police Intelligence Service. This is the way we need to approach such criminal activity. The paper states, in part —

An interesting feature of the Danish strategy is the close relationship between police and tax authorities, which focuses particularly on financial crime, tax evasion and social security fraud.

This modus operandi is adopted by law enforcement all over the world, using some of the elements but not necessarily all of them.

The last point I want to make is that in Scandinavia, it is recognised that it is particularly difficult for people who want to leave a gang and move away from their destructive criminal paths. The paper states —

On paper, if a person wishes to move on from a destructive or criminal past, all Scandinavian countries offer some form of public support to facilitate the transition. There are a range of initiatives aimed at increasing collaboration between local government, the police, prison services, prosecutors, tax administrators, customs agencies et cetera, organised collectively under what are usually referred to as ‘exit programs’ or ‘defector programs’ ...

That assistance may include housing and labour market integration programs; in other words, giving members who want to pursue a law-abiding life a way out. Studies have shown that a great number of people want to exit gangs and that they need some official support to do so. To conclude, the paper says —

... the Danish government have, rather than relying on punitive measures alone, developed a multi-agency approach, what they refer to as a ‘holistic approach’. This ... includes both long-term and short-term goals that rely on the coexistence of repressive policing strategies (the ‘Al Capone model’ and ‘A solid grip on gangs’) as well as rehabilitative efforts governed by social welfare agencies (‘A way out’). This illustrates the coexistence of traditional efforts to deter OMCG crimes and the development of more innovative strategies that seek to prevent recruitment to gangs and encourage dissociation and desistance. In conclusion, the Danish approach contains elements that are both recognisable and unique in an international perspective, and is recognition that strategies to disband OMCGs are inadequate without accompanying exit strategies.

I am sorry I took members’ indulgence and read from so much of that article, but one thing about crime of all varieties is that criminals evolve to suit measures adopted by law enforcement, so we need to be flexible on how we approach these matters and look to successful models from elsewhere such as overseas and other jurisdictions. Measures such as those in this legislation are part of the toolbox. Of themselves they will not necessarily combat the growth in organised OMCGs in Western Australia, but they certainly provide another tool that can be used that puts pressures on OMCGs and might make people consider the wisdom of joining one of these gangs.

**MR R.S. LOVE (Moore — Deputy Leader of the Opposition)** [8.41 pm]: I rise to make a contribution on the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. I have enjoyed listening to some of the contributions of other members, including the member for Landsdale, who is well known for her knowledge in this area. I particularly wanted to wait and listen to her discussion. There are also others. The member for Burns Beach had some real-life stories of his involvement in the police and having dealt with elements of organised crime and motorcycle gangs in that time. I think the member for Cockburn had some interesting discussion about some incidents in his area, and his experience. The member for Carine also made some interesting contributions. At one stage, I think he was talking about the goings on at the Ora Banda tavern in the goldfields. That struck a bit of a note to me, because a friend of mine used to own that tavern and sold it to the person who then got into trouble, along with other things, and ended up in that bomb blast. There was a bit of a personal touch to that story. Having been out to Ora Banda and visited I always remember how it was such a quaint little tavern. It was such a peaceful, happy, friendly place and had some very sad history because of that intersection with organised gangs.

We have heard some very strong stories. I have noticed that the Attorney General has been listening intently, although at one point he began to get a little bit restless. I do not understand. There was something about a first-year law case that all students in law understand, but that we did not understand because we are only laymen on this side. I believe there was a bit of toing and froing going on there for a while. It was very interesting to watch from here, not knowing exactly what it was all about, but I am sure it was enjoyable to those in the know.

I now turn to the legislation we are talking about and first of all, I guess, the government’s announcement of this legislation in the press release of 13 October, “New laws give police powers to disrupt and dismantle criminal gangs”. This sets out pretty well what the government is hoping to achieve from the new laws. It states —

- The Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021 to be introduced into State Parliament



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- Laws will disrupt and restrict the capacity of those involved in serious and organised crime to plan, support or encourage the carrying out of criminal activity
- New crime of unlawful consorting will attract a maximum five-year jail term
- New offence of displaying prohibited insignia will attract a 12 month jail term and fines of up to \$12,000 or \$60,000 for corporations
- New offence of consorting contrary to a dispersal notice will attract a 12 month jail term and \$12,000 fine

Outlaw motorcycle gang members will be banned from wearing their patches and associating with one another in public ...

We know the bill gives a bit further than just wearing the patches. It also refers to what they might have on the skin as well. That is interesting. I believe the term is a “novel situation”. We will turn to that a little while. We do know that this particular area of law is littered with announcements of great import that something will happen to ensure that organised crime and criminal motorcycle gangs et cetera will be dealt with under the law. We have a long history of that, not just in Western Australia, and also in other states. I am looking here at a report from New South Wales from 2017 that appeared on news.com.au, “Secret report reveals anti-bikie laws are ‘useless’ to control gangs and recommends law abolished”. It talks about the bikie gang laws that were then in New South Wales. Some of the trouble and fighting in New South Wales was alluded to in the Attorney General’s speech. In this article we have the New South Wales laws being shown to have been completely ineffective in dealing with that situation, despite the fact that there had been a long history. The article goes on to outline bikie gangs state by state. The Queensland police talked about some of its laws. They made an application with an excess of 6 000 pages of evidence against the Gold Coast chapter of the Finks, but it did not proceed. It was described as frustrating and ultimately dispiriting for the police. The failed application cost \$1.9 million in staff costs alone. I think those laws were abolished in 2017. In South Australia, in 2009 the Commissioner of Police successfully applied to have the Finks declared as a criminal organisation. The commissioner then applied to have 12 members prevented from associating with each other, and that law was challenged and overturned in the High Court, as we know. There were also declarations sought against Rebels, but they were discontinued following the Finks situation. It is also reported that the Northern Territory police had devoted considerable effort to developing an application against Darwin chapter of an outlaw gang, but the Serious Crime Control Act 2009 at the time of this article remained unused, and that was eight years after it had been done.

We know there has been a history of various attempts in Western Australia. I will pick up an article here that a very astute journalist by the name of Ben Harvey put in *The Sunday Times* of 17 October outlining some of the history here. He said some complimentary things about the Attorney General, so I will not mention those! I will skip over those and we will turn straight to the matters at hand and talk about some of the history that Ben Harvey has identified. He also talks about previous iterations of laws. I will talk about the Attorney General, because Ben Harvey is quoting here —

Quigley wants to make WA “the most inhospitable jurisdiction in Australia” for outlaw motorcycle clubs. He isn’t the first law officer of WA to have a crack.

Before him came Michael “There is no place for criminal organisations in WA and the State Government will continue doing everything in its power to eliminate them” Mischin.

Mischin took over from Christian “I am sure that bikies will mount challenges against us because the effect on criminal gangs will be devastating” Porter.

Porter replaced Jim “Their luxury lifestyles will simply be stripped away” McGinty. As top law dog in Geoff Gallop’s government, Jim was the architect of WA’s first serious crackdown on bikies.

The article goes on to refer to the Ora Banda incident and the lead-up to that, which marked a bit of a turn in the seriousness with which these gangs were taken. The article continues —

The Hancock bombing spawned new laws that had the catchily titled Criminal Investigation (Exceptional Powers) and Fortification Removal Bill 2001. Gallop told us the legislation “will give Western Australia the toughest laws in Australia for combating the sinister and complex activities of criminal gangs”.

Sound familiar?

When those laws were passed, WA had five bikie gangs: Club Deroes, Gypsy Jokers, Coffin Cheaters, Rebels and Gods Garbage (the absence of a possessive apostrophe infuriates me more than this latter gang’s lawlessness). There were about 200 patched members in total. Since then, the WA Government and the Feds have introduced these laws:

- Criminal Investigation (Identifying People) Act 2002.

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- Proceeds of Crime Act 2002.
- Corruption, Crime and Misconduct Act 2003.
- Criminal Appeals Act 2004.
- The Security and Related Activities (Control) Amendment Act 2008.
- Crimes Legislation Amendment (Serious and Organised Crime) Bill 2010.
- Criminal Organisations Control Bill 2011.
- Criminal Organisations Control Act 2012.
- Criminal Investigation (covert Powers) Act 2012.
- Criminal Law (Unlawful Consorting) Bill 2020.
- Migration Amendment (Character and General Visa Cancellation) Bill 2014.

Politicians spent thousands of hours drafting legislation, about which we spent millions on legal advice.

But the effect of it is questionable, to say the least; I am paraphrasing there. I will not go through the rest of the article, but it gets a bit colourful at the end. It goes to show that there is a long history of attempts to control the activities of some of these gangs over the years.

I turn now to what the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021 has in store. I am indebted to Hon Nick Goiran for providing me with a comprehensive briefing note that I am basically going to read through, because what more could I contribute to this debate than a learned legal professional could?

The bill introduces three areas of reform. Firstly, the unlawful consorting scheme is aimed at disrupting and restricting the capacity of offenders to engage in criminal activity by criminalising the association of and communication between offenders. The scheme will apply broadly to anyone who is a relevant offender, being a declared drug trafficker or a person who has been convicted of a range of listed offences, including an indictable offence; a child sex offence; an offence under the bill of displaying insignia in a public place; or breaching a dispersal notice.

Secondly, the prohibited insignia scheme specifically targets criminal organisations such as outlaw motorcycle gangs, affiliate gangs and street gangs. It prohibits the display of the insignia of 46 identified organisations listed in schedule 2 of the bill. These organisations are based on state and commonwealth police intelligence as contained in a report from the Western Australia Police Force, of which I have a copy and will look at in a minute, and was tabled on 29 October. The list can be amended only by Parliament rather than by regulations; because there are fairly strong powers associated with this legislation, it is fitting for Parliament to be the body to decide these matters rather than by regulations through some other decision-maker.

Thirdly, the dispersal notice scheme specifically targets criminal organisations and empowers police to issue and enforce dispersal notices aimed at disrupting consorting in public places. A dispersal notice can be issued to suspected members of different identified organisations and will apply for a period of seven days. A person who fails to comply with a direction issued by a police officer in relation to unlawful consorting or who displays prohibited insignia or who breaches a dispersal notice will commit an offence punishable by imprisonment for 12 months and a fine of \$12 000; or, for corporations, a fine of \$60 000, as I think was outlined in the Attorney General's original press release.

The unlawful consorting scheme is similar to the one in the Criminal Law (Unlawful Consorting) Bill 2020, which the government failed to progress through the fortieth Parliament. It languished in the Legislative Council after having made it to Committee of the Whole, where debate stalled at clause 6. The key difference between the 2020 bill and the current bill is the introduction of the prohibited insignia scheme and the dispersal notice scheme, which were not contained in the 2020 bill. The other main differences are predominantly drafting amendments.

The Department of Justice has said it would provide a table comparing the two bills; that has not yet been supplied to the opposition.

**Dr D.J. Honey:** We've just received it by email.

**Mr R.S. LOVE:** Okay; it has been recently provided, so that is good. We are debating the bill now, so that gives us a lot of time to digest it—not.

The opposition has a couple of areas of concern. I should put it on the record that we will not be opposing this legislation, but we will be asking some questions around its effect on other categories. We understand from information given to the shadow Attorney General in the briefing about the anti-consorting laws that of the 800 convicted child sex offenders captured under the current anti-consorting legislation, only about five per cent will be captured under this bill's new anti-consorting scheme. I will be interested to discuss that during consideration in detail to gain an

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understanding of where that difference lies and how it will come about. I know there are some changes—I have been reading the blue bill—but it would be instructive if the Attorney General could point out how that has come about.

There is a specific defence for trade union members, and I will be interested to tease out how that will operate in practice. The novelty of the dispersal notice scheme means that it probably deserves some justification and I believe that is the purpose of this document from the Western Australia Police Force, *Report by way of justification of the provisions of part 3 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021*. That report is dated 15 October 2021. In the introduction it refers to part 3 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021 and the two key measures being proposed: a prohibition on the display of insignia of identified organisations in a public place and a prohibition on consorting contrary to a dispersal notice. It states —

A provision which imposes a prohibition on the display of insignia of identified organisations, or a prohibition on consorting contrary to a dispersal notice, may be held invalid if it impermissibly burdens the implied freedom of communication on governmental and political matters, contrary to the Commonwealth Constitution.

Further, it says —

Parliament does not generally need to provide evidence to justify the legislation it enacts. However, in *Unions NSW and ors v State of New South Wales* [2019] HCA 1 the High Court noted that this position is different in respect of laws which burden the implied freedom. Because laws which burden the implied freedom of political communication must be justified, there must be evidence of constitutional facts which justify such laws ...

I am supposing that the whole purpose of this report that the police has provided to the government is as justification. It goes through to describe what outlaw motorcycle gangs are. I think we heard a very good description of some of those aspects from the member for Landsdale earlier. The report states —

The Australian Institute of Criminology published a paper in March 2021 which provided a comprehensive literature review of the organisational structure ...

It defines outlaw motorcycle gangs. It sets out that there is conflict and a risk to the community from that. The report states —

OMCGs are recognised as having high levels of involvement in methylamphetamine production and distribution, illicit firearms trafficking, tax evasion and money laundering, as well as serious violent crime (Australian Criminal Intelligence Commission 2017, 2015) ... OMCGs are highly territorial and utilise intimidation and violence to exert power and control over criminal syndicates.

I will not go over what it says in each section, but I will give members a feel of what it says about these gangs and what threat they represent.

Another section is headed “OMCG Violence and Criminal Behaviour in Western Australia”. The table shows some incidents that have been through the courts or are before the courts and subject to active investigation as at August 2021. I do not intend to read them all out, but there is a number. There is one and a half pages of descriptions of various crimes that have occurred as a result of activities and violence by these particular organisations. The report then refers to prosecutions and imprisonment of gang members in Western Australia. It says —

WA Police currently records 431 verified OMCG members, however due to recent membership movements within gangs, this number is not truly indicative of current gang membership in WA. When the emerging gangs such as the Mongrel Mob and Black Power are included in the numbers, it is likely that gang membership in WA exceeds 700.

It lists a number of offences that various gang members and gangs have been associated with such as robbery. Some of the people in the cases listed have been sentenced, so they are no longer subject to any court action. Some of them are on remand and I am not talking about them. The cases relate to drugs and firearms offences, assaults, traffic offences, stealing motor vehicles, burglaries, arson and robbery. There are lots of firearms and drugs offences. There are some offences of kidnapping and murder, so the very violent history of those gangs is outlined in this report. It identifies 46 organisations proposed for inclusion in the bill that fall into four categories —

- OMCGs recognised as having a presence within Western Australia
- OMCGs recognised as having a presence within Australia
- OMCG Affiliate Gangs (also known as ‘feeder clubs’)
- Street Gangs

It refers again to the structure of the organisations in Western Australia and across Australia. It states —

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WA Police Force has proposed that each of the 38 OMCGs listed by the Australian Criminal Intelligence Commission ... Identification Chart —

Which is referenced —

... be listed as identified organisations.

It then details the affiliate gangs and street gangs, lists the organisations, displays their insignia and gives the reason that they are included. It is mainly because of that chart that I referred to, which is being used as the prime reference source. The report refers to the prohibition of the display of insignia of an identified organisation in a public place. It states —

Clause 25 of the Bill provides that a person commits an offence if the person displays insignia of an identified organisation in a public place ... The following are insignia of an identified organisation: includes the name of the organisation, the logo or patch of the organisation, and another image, symbol, abbreviation, acronym or other form of writing or mark that indicates membership or, of an association with, the organisation. The following are taken to be insignia of every identified organisation: the symbol “1%” or the symbol “1%er”.

That is the nub of most of the report. It refers to gang rivalry, the impact on the public and the purpose of the prohibitions. It continues —

A prohibition on the display of insignia of an identified organisation will lessen the likelihood of such breaches of the peace or acts of violence since, in most cases, absent the display of such insignia, a member or members of one identified organisation would not be able to identify a member or members of another identified organisation.

A justification is laid out for that. Then it refers to unlawful consorting, the prohibition on consorting contrary to a dispersal notice, and clause 36 of the bill. It gives a practical example of what is known as “runs”, which are gatherings organised and participated in by the gangs. It refers to the intimidation of groups by gang members and the purpose of the prohibitions. It states —

The issue of a dispersal notice to a member of an identified organisation to prohibit that member from consorting with another member of an identified organisation will mean that members of the public can go about their lawful business in public places without experiencing intimidation, threat or fear.

I have listed all the references earlier. That report gives quite a good background, I think, to why the police deem this to be a necessary piece of legislation and, hopefully, it will provide the facts that will justify the necessity if there was such a challenge.

The other matter that I wanted to raise some questions about was the oversight by the Ombudsman, rather than the Corruption and Crime Commission. We know that the police will be granted some extraordinary powers under the bill. Part 4 of the Corruption, Crime and Misconduct Act outlines various powers that the police can exercise under that legislation and through the oversight of the CCC, I expect. We are wondering why in this case the Ombudsman has been chosen, rather than the CCC. I would be obliged if the Attorney General could outline why that would be the case. It seems that it would fit very neatly with those other matters, such as the use of controlled activities et cetera that the CCC already has oversight of, yet the Attorney General is proposing that the Ombudsman should be the appropriate place for this to be taken up.

To wrap up, we will not be opposing this legislation. We will be seeking some clarity around those issues that I have spoken about, such as the reason that it appears that fewer child sex offenders will be caught up under the legislation than are already caught up under the existing legislation; why the Ombudsman is being charged with the oversight of these operations; and a bit about some of the other defences, such as being a member of a trade union. There is quite a list of defences. In terms of having to gain an education, there could be little courses that many criminals will start to undertake, such as a certificate II in leadership at Bentley TAFE, where they all show up and learn. It will be interesting to see how in reality they could be —

**Dr D.J. Honey:** A locksmith course!

**Mr R.S. LOVE:** Yes, a locksmith course at one of the TAFEs that they may be attending—who knows? That could be one of the issues that the Attorney General may want to talk about.

I am wondering too, just how urgent the Attorney General sees this bill as being. There are some risks with rushing in legislation in this space. We would not want it to be overturned on some technicality or deficiency that will mean it will not achieve its outcomes. There may be a suggestion in the other place that this bill be referred to the Standing Committee on Legislation. I do not think that committee has had much referred to it in this term of Parliament. I am not sure that that committee has anything referred to it at the moment. That committee is willing

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and able to look at this matter and go through it with a fine toothcomb. I wonder whether consideration could be given to sending this legislation to that committee to ensure that it will achieve its outcomes, which I am sure the Attorney General and all the other people who have spoken today on the background of the bill and on the importance of the bill would like to see. Thank you very much.

**MR J.R. QUIGLEY (Butler — Attorney General)** [9.11 pm] — in reply: I want to thank each of the members for their contributions this evening on what the government regards as a very important bill. I agree with most of what has been said by every speaker, including those from the opposition. I think it was the member for Moore who said that perhaps this bill will not see the end of outlaw motorcycle gangs in Western Australia. I am sure that that is true. It is unrealistic to think that this bill will go to His Excellency the Governor for signature in Executive Council and be proclaimed, and that on the date of operation, 46 named groups will dissolve.

What is the point of this bill? We have to look at its genesis. Its genesis was a long while ago, when around Australia there was an outbreak of outlaw motorcycle gang violence. It was horrendous violence. The Hells Angels and the Comancheros were at the arrivals hall at Sydney Airport and used balustrades to beat each other, causing deaths. There were drive-by shootings. There were assassinations. Around Australia, various governments moved to introduce tough laws to try to suppress outlaw motorcycle gangs. The way they went about this was to pass laws that said that prohibition orders could be placed against a person who was a member of these organisations. Those laws included mandatory sentencing uplifts, which meant that there could be double penalties for a person who was declared to be a member of a gang. The problem was: what gang? Of course the legislation, firstly in South Australia, then in New South Wales, then in Queensland, and ultimately in Western Australia, did not specify what gang. It just said that if a person was a member of a group that had these attributes, the police could apply to the courts to declare the group an outlaw gang, and certain consequences would follow.

The second step was that the police had to go back to the court in respect of an organisation that the court had already declared unlawful and seek a prohibition order against a person whom they alleged was a member of that organisation. Members will notice that the feature of this scheme so far was not the courts making a curial judgement about a dispute, which is what courts do. It was the Parliament and the executive asking the courts to complete the task that the Parliament and the executive had never done; that is, identify the particular groups, and then impose consequences for the groups that the courts had identified. In three of those cases, the High Court said this is an impermissible use, because chapter III of the commonwealth Constitution guarantees that the courts will be independent from the executive and the legislature. The courts are the third arm of government, and an equal partner in government, but the courts cannot be directed by either the executive or the legislature to do certain things, because they are an independent branch of government. The High Court identified that what was happening in these schemes is that the courts were being used as a cypher to finish the legislative process, as it were, by making the declarations.

The member for Moore very helpfully pointed out the case in Queensland that formed part of the review of the Criminal Organisations Control Act by the Western Australian police. In that case, the Queensland police spent \$1.9 million and thousands of man hours to try to convince the court to declare a group an outlaw motorcycle gang, when everyone in the community knew that it was an outlaw motorcycle gang. It was not that the courts were being silly, but that the courts had to go through this whole process. The police had to go through an intelligence gathering process. In the case in New South Wales, which was being heard by Hon Justice Peter McClellan, he said in his report that he had 80 lever-arch files of police intelligence, and because the applications had been brought ex parte, an obligation fell upon the court to check and sift very carefully through all this intelligence, because it would affect people who were not before the court. This was all being done in secret because the police could not reveal to their targets what they knew of the intelligence. Justice McClellan said that he had to go through all of this. It was taking months, and the police just gave up.

In Western Australia, the previous government had been looking at what was happening in Queensland, and it followed the Queensland laws. I can remember then Attorney General Porter saying that we will get these laws right, because we are awaiting the outcome of the High Court case in Queensland, which upheld most of their law, but in its practical application it was hopeless. So we in Western Australia largely followed these templates from South Australia, New South Wales and Queensland, with some variations, but it was a general scheme under which the court would make the declaration. What is unusual about this particular case is that after consultation with the Solicitor-General about why these cases were failing—that is, on the High Court's strident objection to the executive using a chapter III court as a cypher—we asked, "How can we get around this? How we can get around it is not a get-around or a workaround, but for this Parliament to accept the responsibility of itself identifying the outlaw or criminal organisations to which the law will apply?" In answer to the question asked by the member for Cottesloe and, I think, the member for Moore about why the provisions are in a schedule and not in regulations—we will come to this in consideration in detail—the legislation provides that it is those groups named in the legislation

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or any one of those groups by another name. If the Hells Angels wants to change its name to the Halls Angels or something like that, it will still be captured by the legislation using any other name.

The High Court also held that—this was cited by someone else—in the unions versus New South Wales case about political donations and the ban on certain political donations, any burden or impediment on the implied freedom of political discourse would be rejected unless it was reasonable and necessary and the Parliament itself had considered those matters. It was from that High Court judgement that our Solicitor-General, Mr Joshua Thomson, SC—as I have said before, he is the finest constitutional lawyer practising at the bar in Australia—said that if the organisations were listed and the reasons for listing those organisations were before the chambers when they argued the legislation, that would meet the High Court’s criteria that if there was going to be a burden on any implied freedom of political discourse, it would have to be reasonable and necessary and those aspects would have to be considered by Parliament. I apologise to the chamber for omitting to table during the second reading speech the *Report by way of justification of the provisions of part 3 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021* dated 15 October 2021. I tabled it during the course of a brief ministerial statement shortly after the second reading speech. It is available to all members because it was tabled just before or just after question time. That report constitutes what the government says is the justification for moving against these particular named organisations or bringing them within the scope and remit of this bill. That document was prepared not just by the police—there are police members present in the chamber this evening—led by Inspector Peter Foley, who, I might add, has been working on this bill for a couple of years, in consultation with my office, but also, most importantly, with a senior lawyer from the State Solicitor’s Office and the Solicitor-General of Western Australia. It was put forward by way of justification for naming those organisations.

The second issue that was raised about those organisations related to the oversight of the operation of the legislation: why will oversight not be assigned to the Corruption and Crime Commission and instead be given to the Ombudsman? I can answer that and I will answer it this way: the charter of the CCC is to investigate serious misconduct in the discharge of public duties by public officers. The person involved has to be a public officer, it has to be in relation to the discharge of their duties as a public officer, and these days it has to constitute not minor misconduct—the legislation was amended by the previous government—but serious misconduct. It is not anticipated that in issuing anti-consorting notices, prosecuting insignia offences or issuing dispersal notices that police officers will be acting in any way other than in accordance with the law as set out in this bill. It does not sit comfortably within the CCC’s charter. However, there must be oversight.

I think New South Wales was the first jurisdiction to turn to this sort of consorting law, although its law does not contain the prohibitions on insignia or dispersal notices. Under its law, any officer could issue a consorting notice. What happened is that hundreds, if not thousands, of notices were issued by constables against really low-hanging fruit in regional towns and against Indigenous people who were known to have convictions. It was the vulnerable, the poor and the weak who mainly received consorting notices. The Ombudsman of New South Wales undertook a review into the use of the notices. It was upon reading the review of the commissioner for parliamentary investigations in New South Wales, otherwise known as the Ombudsman, that it became evident that leaving aside serious misconduct or any misconduct, those constables who were issuing consorting notices against poor Indigenous people with offences in the regions were not acting unlawfully, but they were not acting in accordance with the original intent of the act.

In 1992, the Law Reform Commission, which was headed by, I believe, the present Senior Puisne Judge, Hon Mr Justice Rene Le Miere, recommended the abolition of consorting offences from the Police Act. It referred to a judgement by Chief Justice Keane in the UK who said that consorting offences do not seek to punish an event that is a crime; rather, they seek to punish people just consorting together. That was back in 1992. Things have moved on because that was before the evolution of organised crime as we know it today. I think it was even before the inauguration of the first outlaw motorcycle gang in Western Australia, which was the Coffin Cheaters, which started in 1973 or 1974. In the government’s view, it is necessary to do what the Ombudsman in New South Wales does, and that is to conduct an annual review of the usage of notices, not to look at every particular one and say, “Was that constable acting unlawfully?”, but to give a report to the minister and the Parliament of their usage. It is another safeguard in the bill, which we will come to in consideration in detail. Not just any officer can issue a consorting notice, a commander or above has to sign-off on it. There are provisions in the legislation that empower the police to require a person to stand fast. There is a time limitation in the act, which we will come to, to give them time so that a police officer can serve an anti-consorting notice. It will be an audit of proper usage rather than an investigation of alleged misconduct. Of course, any criminal or anyone else who is subject to one of these notices and who wishes to allege serious misconduct—that they were assaulted in the course of the service of the notice or some other serious irregularity—can go to the Corruption and Crime Commission; but going to the Ombudsman is an audit of usage.

Without being too harsh on the shadow Attorney General, I do not understand what he is saying about sex offences. I do not understand a lot of what he says actually. I mean to say, he said tonight that the ministerial expert panel

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had no head of power. Of course, it did not have a head of power. What a silly thing to say. I got a group of experts in to advise me. It is not a head of power. He goes on with absolute errant nonsense just to take up time. He misled the members for Cottesloe and Moore when he said that only five per cent of sex offenders currently covered by consorting laws will now be covered by the new legislation. Piffle!

**Dr D.J. Honey:** That's what he was told —

**Mr J.R. QUIGLEY:** I was a bit quiet then, wasn't I? I said "Piffle!"

**Dr D.J. Honey** interjected.

**Mr J.R. QUIGLEY:** I did not interrupt the member for Cottesloe.

I have to go from my memory now—consorting for sex offenders. I challenge the shadow Attorney General that when it comes to his time, it will not be in a committee, it will be in the chamber. He can tell us about convictions under section 557K(4) of the Criminal Code. Section 557K(4), for those who do not readily recall it, provides that a police officer can, under paragraph (a), approach a person convicted of a sex offence and tell that person that the person that they are with is also convicted of a sex offence; and, under paragraph (b), warn that person that if they habitually associate with another person, they can be prosecuted. There has not been a prosecution—I cannot remember a prosecution because there is a big problem with it. "Habitual" has never been defined. What is "habitual"? They are saying that only five per cent of sex offenders are covered by this new legislation. The old legislation is not taken away. We have not repealed section 557K(4); that is the still the law, member for Cottesloe.

**Dr D.J. Honey:** How many warnings have there been?

**Mr J.R. QUIGLEY:** It is still the law.

**Dr D.J. Honey** interjected.

**Mr J.R. QUIGLEY:** No. The member for Cottesloe said that when we bring in this law, it will cover only five per cent. No. The Criminal Code exists before this law is passed. Section 557K(4) is the law this evening and when this bill passes the Council, and is signed by Executive Council and the act is proclaimed, section 557K(4) of the Criminal Code will exist as it exists now.

The police have a problem with section 557K(4) because there are imprecise definitions in it. There is not going to be any weakening. That is another classic Goiran scare tactic. I will say it loud enough: that is just absolute piffle—for Hansard that is P-I-F-F-L-E—and so much of what he sprouts is. Everyone in here defers to him and says, "We'll leave the examination to the knowledgeable shadow Attorney General in the other place." That is the mistake members of the opposition make in their analysis of legislation in this place. What I hear in here from them is far more insightful than the crap I hear out of the other place—sorry, the nonsense I hear from the other place, coming from the shadow Attorney General. Members opposite should back themselves and not listen to him. Fancy saying, "Where was the ministerial expert panel's head of power"? What planet is he on? He is too busy stacking branches.

As I said at the outset, we do not believe, and we do not hold out, that this legislation will see the eradication of outlaw motorcycle gangs in Western Australia. But I tell members this: when I became the Attorney General, I saw the police report into the Liberal government's effort on the Criminal Organisations Control Act 2012. The police said that they would never use it. That was in their report. The police scrapped Mr Porter's effort and said, "We'll never use it." I kept on asking the former Minister for Police Hon Liza Harvey when she was going to start an application under the Criminal Law Organisations Control Act and she said, "It's in the making presently, member—presently". It never, ever, ever, ever happened.

When I came to government, I went to a meeting with the serious and organised crime squad at Curtin House, at which the then assistant commissioner, now deputy commissioner—we are lucky that we have him in Western Australia—Col Blanch, was present. We heard a bit of an outline on the activity of some of these gangs, some of these outfits, and I said, "Well, what do you want? What can we, the government, deliver? What do you need? What tools do you need?" This was before this term of government, in the last term of government. The first thing he said was, "Good consorting laws like they have in New South Wales, which Strike Force Raptor used in New South Wales against organised crime in that state. I said, "Done. We'll do it." We introduced the 2020 bill to deliver not on Labor Party ideology, but what the police requested.

That bill did not get through in the allotted time in the last Parliament. Member for Cottesloe, I am not going to do a post-mortem of the passage of that bill, but I will say this: after the prorogation of the last Parliament, there was the assassination of Nick Martin, and after the murder of Nick Martin down at the Motorplex, the police were in the media. Leading up to the election, one of the things that the police said they would like the next government to do was to outlaw patches so that they could harass these gangs. This was before the election, so this was a general request to the body politic, not knowing who would win the election. It was an appeal to the body politic to outlaw insignia. I, for one, used to think that that would not be a good move, because if they are walking around with insignia

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on their backs, at least the police know who they are and they will not be underground. At that meeting I was told that that was an old-fashioned and naive view. The police assured me that they know not only every gang in Western Australia, but also every member of every gang in Western Australia, and that they know the nominees of every gang in Western Australia. The only people who do not know this information is the public. Naming them was not going to be any impediment to law enforcement. Why are we naming them? For three reasons: firstly, when the police front a member of one of these organisations and start to talk to them about their conduct, they are skilled and schooled in how to respond to police. They either say nothing or give them a torrent of obscenities; they say nothing or just abuse the police. That is their response. It leaves the police in an invidious situation. I suppose they could arrest them for disorderly conduct, which is like trying to arrest Capone for spitting on the sidewalk, but there is no way they can take it up to the bikies in a confrontation. We have seen pictures of the serious organised crime gang squad—I will get corrected by the minister.

**Mr P. Papalia:** That'll do!

**Mr J.R. QUIGLEY:** That will do, he said. We have seen pictures of them and their operatives —

**Mr P. Papalia:** Big.

**Mr J.R. QUIGLEY:** The minister said it: they are big. They are big and well equipped with all the accoutrements: hard hats, visors, tasers and everything else they need—rams to take out doors, the whole trip. What could they do? Under this legislation, if they are face to face with one of these bikies who is wearing any insignia on their clothing that indicates their membership of an outlaw motorcycle gang as named in the legislation, they will be able to do two things: they can arrest and charge them with the offence. There are heavy penalties—\$12 000 for a summary offence and \$60 000 for corporations. These outlaw motorcycle gangs have their corporations. The police will be able to charge them. Wearing insignia is of course one of those offences that will precipitate an anti-consorting notice. If the police see two of them together with their gear on, they will be able to hit them with an anti-consorting notice and ratchet it up further. That can last for three years. We are trying to give the police tools to harass these people out of our space. That is the first reason.

The second reason is recruitment. There are lost souls in this community, people who are not attached to family and who live on the fringes of society. As youngsters, they get attracted to the group and the group looks attractive to that sort of person, getting around on Harleys with their colour patches. It will not only give the police the ability to harass and harangue these people, but also make them less attractive to young recruits. That is a very important aspect. The third aspect of course is just the general intimidation of the public. Bikies from outlaw motorcycle gangs do not go around every day in patch colours. We will see them in the paper, and we saw pictures in the paper today of the alleged murderer Pye coming out of court. He did not appear to be wearing patch colours, nor did we see Nick Martin, the deceased, wearing patch colours. They wear those colours when they want to go on a show of strength. There is no group of people stronger in Western Australia than the Western Australia Police Force. It is not the Western Australian police service; it is the Western Australia Police Force. We have to give them the tools to meet the challenge.

Finally, as has been noted by speakers, this legislation also includes anti-dispersal notices. These were not in the original bill, but after discussing with the police what happens, they were included. It used to get on my pip—I have not seen one for a while—but the Rebels had a national run of 50, 60 or more bikers come across the Eyre Highway. What do we do? Our response hitherto has been to go out to Eucla with crews of police. I am not berating the police, because they did not have the tools, but they would end up de facto tour guides, following these people around the south west and everywhere, and to the clubhouse in Perth at great cost to the taxpayer. The police should be driving them back across the other side of the border. We have included anti-dispersal notices so that if outlaw motorcycle gang members are getting around, perhaps with a flannel shirt on so we cannot see their colours, and the police reasonably suspect that they are a member of an outlaw motorcycle gang and they are travelling in company with another, they can issue them with a seven-day dispersal notice. It is not a long period, but it is enough to disrupt the activity, and included in there is a right of review within that seven days by the commissioner. If they think they are being picked on, they can take their right of review, and we hope that the anti-dispersal notice itself will be an important tool in the police's toolkit in confronting society's enemies, and that is organised crime.

I say societal enemies. They are, by their own definition, the "1%ers". That is why I have referred, member for Cottesloe, to "1%", or "1%er" in the legislation. It is not just their insignia. If members look in today's paper at the photo of the late Nick Martin coming out of court in 2013, they will see that one of them has on their T-shirt, in a diamond, "1%". Some of them have "1%er", so we have included "1%er". The accused murderer Pye has got "1%" on the sleeve of his black T-shirt. That will be an offence once we pass this legislation and he could be arrested on the spot for wearing "1%". They hold out one per cent as a boast. They are not part of the rest of us; they are the outlaws. Good on you, sunshine; you branded yourself as an outlaw! The Western Australia Police Force, under the leadership of Deputy Commissioner Col Blanch and his serious organised crime squad are ready to take you on! We just have to give them another tool, which this Parliament will be delivering them pronto.



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I said that this legislation will not see the end of outlaw motorcycle gangs, and when I say “other tools”, we have to give police a range of tools. The Minister for Police has been working assiduously on a whole new firearms law. I am already working on the next tranche, and it is just going to keep on coming. I am currently working on anti-money laundering laws to give us real teeth in the money laundering area in Western Australia. I note that the member for Moore quoted an article.

**Mr P. Papalia:** Was it a report or an article?

**Mr J.R. QUIGLEY:** I am not sure. When he was going through the different Attorneys General, it was an article by Ben Harvey.

He went through what Quigley was doing, what his predecessor Mischin did, which was nothing, and what Jim McGinty said: “We’ll rip their luxury lifestyles away from them.” We learnt that the problem with the confiscation of proceeds of crime was that it was all handed to the Director of Public Prosecutions, who was already totally overworked prosecuting crime and did not have the resources to go back after a conviction and start all over again chasing money trails. The police were so busy out there solving murders and solving missing persons, doing all that valuable work, that they did not have the time to go back and do the forensic work after they had convicted a criminal.

So it was that in our first year of our first term we transferred unexplained wealth to the Corruption and Crime Commission because it is attached to crime and corruption. I know that the CCC has been working up its proceeds and has already seized a lot of money and frozen more money under the unexplained wealth law. I suppose one of the biggest hits it got under unexplained wealth was the seizure of Paul Whyte’s houses, which we have seen auctioned recently. The CCC is looking at the unexplained wealth area, serious and organised crime will look at consorting, all police will look at firearms and we will bring in anti-money laundering laws and that will not be the end of it. We have more; we will keep on supplying the laws that the police—there are more that I will not talk about tonight—identify to us as what they need in their toolkit to take on these criminals on behalf of our society.

I said before that we were lucky to have Deputy Commissioner Col Blanch as our deputy commissioner. We are more lucky having Commissioner Chris Dawson return to this jurisdiction as our commissioner, because let it not be forgotten that he left this jurisdiction to take over the Australian Crime Commission and its intelligence gathering. He worked there with Mr Blanch and the two of them came back, first Mr Dawson, and then he brought Mr Blanch back. No-one can say there has not been a significant uplift in the police’s preparedness and capacity to really take on serious and organised crime.

We know what is happening in the District Court. The Chief Judge of the District Court, Hon Julie Wager, has told me that at least 80 per cent of the criminal work in the District Court, in some way or another, involves methamphetamine as the driver of serious crime. In large part, the purveyors of this drug are outlaw motorcycle gangs. When the Minister for Police came with me for a briefing at police headquarters, we were shown a video of different operations and Mr Blanch pointed out that in South America, there is a vertical merchandising plan in that the cartels control the growing of coca and the distilling of the coca leaf and, ultimately, the retail distribution of it. The triads in Asia have the same business model. They control it from the production of methamphetamine in Chinese cities to its transportation and retail sale. When it comes to Australia, because of our border controls, they cannot get their own retail and low-level wholesale outlets happening in Western Australia, so they have seconded outlaw motorcycle gangs with their muscle and their muscly men and their omerta—their code of silence—as the Chinese’ and South Americans’ best shot, a ready-made distribution network in our country.

I thank all police, especially the serious organised crime team, for their brave and unstinting work against organised crime, in particular against outlaw motorcycle gangs. I commend this bill to the house. In doing so, may it please the chamber, I want to thank each member who has made an important contribution this evening to this important legislation.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

*Consideration in Detail*

**Clause 1: Short title —**

**Mr R.S. LOVE:** Can I have a little bit of the background on some of the consultation that has taken place? Was the Law Society of Western Australia or the Western Australian Bar Association consulted when the Attorney General was drafting the bill; and, if yes, what advice or feedback did they provide to him?

**Mr J.R. QUIGLEY:** No and none. The people who were consulted were the WA Police Force, the State Solicitor’s Office, the Solicitor-General of Western Australia, the Office of the Director of Public Prosecutions of Western Australia, the Office of the Director of Public Prosecutions of New South Wales, the Parliamentary Commissioner

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for Administrative Investigations in Western Australia, the Department of the Premier and Cabinet, the Department of Treasury and the Department of Local Government, Sport and Cultural Industries through the personage of the Director of Liquor Licensing.

Importantly, there is the Aboriginal Legal Service of Western Australia, the Legal Aid Commission of Western Australia; the Corruption and Crime Commission of Western Australia, the Commissioner for Victims of Crime of Western Australia; courts and tribunal services in the Department of Justice, the Honourable Chief Justice of Western Australia, His Honour Justice Peter Quinlan; the Honourable Justice Julie Wager, the Chief Judge of the District Court; and, finally, Chief Magistrate Steven Heath of the Magistrates Court of Western Australia.

**Mr R.S. LOVE:** I understand from information provided to the opposition that no drug traffickers have been charged under the current consorting legislation. Can the Attorney General confirm that that is the case?

**Mr J.R. QUIGLEY:** It is section 557K.

**Clause put and passed.**

**Clause 2: Commencement —**

**Mr R.S. LOVE:** We are talking here about the commencement date of the bill. There is something we want to clear up around the child sex offence stuff. I am advised that there is provision for a three-year transition to assess against proposed legislation the 800-odd people listed on that schedule or who could potentially fall under the legislation and who cannot consort under the current legislation. Can the Attorney General explain how that process will evolve? What happens if at the end of the three years that has not been completed? Will the legislation be put in place regardless?

**Mr J.R. QUIGLEY:** As I said in my reply to the second reading debate, tonight it will still be section 557K(4) and that will exist during the transitional period of three years. It is important to acknowledge in response to this question that the existing consorting scheme under the Criminal Code is different from that contained in this bill, and this is by design. The operational difficulties and ineffectiveness of the existing consorting scheme are the key reasons for the introduction of the new scheme contained in this field. There has been an inconsistent approach to the circumstances in which consorting notices are issued resulting in the notices being of variable utility. Under section 557K of the Criminal Code, a police officer of any rank may warn a child sex offender that consorting with another may lead to an offence. Prosecution of the existing offence under 557K has also proven to be difficult, as the principal element of the defence is that the person subject to the notice habitually consults with the other person. The word “habitually” is not defined. Since 2015, which is six years ago, 20 prosecutions have been commenced under section 557K(4) of the Criminal Code—this is in six years—and only eight convictions have been recorded because of its difficulties. Of those eight convictions, most sentences were for a fine ranging from only \$10 to \$4 000, so it was sort of a moribund provision. There were only eight convictions in six years from 20 attempts.

Section 557J of the Criminal Code applies to declared drug traffickers, which the member referred to, and has not been operationally effective. There is no dedicated police system for drug trafficking offenders. In the case of declared drug traffickers, there is no register of current notices and there are no prosecutions under the current code. The scheme introduced by the bill does not seek to simply replicate the existing provisions in the Criminal Code. It will apply to a broader range of offenders. It will be targeted in its operations. Notices will be not only levied on child sex offenders, but also based on the likelihood of further offending—in other words, actual and evidence-based risk. That is why we want to keep them apart on evidence-based risk. It will be easier to prosecute the offences, it will be supported by important safeguards and will be effective in achieving its purpose. The consorting scheme in this bill has been developed in close consultation with the WA Police Force to ensure it is operationally workable, and it will be effective in disrupting serious and organised crime.

I turn to the member’s question, which essentially is how many sex offenders subject to the current scheme in the Criminal Code will be subject to the new consorting scheme. Firstly, every child sex offender subject to the existing consorting scheme will be a relevant offender under this bill. The meaning of “relevant offender” and “child sexual offence” is set out in clauses 6 and 7, which also rely on schedule 1 of the bill. The qualifying offences under the current scheme are mirrored in schedule 1 of the bill. The bill provides for a three-year transitional period to enable a dedicated police analyst to review the current consorting notices in respect of each current offender. Police analysts will investigate a range of data sources, including criminal history, whether they have had co-offenders or offences involving consorting.

**Ms M.M. QUIRK:** I wish to hear what the Attorney General is saying.

**Mr J.R. QUIGLEY:** I thank the member for Landsdale, I am happy to oblige her.

They will involve address checks, prison periods, intelligence databases, prosecution notices and national child sex offender databases. Following that review, in appropriate circumstances the evidence will be put before an authorised officer, being an officer of the rank of commander or above, as set out in clause 3, who will consider whether to issue

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a notice under the new scheme. This work cannot commence until the bill has passed, hence the three-year transitional period. Because of this, it is not possible to say with any certainty the number of persons subjected to current notices who will or will not be subject to a notice under the scheme contained in the bill. I stress again that it will have to be evidence and intelligence based, not just because of a previous conviction. There has to be evidence and intelligence that there is likely to be the commission of a further offence, and that justifies the anti-consorting notices. Existing mechanisms in the criminal justice system are for the purpose of continuous reporting and oversight. For example, the parole scheme, post-sentence supervision scheme and high-risk serious offenders scheme provide mechanisms of supervision and monitoring of offenders leaving the custodial system. We can now regulate those sex offenders the member is talking about and other dangerous people under the high-risk offenders legislation that we introduced in the last term of government. This consorting scheme in the bill is an additional tool to help protect the community from criminal conduct, and its purpose is grounded in restricting and disrupting communication between offenders—offenders who are considered at risk of engaging in further serious criminal conduct with other offenders. Offenders who are considered at risk of engaging in further serious criminal conduct with other offenders are the ones who will get the anti-consorting notices, and not merely because they have a prior conviction. As I have mentioned, the new scheme will be targeted, will contain important safeguards and will be constitutionally robust, and the notices will be based on evidence of future risk. Importantly, unlike the existing consorting scheme in the Criminal Code, it will be operationally workable and effective in disrupting serious and organised crime.

**Dr D.J. HONEY:** In the Attorney General’s reply to the second reading debate, he said that Hon Nick Goiran’s concerns were piffle and that section 557K would continue to exist. Is it not the case that this bill will specifically exclude that section after the transition period and that section 557K will no longer apply after the transition period?

**Mr J.R. QUIGLEY:** That is right; it will be after the transition period. This evening, tomorrow, the next day, next week and next year, section 557K will be there. It is piffle to say that that will be gone; it will be there for the next three years. But I stress again that section 557K has returned eight convictions in six years of the hundreds of sex offenders we have in Western Australia. It is moribund. It is useless. There have been only 20 prosecutions of these people at a less than one in three strike rate. It is nonsense to say that we are not going to be covering the dangerous sex offenders. Additionally, there is the high-risk offenders regime, post-sentence supervision orders and parole. They are all going to be covered.

**The DEPUTY SPEAKER:** Members, we are dealing with clause 2, which is the commencement of the bill. I will give you a little bit of leeway, Leader of the Liberal Party, but that will be it.

**Dr D.J. HONEY:** It is just that the Attorney General discussed this issue in response to a question from the Deputy Leader of the Opposition. I think it is a question worth exploring at this stage, or we can explore it later. Surely, one of the functions of section 557K is that the officer can issue a warning. In fact, prosecutions are not a measure of whether that particular law is useful. I imagine that in the great majority of cases, police officers would not want to go to the difficulty of a prosecution if a warning would suffice to stop two offenders from consorting. I think it is a straw person to say that prosecution is the only measure of success. From my limited experience of police matters, I would say that police often use warnings and do not resort to prosecutions on matters.

**Mr J.R. QUIGLEY:** I am surprised that the Leader of the Liberal Party of Western Australia would say in respect of dangerous sex offenders that a warning suffices. It is just breathtaking.

**Mr R.S. LOVE:** I just go back to the transition period of three years and the process that is going to be followed, as I am a bit unclear. Will the WA Police Force undertake the process and will the Ombudsman oversee the process? Is that how it will happen? Who will be responsible for oversight of the process and what, if any, will there be by way of a procedural review if there is some dispute about whether a process has been followed properly?

**Mr J.R. QUIGLEY:** The police will conduct the review of those who have any anti-consorting notices under section 557K. They will be taking it to a commander in the appropriate case to ask for an anti-consorting notice under this bill should it be appropriate.

**Clause put and passed.**

**Clause 3: Terms used —**

**Mr R.S. LOVE:** This is where we have a number of definitions of terms used in the bill. Could the Attorney General explain whether the definition of “consort, with another person” is significantly different from definitions already contained in the code? Why does it need to be inserted? I would have thought there would be a definition of “consorting” already within the relevant legislation.

**Mr J.R. QUIGLEY:** Section 557K defines “consort” as communicating in any manner. This bill takes it further by expressly including seeking, accepting or being in the company of another person—it is not even communicating, just seeking to be in their company—and communicating directly or indirectly by any means, including by post,

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facsimile, telephone, email or any other form of electronic communication. It goes further than the definition in section 557K.

**Mr R.S. LOVE:** I just want to get a bit of an understanding of what paragraph (a)(iii) of the definition of “consort” means with regard to communicating directly or indirectly. Would it suffice if someone was part of a chat group or an organisation where they may not have even communicated with each other but are in a group that may appear to be made up of people with a particular interest? I am just trying to get an understanding of some of the situations. I do not really know how things operate on the dark web et cetera, but would simply visiting certain sites be enough to be an act of consorting?

**Mr J.R. QUIGLEY:** No, that would not be. There has to be communication or attempted communication. The member was talking about chat sites.

**Mr R.S. Love:** You’re seeking the company of them.

**Mr J.R. QUIGLEY:** If someone is chatting and seeking someone’s company by saying, “Would you come and see me?”, that would be an offence. The member talked about somebody passively visiting a site or looking at a WhatsApp message. If they are not seeking to communicate with a person or seeking their company or to do anything with them, that would not be captured, but any attempt to communicate with that person would be captured. I draw the member’s attention to the definition of “consort” in paragraph (b), which includes consorting with another person in any of the ways mentioned before—we have agreed that this includes texts, emails and whatever—within this state or outside this state, including outside Australia. We now know that some of these bikie gang heads are domiciled in Thailand and others are in Dubai. There are probably other Middle Eastern countries they are fleeing to. They are the people who are organising the shipments, so if there is any attempt to communicate with any of them outside Australia, then unlike under section 557J, where they have to be a declared drug trafficker, these people will be brought within the ambit of this legislation.

**Dr D.J. HONEY:** On page 3, at line 11, there is a definition of “Indigenous person”. Why do we need to single out that particular group in terms of the definitions in this legislation?

**Mr J.R. QUIGLEY:** That is relevant to one of the subsequent defences in the bill.

#### **Clause put and passed.**

#### **Clause 4: Family member —**

**Mr R.S. LOVE:** Given the member for Cottesloe’s question on the earlier clause, I think we may as well explore who is a family member, which has relevance to one of the defences that is set out later in the bill. There are a number of definitions of “family member”, including a spouse, a person with whom the person shares parental responsibility and so on. I think the member for Cottesloe’s question has some import in relation to clause 4(2), given that an Indigenous person is the subject of that clause —

Without limiting subsection (1), a person is a *family member* of another person who is an Indigenous person if, under the customary law and culture of the Indigenous person’s community, the person is regarded as a member of the extended family or kinship group of the Indigenous person.

Does the person who would potentially need to provide a defence or sanction need to be Indigenous or just be recognised by an Indigenous group as being someone with whom they have some sort of kinship or hold to be extended family? I am not sure that the concept of family is limited exclusively to people with a bloodline in certain cultures, so I am trying to get an understanding of how far that could be brought through.

**Mr J.R. QUIGLEY:** There are a couple of things going on here. The definition of “Indigenous person”, which we looked at in clause 3, means “an Aboriginal person or a Torres Strait Islander”. Clause 4, which is the clause we are on, states, “a person is a family member ... if the person is any of the following”, because this is relevant to the defences. Then it goes through the relationships, be they step-parent, grandchild et cetera.

Clause 4(2) goes to the kernel of the answer to the member’s question —

Without limiting subsection (1), a person is a *family member* of another person who is an Indigenous person if, under the customary law and culture of the Indigenous person’s community, the person is regarded as a member of the extended family or kinship group of the Indigenous person.

In a Caucasian family—the member’s family, my family—we could have an Indigenous person as a member of our family because we regard them as a member of our family unit. Subclause (2) sets out that without limiting any of those special relationships in subclause (1), if the Indigenous person regards them as a genuine family member—I know that some white people have been regarded as members of Indigenous families because they may have married lawfully into that family or become some sort of blood brother or kin brother—they are regarded as a family member, because the defence is if they are in their company as a family member.

**Extract from Hansard**

[ASSEMBLY — Tuesday, 9 November 2021]

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**Mr R.S. LOVE:** It has to be tested in some way.

**Mr J.R. QUIGLEY:** That is right.

**Clause put and passed.**

**Clauses 5 to 7 put and passed.**

**Clause 8: Objects of Part —**

**Mr R.S. LOVE:** This clause sets out the objects of the rest of the part to disrupt and restrict the capacity of relevant offenders to organise, plan, support or encourage the carrying out of a criminal activity. I wonder whether the Attorney General could illustrate just how the objects in this clause will be achieved.

**Mr J.R. QUIGLEY:** The objects will be achieved by creating offences rendering liable to prosecution those people who have been convicted of serious offences and who have been served with an anti-consorting notice. The objects will further be achieved by prosecuting those people who are members of the organisations in the first schedule of the legislation. These objects will be further achieved by the dispersal notices even when the people are not wearing or displaying insignia when the police reasonably believe they are a member of one of the scheduled organisations. The police can require them to disperse for a period of seven days. All these things will disrupt their criminal activities.

**Mr R.S. LOVE:** What I am trying to say in a rather cack-handed way is that the objects of this part are not just about prosecutions. When the Attorney General talked earlier about the effectiveness of the existing legislation, he spoke of a number of prosecutions. I think the member for Cottesloe said there were other ways of achieving or measuring the success or otherwise of the legislation. The Attorney General outlined a range of activities that will occur. Will each of those be measured in some way? How will we understand how effective the legislation is? Will it be the number of insignia that are torn down from buildings? Will all these things be recorded or will it simply be determined on the number of prosecutions that are successfully put through a court? Will there be a record of the number of dispersal notices et cetera?

**Mr J.R. QUIGLEY:** I thank the member for the question. Under clause 54, which we have not got to yet, the Parliamentary Commissioner for Administrative Investigations must prepare a report on the parliamentary commissioner's monitoring activities and include any observations or recommendations about the operation of an unlawful consorting scheme. The report will include a review of the impact of the operation of the scheme on a particular group in the community if such an impact came to the attention of the parliamentary commissioner. Further, clause 62 of the bill will require the minister—he is not here; he has gone home! That is probably unfair; he has not gone home—to review the operation and effectiveness of the bill to determine whether the policy objectives of the bill remain valid and whether the terms of the act remain appropriate for securing those objectives. There are two monitoring authorities—the Ombudsman and the Minister for Police. The policy objective of the bill is to disrupt and restrict the capacity of convicted offenders to organise, plan, support or encourage the carrying out of criminal activity. Findings on whether those objectives are being achieved are likely to be informed by both quantitative and qualitative evidence. Although the precise measures of the effectiveness of the regime have not been developed, the Western Australian Crime Statistics and Research unit will provide independent statistics and evidence-based research on crime and on criminal justice issues, which will assist the government in its ability to measure the effectiveness of this reform.

**Clause put and passed.**

Debate adjourned, on motion by **Mr W.J. Johnston (Minister for Mines and Petroleum)**.

*House adjourned at 10.29 pm*

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