

### ***Overview of the Bill***

The Criminal Law (Unlawful Consorting) Bill 2020 (the Bill) will introduce a consorting offence to disrupt and restrict a convicted offender's ability to associate or communicate with other convicted offenders for the purposes of using or building up organised criminal networks.

The Bill implements the Government's commitment to fight organised crime by criminalising communication and networking between convicted offenders who engage in organised criminal activity.

The Bill is intended to encompass a cohort of convicted offenders which includes child sex offenders, declared drug traffickers (within the meaning of section 32A(1)(c) of the *Misuse of Drugs Act 1981*) and persons who have been convicted of an indictable offence.

The Bill will provide the Western Australia Police Force (WAPF) with additional powers to enforce the unlawful consorting scheme and provide for the Parliamentary Commissioner for Administrative Investigations, commonly referred to as the Ombudsman, to scrutinise the exercise of these powers.

### ***Part 1: Preliminary***

#### **1. Short title**

This clause provides that this is the *Criminal Law (Unlawful Consorting) Act 2020*.

#### **2. Commencement**

Paragraph (a) provides that Part 1 comes into operation when the Act receives the Royal Assent. Paragraph (b) provides that section 39 will come into operation 12 months after the rest of the Act, other than Part 1. This is to allow for a transitional period (see clause 40) during which consorting notices issued to child sex offenders under section 557K(4) of *The Criminal Code* will continue to remain in effect until such time that an unlawful consorting notice is issued under the provisions of this Bill.

Paragraph (c) provides that the rest of the Act will come into operation on a day fixed by proclamation.

### 3. Terms used

This clause defines the terms used in this Act.

**Child sex offence** has the meaning in clause 4.

**Commissioner of Police** means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*.

**Consort** (with another person) means:

- To seek, or accept, the company of the other person.
- To be in the company of the other person. The phrase ‘in the company’ indicates a situation where two persons are physically present together and are participating in a common purpose.
- To communicate directly or indirectly, with the other person *by any means*. The expression ‘by any means’ includes post, facsimile, telephone, email or any other form of electronic communication.

Consorting in any of the ways mentioned in the Bill can occur within or outside of Western Australia, including outside Australia.

**Convicted offender** means a person who has a conviction for one or more of the following:

- an indictable offence;
- a child sex offence;
- an indictable offence against a law of the Commonwealth; or
- an offence against a law of the Commonwealth that, if committed in Western Australia, would constitute a child sex offence; and an offence against the law of another State, Territory or country that, if committed in Western Australia, would constitute an indictable offence or child sex offence.

As noted above, a convicted offender can also be a person who is declared to be a drug trafficker under section 32A(1)(c) of the *Misuse of Drugs Act 1981*.

**Conviction** means a finding of guilt, or the acceptance of a plea of guilty, in respect of an offence, whether summarily or on indictment. This does not apply if an offence is committed before a person has reached 18 years of age or if a conviction is spent (a spent conviction is defined in section 3 of the *Spent Convictions Act 1988*).

**Family member** has the meaning given in clause 5.

**Health service** has the meaning given in section 7 of the *Health Services Act 2016*.

**Identifying reference** means a prescribed police officer's registered number.

**Parliamentary Commissioner** means the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971*.

**Personal details** means:

- the person's full name and date of birth;
- the address where the person is residing;
- the address where the person usually resides (if different from the address where the person is residing); and
- the person's business address.

**Personal service** means serving a document by handing it to the person or leaving it near the person, if they refuse to accept it, and orally drawing their attention to the document.

**Police Force** means the Police Force of Western Australia as provided for in the *Police Act 1892*.

**Prescribed officer** means a police officer who is, or is acting as, a Commander or an officer of a rank more senior than a Commander. Western Australian Police Force policy will provide that the Commander or more senior officers tasked with the responsibilities of a prescribed officer under the Bill will be the Commander or more senior officer within the unit currently known as State Crime, which includes both serious and organised crime and sex crime. This is in recognition of the purpose of the Bill, which is to disrupt organised crime, rather than to be a broadly used policing tool.

**Prescribed service method** means personal service (previously defined) or delivering the document to a physical or electronic address nominated by the person to be served.

**Prisoners Review Board** means the Prisoners Review Board as established under section 102 of the *Sentence Administration Act 2003*.

**Record** means any record of information, irrespective of how the information is recorded or stored or able to be recovered, and includes:

- any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and

- any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means.

**Social welfare service** includes services provided by governments and charitable organisations for community welfare, financial assistance, housing and temporary accommodation.

**Unlawful consorting notice** means a notice issued under clause 10(2).

**Vehicle** has the meaning given in section 3(1) of the *Criminal Investigation Act 2006*, namely:

- any thing capable of transporting people or things by air, road, rail or water, irrespective of whether the thing is permanently or semi-permanently stationary, other than a mobile home; or
- a mobile home that is reasonably suspected not to be permanently or semi-permanently stationary in a single location.

#### **4. Meaning of child sex offence**

This clause is intended to replicate the definition of ‘child sex offender’ as defined in section 557K of *The Criminal Code*, with subclauses (2) and (3) drafted to reflect subsections 557K(2) and (3). This is due to the changing nature of and variations in how sexual offences have been described in legislation over time in order to ensure that those offenders convicted of historical child sex offences that may have been described in a different manner to how sexual offences are currently legislated will be encompassed by the definition.

Subclause (1) defines a ‘child sex offence’ to mean an offence listed in Schedule 1, while subclause (2) provides that a reference to Schedule 1 item 1 or 2 to a provision of *The Criminal Code* includes a reference to the provision as enacted at any time. Subclause (3) provides that a reference in Schedule 1 item 4 to a provision of *The Criminal Code* includes a reference to the provision as enacted at any time before it was repealed.

**5. Meaning of family member**

The Bill provides a defence that a ‘family member’ of a person can seek, accept or be in the other’s company in reasonable circumstances, with subclause (1) listing the relationships that fall within the meaning of ‘family member’.

The purpose of subclause (2) is to extend the definition of family member in subclause (1) to recognise the family and kinship structures that exist in Aboriginal and Torres Strait Islander communities in order to exempt the provisions of this Bill from the day-to-day relationships between members of Aboriginal and Torres Strait Islander family members.

**6. Objects of the Act**

This clause outlines the objects of the Bill, which are to disrupt and restrict the capacity of persons who have been convicted of an indictable offence, or a child sex offence or who have been declared a drug trafficker under section 32A(1)(c) of the *Misuse of Drugs Act 1981*, to organise, plan, support or encourage the carrying out of criminal activity.

**7. Act binds the Crown**

This clause provides that the Bill binds the Crown.

***Part 2: Unlawful consorting among convicted offenders***

***Division 1 – Offences***

**8. Unlawful consorting with convicted offenders**

Subclause (1) creates a new crime of unlawful consorting. The crime arises if an unlawful consorting notice (a notice) is served on the person and, during the period that the notice is in force, the person consorts with a convicted person stated in the notice on two or more occasions. The maximum penalty is imprisonment for five years, with a summary conviction penalty of imprisonment for two years.

Subclause (2) provides that the two or more occasions of consorting need not have occurred with the same convicted offender on each occasion to constitute an offence.

Subclause (3) essentially provides for a strict liability crime, in that the prosecution does not need to prove that the consorting occurred for a particular purpose or that the consorting would have led to the commission of an offence.

## **9. Defences to charge of unlawful consorting**

This clause sets out the defences to a charge of unlawful consorting.

Subclause (1) provides that it is a defence to prove that the consorting was between persons who are family members (within the meaning of the term 'family member' as set out in clause 5) and that the consorting was reasonable in the circumstances.

Subclause (2)(a) provides that it is a defence to prove that the consorting occurred in the course of one or more of the following and was 'necessary' in the circumstances:

- (i) engaging in a lawful occupation, trade or profession;
- (ii) attendance at an educational institution to take part in a higher education course registered under section 23 of the *Higher Education Act 2004* or an approved VET course as defined in section 5(1) of the *Vocational Education and Training Act 1996*;
- (iii) receiving a health service or social welfare service;
- (iv) receiving a health service or social welfare service for a person who is dependent upon the person charged for care and support;
- (v) the provision of legal advice;
- (vi) lawful custody;
- (vii) complying with a written law, an order made by a court or tribunal, or any other order, direction or requirement made under a written law;
- (viii) activities undertaken by members of an organisation of employees registered under Part II Division 4 of the *Industrial Relations Act 1979* or the *Fair Work (Registered Organisations) Act 2009* (Cth), for the purposes of the business of the organisation; or

- (ix) if the person charged is an Indigenous person, where they are fulfilling a cultural practice or obligation of the customary laws or traditions of the Indigenous person's community.

The defendant must prove these defences on the balance of probabilities.

The difference between reasonable in subclause (1) and necessary in subclause (2) recognises that a broader scope of dealings between family members is allowable, whereas consorting in other circumstances is restricted to only what is necessary in those circumstances.

Under subclause (3), consorting is not 'reasonable' or 'necessary' if the purpose of the consorting is to avoid the operation of an unlawful consorting notice or relates to criminal activity.

### ***Division 2 – Unlawful consorting notices***

#### **10. Issue of unlawful consorting notice**

Subclause (1) provides that the term 'conduct constituting an indictable offence' includes conduct engaged in, outside of Western Australia that, if it occurred in Western Australia, would constitute an indictable offence.

Subclause (2) provides that a prescribed officer may issue a notice in respect of a person if three requirements are satisfied. First, the person has reached 18 years of age. Second, the person is a convicted offender who has consorted, or is consorting, with another convicted offender, or who the prescribed officer suspects on reasonable grounds is likely to consort with another convicted offender. Third, the prescribed officer considers that it is appropriate to issue the notice in order to disrupt or restrict the capacity of convicted offenders named in the notice to engage in conduct constituting an indictable offence.

Subclause (3) provides that the notice may be issued for consorting that occurred before, on or after the commencement of clause 10.

## **11. Content of unlawful consorting notice**

This clause provides that an unlawful consorting notice must specify the following:

- (a) the name and address of the person on whom the unlawful consorting notice will be served (referred to as the restricted person);
- (b) the name of each convicted offender with whom the restricted person must not consort;
- (c) that consorting on two further occasions may lead to the commission of the offence of unlawful consorting (and that the consorting does not have to occur with the same person on each occasion);
- (d) the date of issue of the notice;
- (e) the name, rank and identifying reference of the prescribed officer who issued the notice;
- (f) that the notice remains in effect on the restricted person for a period of three years from the date of service of the notice, unless revoked sooner; and
- (g) any other matters prescribed in the regulations.

The Bill sets out the minimum content that must be specified in an unlawful consorting notice. However, as contemplated by clause 11(g), additional matters may be prescribed in regulations including, for example, information about the process for applying for revocation of a notice.

## **12. Service of unlawful consorting notice**

Subclause (1) sets out how a notice is to be served on a restricted person, by specifying that a prescribed officer (an officer of, or above, the rank of Commander) must, as soon as practicable after issuing a notice, ensure that a police officer serves the notice on the restricted person, either orally or in writing by personal service.

Personal service is defined in clause 3 as either handing it to the person or, if the person refuses to accept it, leaving it near the person and orally drawing the person's attention to it. This definition of personal service has been adapted from the concept of 'personal service on individuals' as contained in clause 2 of Schedule 2 under the *Criminal Procedure Act 2004* but explicitly excludes the personal service method in



subclause (2)(c). This is because it is not desirable, given the magnitude of the penalty for the offence of consorting, for service to be effected by serving the notice on a person other than the intended recipient.

Subclause (2) provides that when serving a notice, the police officer must explain to the restricted person, in language that the person is likely to understand, the person's obligations under the notice and the consequences of failing to comply with those obligations.

Subclause (3) provides that a failure to comply with subclause (2) – that is, the way in which the police officer explains the person's obligations – does not invalidate the notice.

Subclause (4) provides that a notice expires if it is not served within two months after it is issued. In such cases, a prescribed officer will be required to issue a new notice.

### **13. Further service of unlawful consorting notice when served orally**

This clause sets out additional steps a police officer must follow if a notice is served orally as set out in clause 12(1)(a) to confirm the notice.

Subclauses (1) and (2) require a police officer, within a period of 72 hours after serving the notice orally, to confirm the notice by serving a written record of the notice that includes the particulars set out in clause 11 by a prescribed service method (i.e. by personal service or by delivering the document to a physical address or electronic address nominated by the person). A police officer is also required to make a record of the particulars confirming that the oral notice was confirmed.

Subclause (3) provides that if an oral notice is not confirmed in accordance with subclauses (1)(a) and (2), then the notice expires 72 hours.

### **14. Duration of unlawful consorting notice**

This clause provides that a notice takes effect when it is served on the restricted person and remains in force for a period of three years from that day, unless it expires

in accordance with subclause 13(3) (i.e. an oral notice that is not confirmed within 72 hours) or is revoked sooner under subclause 16(4).

#### **15. Correcting mistakes in unlawful consorting notice**

Subclause (1) empowers a prescribed officer to correct a notice if it contains a clerical mistake, a mistake arising from an accidental slip or omission or a material mistake in the description of any person, thing or matter referred to in the notice. An instance of material mistake covered by this provision is where the unlawful consorting notice was mistakenly issued with a named person that did not have a conviction as defined in clause 3 of the Bill.

Subclause (2) provides that if a correction is made, the prescribed officer must ensure that the restricted person is notified of the correction by a prescribed service method and make a record of the particulars of the correction.

Subclause (3) provides that if a correction is made to a notice under this clause, the notice has the same validity and effect as if the mistake or error had not been made.

#### **16. Revocation of unlawful consorting notice**

Subclause (1) provides that a restricted person may apply to the Commissioner of Police to revoke a notice. Subclause (2) requires such an application to be made in writing and during the period that the notice is in force. Subclause (3) requires the Commissioner to determine an application within 60 days.

Subclause (4) requires the Commissioner to revoke a notice in two situations. First, where the Commissioner is satisfied that the unlawful consorting notice was invalidly issued under clause 10 because the requirements for issuing the notice were not met. Second, where the Commissioner is satisfied that the unlawful consorting notice was validly issued under clause 10, but the requirements for issuing the notice under that section are no longer met due to a change in the circumstances. The Commissioner can revoke a notice on his or her own initiative or after receiving an application from a restricted person. Notice of such a revocation (the **revocation notice**) must be in writing.

Subclause (5) provides that a revocation notice takes effect when it is made.

Subclause (6) provides that a revocation notice must contain all of the following:

- (a) the name and address of the restricted person;
- (b) details that identify the unlawful consorting notice;
- (c) the date on which the revocation notice was made;
- (d) that the revocation notice takes effect when it is made; and
- (e) any other matters prescribed in the regulations.

Subclause (7) provides that as soon as practicable after making a revocation notice, the Commissioner must serve it on the restricted person by a prescribed service method, or cause it to be so served. The Commissioner must also make a record of the particulars of the revocation notice or cause those particulars to be recorded.

#### **17. Variation of unlawful consorting notice**

Subclause (1) provides that a restricted person may apply to the Commissioner of Police to vary a notice to remove the name of a person with whom they are not to consort – called a specified person. Subclause (2) requires such an application to be made in writing and during the period that the notice is in force. Subclause (3) requires the Commissioner to determine an application within 60 days.

Subclause (4) requires the Commissioner to vary a notice if he or she is satisfied that the requirements for issuing the unlawful consorting notice under clause 10 are no longer met due to a change in the circumstances and that the notice specifies the name of at least one other person with whom the restricted person must not consort. Notice of such a variation (the **variation notice**) must be in writing.

Subclause (5) provides that a variation notice takes effect when it is made.

Subclause (6) provides that a variation notice must contain all of the following:

- (a) the name and address of the restricted person;
- (b) the name of the specified person;

- (c) details that identify the unlawful consorting notice;
- (d) the date on which the variation notice is made;
- (e) that the variation notice takes effect when it is made; and
- (f) any other matters prescribed in the regulations.

Subclause (7) provides that as soon as practicable after making a variation notice, the Commissioner must serve it on the restricted person by a prescribed service method, or cause it to be so served. The Commissioner must also make a record of the particulars of the revocation notice or cause those particulars to be recorded.

### ***Division 3 – Police powers relevant to unlawful consorting***

#### **18. Police powers for things relevant to unlawful consorting**

This clause gives a police officer powers in order to serve unlawful consorting notices, including limited powers of detention.

Subclause (1) provides that a police officer, who suspects, on reasonable grounds, that someone is a person on whom an unlawful consorting notice must be served, may do all or any of the following:

- (a) require the person to stop;
- (b) require the person to disclose their personal details;
- (c) require the person to accompany the officer to a police station, or some other place, to serve a notice on the person;
- (d) require the person to remain at a police station, or some other place, for as long as is reasonably necessary, but no longer than two hours, to serve a notice on the person;
- (e) serve a notice on the person;
- (f) if the notice is served orally, confirm the notice under clause 13.

Subclause (2) provides that, for the purposes of exercising the powers in subclause (1), (4) and (6), the police officer may, in respect of a vehicle in which the officer suspects on reasonable grounds the person is located in, enter the vehicle and keep

the vehicle at a particular place, for up to two hours, in order to serve a notice on the person and use reasonable force in doing so.

Subclause (3) provides that if the police officer suspects on reasonable grounds that a personal detail given by the person in response to a requirement under subclause (1)(b) is false, then the officer may require the person to produce evidence of the correctness of the detail.

Subclause (4) provides that if a person refuses or fails to comply with a requirement under clause 18, the police officer may convey the person to, and detain the person at a place for as long as is reasonably necessary, but for no longer than two hours, to serve a notice on the person.

Subclause (5) provides that the person is taken to be in lawful custody while they are being conveyed to a place and being detained at a place.

Subclause (6) provides that if a police officer suspects on reasonable grounds that a person upon whom a notice has been served is consorting with a convicted offender specified in a notice, the officer may require the restricted person to:

- (a) leave a place, or a part of the place, specified by the officer;
- (b) go beyond a reasonable distance from the place, or a part of the place, specified by the officer; or
- (c) obey a requirement of the officer under subclause (6)(a) or (b) for a reasonable period specified by the officer that does not exceed 24 hours.

Subclause (7) provides that subclause (6) does not apply if the police officer is satisfied that the circumstances referred to in clause 9 would give the restricted person a defence to a charge of a crime under clause 8(1) in relation to the consorting.

## **19. Failure to comply with directions of police officer**

This clause contains three offences for failing to comply with the direction of a police officer exercising powers under clause 18.

First, under subclause (1), a person who, without reasonable excuse, does not comply with the requirement of a police officer to:

- stop or accompany the officer to a police station or some other place, or remain at the police station or some other place to serve the notice; and
- leave a place, or part of a place, go beyond a reasonable distance from the place, or part of the place, or obey such a requirement for a period of up to 24 hours, commits an offence.

Second, under subclause (2), a person who is required by a police officer to disclose their personal details commits an offence if the person, without reasonable excuse, fails or refuses to comply with the requirement or gives any personal detail that is false in a material particular.

Third, under subclause (3), a person who is required by a police officer to produce evidence of the correctness of a personal detail commits an offence if the person, without reasonable excuse, fails or refuses to comply with the requirement or produces evidence that is false in a material particular.

Subclause (4) provides that it is not a defence to any of these offences, if information required to be given under the order would, or might, incriminate the person.

The maximum penalty for each offence is imprisonment for 12 months and a fine of \$12,000.

### ***Part 3 – Monitoring***

#### **20. Terms used**

This clause defines the following terms used in this Part.

***Disclose*** (in relation to information) includes divulge or communicate to any person or publish.

***Investigative purposes*** means the scrutiny of the exercise of the powers conferred under the Bill.

**Personal information** has the meaning given in the Glossary clause (1) of the *Freedom of Information Act 1992*, namely: information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead: (a) whose identity is apparent or can reasonably be ascertained from the information or opinion; or (b) who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.

## **21. Parliamentary Commissioner to monitor exercise of powers**

This clause requires the Parliamentary Commissioner to keep the exercise of powers conferred under the Bill under scrutiny, by:

- (a) inspecting the Police Force's records in order to ascertain the extent of compliance with Part 2;
- (b) reporting to the Minister about the results of those inspections; and
- (c) doing anything necessary or incidental to the performance of the functions in (a) and (b).

## **22. Powers for entry and inspection of records**

For investigative purposes, subclause (1) gives the Parliamentary Commissioner power to:

- (a) after notifying the Commissioner of Police, enter at any reasonable time premises occupied by the Police Force;
- (b) at any reasonable time, access all records of the Police Force;
- (c) make copies of, and take extracts from, records of the Police Force;
- (d) take into, or onto premises, any person, equipment and materials the Parliamentary Commissioner reasonably requires; and
- (e) direct a member of the Police Force to give the Parliamentary Commissioner such assistance as is reasonably required.

Under subclause (2), the Commissioner of Police must ensure that an officer of the Police Force provides the Parliamentary Commissioner with any assistance that is reasonably required in connection with these activities.

## **23. Powers to obtain information relevant to inspections**

Subclause (1) provides the Parliamentary Commissioner with powers, for investigative purposes, to direct a member of the Police Force to produce a document or other thing that is in the person's possession or under the person's control, and direct a member of the Police Force to give such information as is requested in relation to an investigative purpose.

Under subclause (2), the Parliamentary Commissioner may inspect a document or other thing produced in response to these directions, retain it for any reasonable period considered appropriate and make a copy.

Subclause (3) specifies that a direction under subclause (1)(a) must specify the time at, or within which, the document or other thing must be produced and may require that the document or other thing be produced at a place specified in the direction and by any means specified in the direction.

Subclause (4) specifies that a direction under subclause (1)(b) must specify the time at, or within which, the information or answer must be given and may direct that the information or answer:

- (i) be given orally or in writing;
- (ii) be given at, or sent or delivered to, a place specified in the direction;
- (iii) in the case of written information or a written answer, be sent or delivered by the means specified in the direction; or
- (iv) in the case of written information or a written answer, be verified by statutory declaration.

In accordance with subclause (5), a place or a period or the time of day specified in a direction under subclause (1) must be reasonable with regard to the circumstances in which the direction is made.

#### **24. Authorised recording, disclosure or use of information**

For the purposes of the Bill, under subclause (1), the recording, disclosure or use of information is authorised if done in good faith in any of these circumstances:

- (a) for the purposes of, or in connection with, the performance of the Parliamentary Commissioner's scrutiny of the exercise of powers conferred under the Bill;



- (b) under the Bill or another written law;
- (c) to a court or other person or body acting judicially in the course of proceedings before the court or other person or body;
- (d) under an order of a court or other person or body acting judicially;
- (e) if the information recorded, disclosed or used is personal information – with the consent of the individual, or each individual, to whom the information relates;
- (f) in any other circumstances prescribed for the purposes of this subclause.

Subclause (2) provides that if the recording, disclosure or use of the information is authorised under subclause (1), then no civil or criminal liability is incurred. In addition, the recording, disclosure or use is not a breach of any duty of confidentiality or secrecy imposed by law or a breach of professional ethics or standards or any principles of conduct applicable to a person's employment.

**25. Parliamentary Commissioner may recommend revocation or variation of unlawful consorting notice**

Subclause (1) enables the Parliamentary Commissioner, as a result of an inspection under this Part, to recommend to the Commissioner of Police that a notice be revoked under section 16(4) if the Parliamentary Commissioner is of the opinion that the requirements for the issue of a notice under clause 10(2) were not met.

Subclause (2) enables the Parliamentary Commissioner, as a result of an inspection under this Part, to recommend to the Commissioner of Police that a notice be varied under section 17(4) if the Parliamentary Commissioner is of the opinion that the notice should be varied.

Under subclause (3), a recommendation from the Parliamentary Commissioner to the Commissioner of Police must be made in writing during the period that the notice is in force and must give the reasons for the Parliamentary Commissioner's opinion under subclauses (1) or (2).

Subclauses (4) and (5) require the Commissioner of Police, as soon as practicable, to notify the Minister (being the Attorney General), in writing, of a recommendation and

also to notify both the Minister and Parliamentary Commissioner, in writing, of any action taken by the Commissioner of Police in respect of a recommendation.

**26. Commissioner of Police to report on use of police powers to Parliamentary Commissioner**

Subclause (1) requires the Commissioner of Police to keep a register of the following information:

- (a) any unlawful consorting notice issued or served under Part 2;
- (b) any revocation of an unlawful consorting notice under clause 16;
- (c) any variation of an unlawful consorting notice under clause 17;
- (d) the use of police powers under clause 18;
- (e) any prosecution for an offence under any provision of Part 2; and
- (f) any certificate of service given under clause 29.

Subclause (2) requires the information contained in the register to be provided to the Parliamentary Commissioner for inclusion in the annual report referred to in clause 27.

**27. Parliamentary Commissioner to report on monitoring activities**

Clause 27 provides that the Parliamentary Commissioner must report annually on the Western Australia Police Force's exercise of powers under Part 3. This report is intended to ensure transparency of the use of powers under the Bill to enable the Government and Parliament to address any misuse of powers.

Under subclause (1), the Parliamentary Commissioner must, as soon as practicable after each anniversary of the day on which Part 3 comes into operation, prepare a report on the Parliamentary Commissioner's monitoring activities under the Bill. The annual report must be provided to the Minister (being the Attorney General) and the Commissioner of Police.

Subclause (2) provides that the annual report may include any observations that the Parliamentary Commissioner considers appropriate about the operation of the Bill. It also requires that the annual report include any recommendations made by the Parliamentary Commissioner that a notice be revoked or varied, details of any action

taken by the Commissioner of Police in response to these recommendations and information provided to the Parliamentary Commissioner under clause 26(2).

Subclause (3) provides that the annual report must include a review of the impact of the operation of the Bill on a particular group in the community, if such an impact came to the attention of the Parliamentary Commissioner in the exercise of scrutinising the powers conferred under this Bill.

Subclause (4) requires the annual report to relate to the Parliamentary Commissioner's monitoring activities during the reporting period, being the year prior.

Subclause (5) requires the Minister (being the Attorney General) to cause the annual report to be laid before each House of Parliament within 12 sitting days of that House after the Minister receives a copy of it.

Subclause (6) provides that nothing prohibits the Parliamentary Commissioner from reporting to the Minister (being the Attorney General) on the Parliamentary Commissioner's activities under Part 3 at any time, on the Parliamentary Commissioner's own initiative or at the request of the Minister.

**28. Jurisdiction under *Parliamentary Commissioner Act 1971* not limited**

Clause 28 provides that nothing in Part 3 of the Bill limits or affects the jurisdiction or functions of the Parliamentary Commissioner under the *Parliamentary Commissioner Act 1971*.

***Part 4 – Miscellaneous***

**29. Proof of service**

Subclause (1) provides that, if service of any document is required under this Bill, proof of service must be given by certificate in writing.

In addition, subclause (2) requires that the certificate must state that, on the day and at the time and place stated in the certificate, the person giving the certificate served the document in accordance with the Bill.

Subclause (3) provides that the certificate must state the full particulars of the name and address of the person served.

Subclause (4) provides that a certificate under clause 29 is, in the absence of evidence to the contrary, sufficient proof of service of the document on the person stated to have been served.

### **30. Delegation by Commissioner of Police**

Subclause (1) empowers the Commissioner of Police, except where provided in subclauses (5) and (6), to delegate, powers or duties to revoke or vary a notice (called **revocation or variation functions**) to a police officer (the **delegated officer**) who is, or is acting as, an officer of a rank more senior than a Commander.

Subclause (2) provides this delegation must be in writing and signed by the Commissioner of Police.

Under subclause (3), a delegated officer cannot delegate revocation or variation functions.

Subclause (4) provides that when a delegated officer is performing revocation or variation functions, the officer is taken to do so in accordance with the terms of the delegation, unless the contrary is shown.

Under subclause (5), a prescribed officer who issues an unlawful consorting notice is not eligible to be the delegated officer in relation to that notice.

Subclause (6) provides that a delegated officer cannot revoke or vary an unlawful consorting notice on their own initiative, but may revoke or vary a notice on the recommendation of the Parliamentary Commissioner.

### **31. Delegation by Parliamentary Commissioner**

Subclause (1) defines **inspecting officer** as the Deputy Parliamentary Commissioner for Administrative Investigations appointed under section 6A(2) of the *Parliamentary Commissioner Act 1971* or an officer of the Commissioner appointed under section 9(1) of the *Parliamentary Commissioner Act 1971*.

Subclauses (2) and (3) provide that, subject to subclause (4), the Parliamentary Commissioner may delegate powers or duties under Part 3 to a specified inspecting officer or inspecting officers of a specified class. Such delegation must be in writing, signed by the Parliamentary Commissioner.

Subclause (4) confirms that the Parliamentary Commissioner cannot delegate a power to report to the Minister.

Under subclause (5), an inspecting officer to whom a power or duty is delegated under this clause cannot delegate that power or duty.

Subclause (6) provides that an inspecting officer exercising or performing a power or duty that has been delegated to that inspecting officer under this clause is taken to do so in accordance with the terms of the delegation, unless the contrary is shown.

Subclause (7) provides that nothing in this clause limits the ability of the Parliamentary Commissioner to perform a function through an officer or agent.

### **32. Laying documents before House of Parliament not sitting**

Subclause (1) provides that this clause will apply if a provision of the Bill requires the Minister to cause a document to be laid before a House of Parliament within a particular period.

Subclause (2) requires the Minister to give a copy of the document to the Clerk of that House if the House of Parliament is not sitting and the Minister is of the opinion that the House will not sit during that period.

Subclause (3) clarifies that a document given to the Clerk of a House in this way is taken to have been laid before the House.

Subclause (4) provides that the laying of a document before a House that is taken to have occurred under subclause (3) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the document.

### **33. Regulations**

This clause provides that the Governor may make regulations prescribing matters required or permitted to be prescribed, or that are necessary or convenient to be prescribed for giving effect to the purposes of the Bill.

### **34. Act to be reviewed after 3 years**

Subclause (1) requires the Minister (being the Attorney General) to review the operation and effectiveness of the Act, and prepare a report based on the review, as soon practicable after the third anniversary of the day on which clause 34 comes into operation.

Subclause (2) requires the review to address whether the policy objectives of the Act remain valid; whether the terms of the Act remain appropriate for securing the policy objects of the Act; whether the powers exercised under the Act have been exercised in accordance with the objects of the Act; and any other matters that appear to the Minister to be relevant to its operation and effectiveness.

Subclause (3) provides that the Minister is to cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the third anniversary.

**Part 5 – Amendments to other Acts**

**Division 1 – Community Protection (Offender Reporting) Act 2004 amended**

**35. Act amended**

This clause provides that this Division amends the *Community Protection (Offender Reporting) Act 2004*.

**36. Schedule 2 amended**

This clause amends Schedule 2 of the *Community Protection (Offender Reporting) Act 2004* by deleting reference to the offence at section 557K(4) of *The Criminal Code* and replacing it with reference to the offence of unlawful consorting contained in clause 8(1) of this Bill. This reflects the removal of the offence of consorting between convicted child sex offenders from *The Criminal Code* and insertion into the unlawful consorting scheme in this Bill.

**Division 2 – The Criminal Code amended**

**37. Act amended**

This clause provides that this Division amends *The Criminal Code*.

**38. Section 557J deleted**

This clause deletes section 557J of *The Criminal Code*. Section 557J of *The Criminal Code* contains an offence for consorting between declared drug traffickers. This cohort of offenders will now be subject to the new unlawful consorting scheme contained in this Bill. A **declared drug trafficker** means a person who is declared to be a drug trafficker under section 32A(1)(c) of the *Misuse of Drugs Act 1981* (WA).

**39. Section 557K amended**

This clause will delete subsections 557K(4) and (5) of *The Criminal Code* and the definition of **consort** in section 557K(1). This Bill includes child sex offender consorting within its broader unlawful consorting regime. All offenders that could fall within the

consorting provisions of section 557K of *The Criminal Code* could also fall within the unlawful consorting regime created by this Bill.

The remainder of section 557K of *The Criminal Code* will continue to prohibit child sex offenders from being near places where children are regularly present without reasonable excuse.

The heading to amended section 557K will read:

**Child sex offenders not to be in or near places where children are regularly present**

**40. Schedule 1 clause 4 inserted**

This clause will insert a new clause 4 into Schedule 1 of *The Criminal Code* to provide for a transitional period from the day clause 10 of the Bill comes into operation, and ending on the day when clause 39 of the Bill comes into operation. As provided for in clause 2 of the Bill, that transitional period is twelve months.

During this transitional period, a police officer cannot give a warning under subsection 557K(4) of *The Criminal Code* (the former notice), but a prescribed officer may issue an unlawful consorting notice under the provisions of this Bill. If a notice is issued under the provisions of this Bill, the former notice ceases to have effect.

The intent of clause 40 is that both regimes will operate concurrently for 12 months following commencement of the operative provisions of the Bill. During this period, warnings issued under subsection 557K(4) of *The Criminal Code* will continue to have effect until they are replaced by a new notice issued under the Bill. If warnings issued under subsection 557K(4) of *The Criminal Code* are not replaced during the transitional period, those warnings will cease to have effect when clause 39 of the Bill comes into operation.

This transitional provision is to enable sufficient time for the Western Australia Police Force to bring convicted child sex offenders subject to the consorting regime under



section 557K of *The Criminal Code* into the more rigorous consorting regime provided for in the Bill.

***Schedule 1 – Child sex offences***

This Schedule contains a list of offences that fall within the definition of **child sex offence** defined in clause 4 of the Bill. The list of offences is consistent with offences included in the definition of child sex offender in section 557K of *The Criminal Code*.