CRIMINAL LAW (UNLAWFUL CONSORTING) BILL 2020

Second Reading

Resumed from 20 February.

MR P.A. KATSAMBANIS (Hillarys) [12.32 pm]: I am the lead speaker for the Liberal Party on this legislation. Right from the outset, I indicate that the Liberal Party will be supporting this legislation, save and except for one small provision contained in clause 9(2)(a)(viii), which I will explain as I proceed in my discussion on this bill.

At the heart of it, this bill aims to disrupt convicted offenders from their organised criminal activities by stopping them from associating with each other so that they cannot carry out ideas, schemes and the like. We know, unfortunately, that organised criminal gangs operate in our state and across our nation, and really across the world. Some have links that go beyond state and national borders and are increasingly becoming multinational criminal groups, as well as the more locally based groups that we have come to know. Many of those groups style themselves as outlaw motorcycle gangs, even though many of their adherents or members, if we want to use that term loosely, and in particular their hierarchy, may never have owned a motorcycle or may not even ride a motorcycle. Colloquially, a lot of those criminal groups have been known as outlaw motorcycle gangs. Organised criminal activity is not restricted in any way to those sorts of motorcycle gangs; they are just one subset of the totality of organised crime.

I do not think there would be anyone in this Parliament or any law-abiding member of our society who would not want to restrict and, hopefully, one day eliminate organised criminal activity in all its forms. Criminal activity seeps into almost every part of everyday life, from drug dealing to standover tactics, more organised attempts at fraud and, increasingly, electronic crime as well. That is when some of the multinational nature of the offending comes into play. We all want to stop that. We want to stop the illicit drug trade on our streets, in our suburbs, across our state and across the world. We want to stop fraud. We want to stop the smuggling of human beings—the human trafficking, including child trafficking, that goes on. We want to stop money laundering. We want to stop standover tactics from being used. The community expects us as legislators to pass legislation that gives our police force and our legal system the ability to better deal with these highly organised, well-funded, often very well-advised people who are up to no good, and they are up to no good in a highly organised way. At the heart of the questions is: why are the vast majority of them doing it? They are doing it for the massive profits that they can make. It is a lazy way of making big money, but at the expense of law-abiding citizens. We are all in unity on this issue; we all want to make it work.

Our laws have been around for a while, but they really have not caught up. The Attorney General has spoken about the Western Australia Police Force not effectively using consorting legislation that has existed since 2004. There was an attempt by the previous government with the Criminal Organisations Control Bill 2012, which I think was introduced into this place in 2011 and became law in 2012, to better articulate the law in that regard. What happens every time any state government, or any federal government for that matter, passes this sort of legislation? Very quickly, organised criminals with extremely deep pockets take these sorts of laws to the High Court and claim that they violate human rights. They claim that they violate the implied freedom of communication on political and government matters that has been read into our Constitution. They utilise to their advantage the constitutional protections that are properly in place to protect law-abiding citizens. Laws of other states that have been subjected to debate in the High Court have been struck down. I think the fear around the introduction of the Criminal Organisations Control Act in Western Australia in 2012 was that it, too, would be subject to a High Court challenge if it were used, and that it might not survive a High Court challenge.

This Attorney General and this government have looked at what has happened in other states and at the legislation that perhaps has been a bit more robust and able to survive High Court challenges. They have used that as a guide to inform the drafting of this bill. The jurisdiction that seems to have had the best success in surviving a High Court challenge is New South Wales. Its consorting legislation was considered in the High Court case of Tajjour v New South Wales. I hope I have done justice to the pronunciation. The High Court found that New South Wales' provisions on consorting were not invalid. It found that they did not contravene the freedom of communication about government political matters that was implied into our Constitution by the High Court, and it found that it did not offend that implied freedom because it was reasonably appropriate and adapted to serve the legitimate purpose of the prevention of crime in a manner compatible with the maintenance of the constitutionally prescribed system of representative government. The High Court said, "New South Wales, you've got these laws into a state that can meet the tests that we apply to see whether they offend natural human rights and the implied constitutional freedom of communication on political matters that are implied or inferred into our Constitution." This government has taken those laws and tried to adapt them for the purposes of Western Australia. Just as the Attorney General expressed during discussion on the Criminal Organisation Control Bill in February 2012, when he was the shadow Attorney General, we as an opposition wish these laws every success. We do not want to barrack against them. We wish them every success because, again, this is not a partisan political matter. We want to get criminals off our streets. We want to stop organised criminals from consorting with each other to get up to no good. We could use some other colourful phrases that the Attorney General is really good at coming up with. We want to hinder their activities. In an ideal world,

we want to stop their activities completely, and consorting laws are a powerful tool in the arsenal that our law enforcement agencies could utilise to stop organised criminals from getting together for the purposes of concocting and executing criminal schemes.

This bill creates a system that is essentially in two tiers. Firstly, it relies on unlawful consorting notices that would be issued to these people. Secondly, it relies on the offence of unlawful consorting if these people breach the notice that they have been issued. There are three essential prerequisites in issuing an unlawful consorting notice. Firstly, the person who is issued with a notice needs to be at least 18 years of age. They need to be a convicted offender who has consorted, is consorting or is likely to consort with another convicted offender. It relies on one convicted offender dealing with another convicted offender. The prescribed officer who issues the notice—I will get on to who can be a prescribed officer in a minute—needs to consider that it is appropriate to issue the notice in order to disrupt or restrict the capacity of the convicted offenders to engage in conduct constituting an indictable offence. It is a pretty high hurdle for a prescribed officer to meet. They need to consider that it is appropriate to issue the notice so that they can disrupt or restrict the capacity of the convicted offenders to engage in conduct constituting a serious indictable offence. The types of offenders who would fall into this scheme are a little broader than the existing law. It would cover people who have committed the following: an indictable offence in Western Australia; a child sex offence; an indictable offence against commonwealth law; an offence against the commonwealth that, if committed in Western Australia, would constitute a child sex offence; and, if it has happened in another state, territory or country, the offence that was committed in Western Australia would constitute an indictable offence or a child sex offence. I think that shows that we are dealing with very serious criminals who have the capacity, the ability and the desire to move between jurisdictions. We are covering off the fact that they may have committed the offences in another jurisdiction. The prescribed officer who can issue the notice is given some significant discretion and also has to weigh up some heavy considerations that I discussed a minute ago. As a result, that officer cannot be a constable or even a sergeant; it needs to be someone who is a commander, more senior than a commander or someone who is acting in the role of a commander. To issue a notice, the minimum role of a "prescribed officer" is a commander.

Mr J.R. Quigley: It is because it is an impediment on freedom.

Mr P.A. KATSAMBANIS: The Attorney General says it is because it is an impediment on freedom. I think that is one of the reasons. Let us be honest; we need to defend these laws in the High Court. These laws will be litigated in the High Court. I would imagine that they will be litigated in the High Court relatively soon after they are given royal assent. Yes, we need to show that not anyone can issue the notice; it is a very restricted group of people. I also think the criteria that a prescribed officer needs to weigh up when considering the issuing of the notice is just as important in ensuring that someone of seniority within the police force is someone who is able to make that judgement.

Then there are some service requirements. The notice needs to be prescribed as soon as practicable, and it can be prescribed either orally or in writing. That is important because sometimes these people are well worded and well versed, and they can avoid service if it is in writing. The capacity to deliver the notice orally is an important matter. If the notice is served orally in the first instance, it needs to be confirmed in writing and served via a prescribed service method within 72 hours. That is outlined in clause 13 of the bill. I have had a look at that and I think it works. I do not know that it will cause any constitutional problem. The High Court might want to turn its mind to other issues. Service is important, because the notice only takes effect when it is served. It remains in force for a period of three years. It should also be pointed out that in the construction of this legislation, the notice can prohibit someone from consorting with one individual or more than one individual. It could be a list of one or a list of many. I will seek clarification from the Attorney General; I do not think it can be a class of people. It cannot be members of the South Fremantle Football Club; it has to be people who are actually named in the notice, not that I am casting any aspersions on that club whatsoever—that is just the first thing that came to my mind as far as a class of membership. I did not want to refer to outlaw motorcycle gangs in that regard. The notice is in place for three years. Once someone is served with that notice, they are under some onerous obligations and they are subject to being prosecuted for the new crime of unlawful consorting. That offence is committed when, on two or more occasions within that three-year life of the notice, the convicted offender who is the subject of the notice consorts with a convicted offender with whom they are not to consort—that is, someone listed on the notice that they are given as being someone with whom they cannot consort. If they do it on two or more occasions, they can be prosecuted for the crime of unlawful consorting. Under the legislation, the crime carries a maximum penalty of five years' imprisonment and, for a summary conviction, a maximum of two years' imprisonment. It is a pretty serious penalty. Of course, if someone were subject to it and they had deep pockets and were so minded, they would want to make sure that they litigated it to avoid the punishment, if they possibly could. Again, it is important for us to look at this to make sure that it is all properly calibrated.

The offence can happen when people consort face to face, such as two scallywags standing on the corner outside the pub having a chat to each other. However, it can also include consorting by electronic or any other form of communication. I think that recognises the reality that today people do not need to get together to consort and

concoct or even execute a scheme. They can be in different places. They can be in different countries or different states. They can communicate electronically. They can do it by email or SMS. They can do it in many ways. I am not sure whether our friends in the outlaw motorcycle gangs have taken to having Zoom meetings during the COVID-19 crisis, but I would imagine that, like the rest of us, they certainly are aware of the electronic means by which they can communicate.

The ACTING SPEAKER (Ms M.M. Quirk): Member, I think they probably use Google Hangouts!

Mr P.A. KATSAMBANIS: Google Hangouts—okay! I take that interjection from the Chair. It is a very technical term.

Quite rightly, the Attorney General has indicated that he has included a series of defences to the charge of unlawful consorting. That is important because, again, this has to stand up to scrutiny in the High Court that we are not denying them their human rights in a circumstance in which it was inappropriate and it was not properly calibrated or, as the High Court said in Tajjour, it was not reasonably appropriate and adapted to suit the legitimate end of the prevention of crime. We need to give people defences, and they are outlined in clause 9 of the bill.

The Attorney General has also stressed that some of the defences that he has incorporated take into account the review of the New South Wales act that was conducted by the New South Wales Ombudsman in 2016, which suggested improving the legislation by particularly considering how it may be applied discriminately against Aboriginal and Torres Strait Islander people, people experiencing homelessness, children or any other vulnerable members of the community. Obviously, this law cannot be applied against children, because, as I outlined earlier and is outlined in the legislation, the minimum age for someone who can be served with an unlawful consorting notice is 18 years. That is an important safeguard.

The defences are in separate subclauses. Clause 9(1) provides that it is a defence if the consorting was between persons who are family members. That is a starting point, but that is not the only criterion for family members. There is another test, so there is an "and". It must be between persons who are family members and it must be reasonable in the circumstances. There needs to be a determination of reasonableness. We understand that in many families, unfortunately, criminality is common. They may be members of families. They could be siblings, a husband and wife, or cohabiting partners who are convicted criminals, and they would meet the criteria. We need to take into account family relationships. Those people who are family members and are consorting with each other need to prove that their consorting was reasonable in the circumstances. I have absolutely no doubt that that provision of "reasonable in the circumstances" will end up being heavily litigated. I think the judges in our courts are well versed and experienced in this. They will set some boundaries around what is reasonable or unreasonable in the circumstances. As an example, family members or partners who are separated but are still legal partners may need to get together to determine family law matters or to provide the other partner with access to the children of their partnership, so we can see why that sort of defence would be needed.

Clause 9(2) lists nine separate types of activity that would be covered if two convicted criminals were consorting. I should stress that with each of these, it still has to be necessary in the circumstances. That is a higher test than reasonableness, and I acknowledge that. I will spell out what they are, but I will not read them all word for word. The activities include engaging in a lawful occupation, trade or profession; attending an educational institution to take part in a higher education course or an approved VET course; receiving a health service or social welfare service; obtaining a service mentioned in subparagraph (iii), which is a health service or social welfare service, for a person who is dependent upon the person charged for care and support; and the provision of legal advice, although in those circumstances, the question that arises is: if a person attends a legal office for the purpose of getting legal advice and they are consorting with someone who has been convicted of an indictable offence, is that person the one providing the legal advice?

Mr J.R. Quigley: It could be two people charged in the waiting room together.

Mr P.A. KATSAMBANIS: It could well be two people charged, yes. It could be in the course of the provision of legal advice. They could be sitting in a waiting room waiting for the poor busy junior Legal Aid lawyer or the duty lawyer at the Magistrates Court. I can see that. It could also occur in the course of lawful custody. Of course, in some circumstances, unfortunately, we cannot separate these bad people in lawful custody. They are there; they are in lawful custody. That is why they are there; they are being detained. They could also be 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. That will ensure that we are not binding our courts from making an order. There may well be circumstances in which courts need to issue a compliance order, so we do not want to fetter our courts in that way. I will skip over the eighth activity and go to the ninth, which is if the person charged is an Indigenous person fulfilling a cultural practice or obligation of the customary laws or traditions of the Indigenous person's community. That goes back to the recommendations of the New South Wales Ombudsman. I know that it is crafted to make sure that it is broad enough, but perhaps during consideration in detail we might tease out some of those circumstances with the Attorney General or he might do it in his summing up. It is not a catch-all. It is not, "I'm in an Indigenous community; I need to consult with these people." It needs to be necessary in circumstances when "fulfilling a cultural practice

or obligation of the customary laws or traditions of the Indigenous person's community". That might be attendance at a funeral or something of that nature. Perhaps to guide the courts in the future the Attorney General can spell out the nature of what that that might be. However, I think it is an important protection. Indigenous people who are fulfilling cultural practices or obligations should not be subject to this law if it is necessary in the circumstances.

The one exception, the one defence, that has raised the ire of community members, which I have spoken to, is the eighth subparagraph. I will read out clause 9(2)(a)(viii) in full —

> activities undertaken by members of an organisation of employees registered under the *Industrial Relations Act 1979* Part II Division 4, or the *Fair Work (Registered Organisations) Act 2009* (Commonwealth), for the purposes of the business of the organisation;

Essentially, this is a carve-out for union activity. It is spelt out in the second reading speech: two outlaw motorcycle gang members can get together for the purposes of union activity. It is interesting that it is union activity and union activity only. Both the Industrial Relations Act and the Fair Work (Registered Organisations) Act regulate organisations of employees and organisations of employers. If people are getting together for the purposes of union activity, it is okay to consort with criminals. If people are getting together for the purposes of an employer association, that is not okay. That in itself is clearly discriminatory. It is picking one class out of the Industrial Relations Act and the Fair Work (Registered Organisations) Act and giving them a special carve-out but not picking out the other. I could stand here for the next half hour and talk about the Labor Party and trade unions, but this is more important than just that, and I will get to that in a minute.

This is a carve-out for members of that particular type of activity—trade union activity. There is no carve-out for members of a football club, or a netball club, or an elderly citizens club from getting together for the business of that organisation.

Mr A. Krsticevic: Not-for-profit sector.

Mr P.A. KATSAMBANIS: There is no carve-out for anyone in the not-for-profit sector or for charity work. There is not a carve-out for a Lions club or a Rotary club, but there is a carve-out for a trade union. A trade unionist can use this as a defence. I accept that, yes, they will have to prove it is necessary in the circumstances, but a member of an employer organisation or a member of any other not-for-profits will not have that same defence. That raises the question: why? Apart from the umbilical cord that ties the Labor Party to the trade union movement, we could say that it is unfair and discriminatory, but we could just shrug our shoulders and say, "That's what a Labor government would do." If that were the only reason why, perhaps we could just simply shrug our shoulders and say, "That's what a Labor government would do"—give their union mates a special carve-out.

But when we go back to the history between the link between some trade unions and organised criminals, we realise that this will be an open front door for some organised criminals to take advantage of this bill and to continue to conduct their unlawful activities. We need to go no further than the Royal Commission into Trade Union Governance and Corruption, which found, quite clearly, that there had been a significant interrelationship between some trade unions, particularly in the construction sector, and outlaw motorcycle gangs. *The Australian* on 8 January 2016 reported what Commissioner Dyson Heydon said —

> Last week Commissioner Dyson Heydon said thugs and bullies were involved in unions around Australia and misconduct had taken place in every jurisdiction, except the Northern Territory.
>
> He referred more than 40 union figures and organisations to authorities …

They included a Victorian member of Parliament and former Health Services Union secretary, Kathy Jackson. The evidence that the royal commission heard was damning of the links between organised crime and, particularly, the Construction, Forestry, Maritime, Mining and Energy Union. According to a report on ABC news on 18 September 2014, Victorian Assistant Police Commissioner Stephen Fontana told the Royal Commission into Trade Union Governance and Corruption —

> … police have begun several investigations into allegations of violence, intimidation and debt collection carried out by outlaw bikie gang members for the union.

Outlaw bikie members were conducting violence, intimidation and debt collection for the union. Go back to our legislation: "for the purposes of the business of the organisation". The CFMEU was hiring bikies to run their debt collection for the business of the organisation. This is what Mr Fontana, a senior police officer, an assistant police commissioner, submitted to the royal commission —

> "That group is heavily involved in debt collection and they just go there and stand over people and bypass normal civil process,"

They bypass the courts and the legal system. The article continues —

> He said police had been unable to make any arrests because alleged victims had withdrawn their statements in fear of their own safety.
>
> …
>
> Assistant Commissioner Fontana told the hearing in Melbourne that bikies and corrupt union officials knew they could get away with their crimes because the industry was not regulated.
>
> "People have been called to places where they've been assaulted, threatened and a whole range of other things have taken place," …
>
> Without better protection laws for whistleblowers, following through with arrests would put people at risk, Assistant Commissioner Fontana told the hearing.

We have direct evidence to a royal commission of the inextricable links between bikie gangs and the CFMEU. It went further. Victoria Police put in a submission to the inquiry in 2015. Again, on 8 January 2018, the ABC news reported —

> In its 2015 submission to the Royal Commission into Trade Union Governance and Corruption, the force identified a "culture of fear" in the construction industry.
>
> Victoria Police has asked for additional powers to tackle the use of bikies as "debt collectors" by unions, and has called for the construction industry watchdog to be reinstated.

Thankfully it has been. The article quotes the submission to the royal commission —

> "There is a climate of fear amongst people who are either the victims of trade unions' unlawful activity, or who uncover unlawful activities within their unions, making them unwilling to speak to any authorities for fear of retribution," the submission said.
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> Victoria Police has identified Outlaw Motor Cycle Gang (OMCG) members being used by union officials as "hired muscle" for debt collection, with "standover" tactics used to intimidate victims.
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> The submission said a number of known bikie gangs, including the Rebels, Comacheros and Banditos, had been identified as being actively involved in trade union activities like strikes of picket lines, or debt collecting.
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> It said some of the activities amounted to "debt collecting in the broadest sense and is really more akin to blackmail, since it involves demanding money with menaces".

It goes on —

> … submission also detailed a number of cases of alleged standover tactics …
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> They included at least one incident in which two bikie gang members, and others, attended the home of a person who owed money to a building subcontractor.
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> "All the attendees wore tops with the insignia of the OMCG of which these two people were members," …

The royal commission received other evidence that this is happening in every state except the Northern Territory, so that includes Western Australia. When a royal commission uncovers a direct link between outlaw motorcycle gangs and construction unions, how in good conscience can we give a specific defence to those people because they were conducting union activity for the purposes of the business of the organisation? How in good conscience can we justify that to the public of Western Australia when we do not give that same carve-out for employer groups, sporting clubs, community groups or not-for-profits? I am not arguing that we should give that carve-out; I am highlighting the very special treatment being given by this government that always talks tough on crime, even though I can list its litany of failures in delivering, and this is another one. This government is tough on crime and tough on outlaw motorcycle gangs, except when they collect debts or use standover tactics for the trade union movement. That does not pass the pub test or any test of decency. This is one more example of a government risking the safety of the general public to protect its mates in the trade union movement. I acknowledge that this does not apply to every trade union; it is a minority of trade union members and types of trade unions that do this.

We are trying to break the link between organised criminals and their nefarious activities, but giving them this sort of carve-out, particularly to groups like the Construction, Forestry, Maritime, Mining and Energy Union, highlights that this government is not serious about tackling all types of organised crime. It highlights that this government is hamstrung in going to the heart of the problem inside some trade unions. I know that all sorts of fun and games are going on in the Labor Party with factional alignments and realignments, walkouts such as the one we saw last year at the Labor Party state conference, and the attempt to take some unions into one group and then the other group and hoping that they can come back and, in some cases, hoping that they do not come back. I recognise that all sorts of factional shenanigans are going on, and I also recognise, as I said, that the vast majority of trade unionists and their leaders would be aghast at having OMCG members within their trade union. I recognise that, and good on those people who are trying to keep them out—or perhaps they should not bring those OMCG members in in the first place. More power to those union members; I support them 100 per cent.

Some trade unions or subgroups within trade unions think it is okay to hire outlaw motorcycle gangs to rough people up, threaten them and blackmail them, as the Victoria Police submission to the Royal Commission into Trade Union Governance and Corruption outlined. This is not me or some group of ideological warriors from the Liberal Party making this stuff up. A police force has submitted this information to a royal commission and asked for action. A few years later, this government is walking away from that and leaving an open door for OMCGs to walk into trade unions and, in some cases, control them. I know of good trade unionists, many of whom are in this chamber, who do not want that to happen, so do not allow it—block this provision and stop it from happening. I have an amendment on the notice paper that I will move during consideration in detail to remove this clause. This clause harms the government's argument rather than strengthening it, because the government is creating a specific carve-out from consorting laws for the thugs, criminals and bullies who have infiltrated trade unions. They are not helping the trade union movement; they are hindering it. Why would a government, who is there to represent the legitimate interests of workers, want to be associated with outlaw motorcycle gangs? I think that most government members would not want that, so this is their opportunity to make a change. I do not know how this clause got into the Criminal Law (Unlawful Consorting) Bill 2020, but here is an opportunity for the government to take it out and close one more window of opportunity for an activity that the police tell us is actually happening—it is not ideological or theoretical.

Royal Commissioner Hon Dyson Heydon said that he had found evidence that it was happening in every single state or territory except the Northern Territory. Do not let it happen! If this government is going to be tough on crime, it should be tough on all crime. If it is going to be tough on these sorts of criminals and stop them from consorting with each other, then stop them! Do not give them an open door to walk through and do not let the legitimate trade unions be taken over by thugs, bullies and serious criminals—people who have committed indictable offences and child sex offences. Do not let them in. I look at this clause and I shake my head. Even if the government is totally wedded to the trade union movement, why would it give it a carve-out for this activity? Government members will get the opportunity to stop this. In many ways it will be an opportunity to protect a trade union movement that is left exposed by this sort of provision and at the mercy of these thugs who want to infiltrate and take over. If the unions need a debt collector, there are plenty of legitimate people out there—do not hire OMCG members.

Let me talk about the construction union in particular. I do not have to tell people in the Labor movement about the problems they currently have with the hierarchy of the CFMEU at a national level and Mr Setka, his influence in the union and the inability of the Labor movement to wedge him out of the position that he has taken up. I am sure he is embarrassing to all Labor Party members. I am sure Mr Setka is a total and utter embarrassment to the Minister for Prevention of Family and Domestic Violence, the Attorney General, the Premier and everyone involved in the Labor movement. The federal Labor leader has said how much of an embarrassment he is, but he is still there.

Mr J.R. Quigley: Who?

Mr P.A. KATSAMBANIS: Mr John Setka. He is still in the union.

Mr J.R. Quigley interjected.

Mr P.A. KATSAMBANIS: They managed to get Mr Somyurek out, but they have not got Mr Setka out. The government should show that it is not beholden to these people. If we say that it is okay for criminals to consort if they hang out in the union, we are delegitimising the trade union movement. They cannot do that at a footy club because we will issue them with a notice—thank goodness. They cannot try to infiltrate a service organisation or a not-for-profit group because they will be issued with a notice, and if they do it again, we will charge them with a criminal offence subject to five years' imprisonment. We are treating this very, very seriously—except when they are in a trade union! I think I have made my point on that. The Liberal Party will not tolerate that. We are not anti–trade union. I am certainly not anti–trade union. We are anti-criminal. We do not care whether it is the footy club or the trade union movement, or the Liberal Party, for that matter, if that were to happen. We should root that out.

In addition to the defences that are provided in the bill, the bill provides some safeguards. One safeguard is oversight by the Ombudsman. Part 3 of the bill gives the Ombudsman particular powers to scrutinise the actions that are taken by the police. The Ombudsman will be empowered to inspect police records, and obtain any relevant information. The Ombudsman will also be empowered—curiously—to recommend to the Commissioner of Police that an unlawful notice should be revoked. I am interested to explore that. That is an extraordinary power to give to the Ombudsman, although the Ombudsman does have reporting obligations to the Parliament, which is good. I therefore ask the Attorney General to address two questions in his summing up: firstly, why is this power necessary and how would it be exercised; and, secondly, would this power be extended to the amendment of a notice? The Ombudsman could say to the Commissioner of Police that a notice should be revoked. Could the Ombudsman also say to the Commissioner of Police that a notice should be amended? Perhaps the Attorney General would address those questions.

The Ombudsman is tasked, by this legislation, to provide an annual report to the Parliament documenting the outcome of his monitoring activities, and including any impact of the scheme on a particular group, if such an impact has come to his attention. The Attorney General could clarify this, but I imagine that the Ombudsman could report that as a result of issuing a series of notices, or even some criminal charges, there has been an impact on a bikie gang, or, conversely, that a particular social group in society has unfortunately been targeted wrongly, either because of the way the bill is constructed or because of the way police have enforced their powers under the legislation. We look forward to seeing those Ombudsman reports.

One of the overriding issues in this bill is that it will provide the Ombudsman with a heap of new powers. I do not think that a bunch of people are currently sitting around in the Ombudsman's office doing nothing. In fact, I think they are working very hard. I have made this point in other cases in which oversight bodies have been given additional powers: what additional resources will be made available to the Ombudsman's office to enable it to properly exercise the duties and powers that it will be given under part 3 of this bill? I would expect an answer that goes beyond, "We have spoken to the Ombudsman, and if his office needs some resources in the future, we will give that to them." I do not think that is good enough. We are setting up a scheme under which supervision or oversight by the Ombudsman will be a critical component of legitimising this legislation in the eyes of the High Court of Australia. I do not think I need to tell the Attorney General that without the inclusion of part 3, the High Court would pay no attention to any submission by the government of Western Australia suggesting that it was okay to pass this legislation and to give the police these additional powers. I do not think the High Court would wear that for more than about 30 seconds. Part 3 of the bill is a critical component to ensure that this legislation is given appropriate third party oversight, with a report to Parliament, and therefore will stand up to constitutional scrutiny in the High Court and be found to be lawful. Therefore, the Ombudsman's office must be properly resourced to perform its role and duty to scrutinise the powers that will be conferred on police. It is also not good enough for the government to say, "We do not think this will be used much, so the Ombudsman will not have too much to do."

The Attorney General has thundered in this place that the government is going to use this legislation to smash the bikie gangs. Therefore, implicit in the Attorney General's argument is that this legislation will be a tool that the police will wield on a regular basis—and so they should. We know that bikie gangs exist. We saw a report on 6 February about the good work our police have done. Sorry; I am looking at the wrong reference. It is very difficult to speak from here when I am used to speaking from my chair over there. There have been many reports recently about police activity to break up motorcycle gangs, raid their clubhouses and stop their nefarious activities. Our police are doing a wonderful job with the limited resources that they have. However, these mobs are out there, consorting with each other, and getting up to no good. We want this legislation to work, and it will be used. Therefore, the Ombudsman will need to be resourced to oversight its use. Heaven forbid that we had a High Court appeal couched in terms that the legislation ought to be struck down because the Ombudsman is not oversighting it and reporting to Parliament; therefore, it does not meet the test of maintaining the constitutionally prescribed system of representative government. That is what representative government is about, is it not? It is about reporting to Parliament.

Mr Z.R.F. Kirkup: Yes, from time to time.

Mr P.A. KATSAMBANIS: I must concur with the member for Dawesville's interjection. He said "from time to time". It is from time to time under this government.

As I have said, an important consideration is the resources that will be given to the Ombudsman's office to enable it to perform its oversight duty.

I also want to raise my concern about a pattern that I see emerging in this state in the sentencing of outlaw motorcycle gang members. If those members are charged with criminal offences, they are often sentenced to a non-custodial term, or if they have breached the conditions of post-sentence supervision orders or bail, or other conditions imposed upon them, they are often not returned to prison. In the last few years, there have been a number of such cases. We see the regular appearance of Mr Troy Mercanti at court for breaching a supervision order, and we see him walking into court and then walking out of court. In November 2018, we saw the report of a horrific incident in which a bunch of Rebels bikies brutally assaulted Jack Talauega in Subiaco. One of those bikies, Peter Michael D'Abreu, was not sentenced to a term of imprisonment but walked out of court with a suspended jail term. Earlier this week, on 15 June, we saw a report in *The West Australian* about Mongols bikie Clovis Chikonga, who had been caught red-handed flushing a stash of drugs down the toilet, prompting the police to seize the water in the bowl so that they could test it for cocaine. He was handed a suspended jail term. We see many, many examples of this. This case of Mr Chikonga gave rise to the commitment that the then Labor Party opposition gave to mandatory minimum sentencing for drug dealers, which it broke when in government in another example of it talking tough on crime and not delivering. I am not criticising any individual sentence or judicial officer, but the pattern of sentencing gives rise to legitimate concerns by the public that even if criminals are issued with notices under this regime, yet they continue to offend and they are prosecuted for their consorting, when they go to court they will walk in the front door in the morning and walk back out and smile at the cameras in the afternoon, which would completely and utterly defeat the purpose of this legislation. If a bikie, the organised criminal, is taken to court for breaching section 8 of

what will be this act, is charged with unlawful consorting with convicted offenders and walks out the front door of the court with a slap on the wrist, he will think there are no teeth in this legislation.

I have covered a wide range of issues today. I believe we will cover a few more in consideration in detail. The Attorney General gave me some amendments this morning, which I will try to work through. There is an amendment from the Liberal Party that I believe will make this legislation stronger and better. It will fix up an anomaly of a carve-out for trade union activity, which is mind-boggling. Apart from that, we wish this legislation success, because we are a party that genuinely believes that we need to stand up for law-abiding citizens, and when there is unlawful activity in our community, we stamp it out as soon as possible.

MR I.C. BLAYNEY (Geraldton) [1.32 pm]: Firstly, it is the intention of the Nationals WA to support this Criminal Law (Unlawful Consorting) Bill 2020. By way of background, criminal groups are becoming more organised, hierarchical and well funded. The Australian Criminal Intelligence Commission states that criminal syndicates in Australia are diverse and flexible, with high-threat organised criminal groups sharing a range of common characteristics—in particular, transnational connections, activity spread across several markets and the intermingling of legitimate and criminal enterprises. This makes them increasingly difficult to police, and this bill intends to disrupt networking between such criminal enterprises, thus ensuring it becomes more difficult for criminals to commit organised crime.

The bill draws upon the consorting legislation introduced in New South Wales. This legislation was thoroughly examined by the New South Wales Ombudsman in 2016, who found that the law impacted negatively upon Aboriginal and Torres Strait Islander people, people experiencing homelessness and other vulnerable people in society. The new consorting legislation in New South Wales was introduced because provisions for consorting under the New South Wales Crimes Act 1900 were constitutionally challenged in the High Court in Tajjour v NSW [2014] HCA 35. The provisions were found to potentially breach the implied freedom of political communication.

In overview, the intention of the bill is to disrupt the communication and networking between convicted offenders who engage in organised criminal activity. The bill will provide the Western Australia Police Force with additional powers to enforce the unlawful consorting scheme. Defences to the charge of unlawful consorting protect vulnerable groups in society such as children, those experiencing homelessness, and Aboriginal and Torres Strait Islander people. This is laid out in clause 9, whereby the difference between "reasonable" in subclause (1) and "necessary" in subclause (2) recognises that a broader scope of dealings with family members is allowable, whereas consorting in other circumstances is restricted to only what is necessary in those circumstances. It is a defence if the person charged is an Indigenous person fulfilling a cultural practice or an obligation of the customary laws or traditions of the Indigenous person's community. The offence of unlawful consorting arises if an unlawful consorting notice has been served and during that notice a person consorts with the convicted person stated on the notice on two or more occasions. The maximum penalty is five years in prison and the summary conviction penalty is two years.

We had some discussion about this bill. We are interested in how police will be able to keep up with the advances in encryption technology over time, which I think is already an issue with a couple of the systems we use on our phones for communication within closed groups. We are interested in how convictions in other countries will be used here, if that is possible. The example that I used was someone coming to Australia who had been convicted of an offence in Robert Mugabe's Zimbabwe or in Syria under Mr al-Assad. Would the conviction that that person brought with them be used against them in this country?

Clause 11 relates to the content of the unlawful consorting notice. The clause provides that an unlawful consorting notice must specify the name of each convicted offender with whom the restricted person must not consort. We are interested in how that list will be kept up to date.

The bill does not mention how consorting will be policed, particularly in the disruption of electronic communications. How will electronic consorting be monitored and detected? As I said, encryption is already an issue. That technology is going ahead in leaps and bounds, so I see an issue there for the police in trying to keep up with the advances in encryption.

The intention of the bill is to disrupt communications between criminals. Criminals usually recruit for criminal organisations while they are in prison. Some regional prisons, such as Greenough Regional Prison in my electorate, have a range of criminals who have committed various levels of crime, as opposed to high-security prisons where they have all been convicted of serious crimes. This means that someone who has committed an indictable offence may have the opportunity to recruit someone who has committed a much less serious offence. When both of these offenders are released from prison, the individual who committed the less serious offence may not be listed on a consorting notice when in fact they should be. This may put the community at risk, and we are curious to know whether this was considered during the drafting of the bill. With that, I reiterate the National Party's support for this legislation.

MR S.A. MILLMAN (Mount Lawley) [1.37 pm]: Madam Acting Speaker —

Mr Z.R.F. Kirkup: Woo hoo!

Mr S.A. MILLMAN: I thank the member for Dawesville! I will try not to disappoint!

When we talk about organised crime, as we do with this Criminal Law (Unlawful Consorting) Bill 2020, we sometimes focus on the criminals and we lose sight of the human impact of their crimes. Today, I want to focus on one particular crime to which this act, once amended, will apply—slavery. Some people call it trafficking, others bonded servitude, but it is slavery plain and simple. In doing so, I want to focus on one particular aspect of slavery in Australia, and that is sexual slavery. As the world's attention focuses on issues of race and exploitation, it is worth remembering that contemporary slavery is a lucrative industry for organised criminal networks in our region. The Australian Federal Police have all too many examples of prosecutions brought against Australian brothels for detaining and abusing women and girls, because it is a crime that almost universally affects women and girls. Women and girls are brought to this country largely, but not exclusively, from the region of South-East Asia under false pretences, and they are subject to horrendous abuse. Poverty makes these women and girls vulnerable to exploitation. Dislocation from their homes and families exacerbates that vulnerability. Imprisonment by their slave masters makes this vulnerability almost total. This is not just some edgy storyline for an engrossing crime fiction novel; it is a shameful undercurrent in our society. It is incumbent on all of us who have the power to make life difficult for organised criminals to use whatever lawful means are at our disposal to do so.

I want to highlight a couple of recent stories—one that speaks to the extent of the problem and another that highlights the sort of devastating personal stories that abound. The first article I will refer to is by Andrew Brown. It was published in *The Sydney Morning Herald* on 24 February 2019. Mr Brown tells us that just one in five cases of modern slavery is known to police. His article tells us that an estimated 1 300 to 1 900 people are slaves in Australia at the moment, but only 414 cases are known. I quote —

> For every human trafficking and modern slavery victim that gets reported to police in Australia, there are four more that go undetected.
>
> The findings were outlined in a new report released by the Australian Institute of Criminology, the first time the true extent of modern-day slavery in the country has been revealed.
>
> Between the 2015–16 and 2016–17 financial years, the report estimates there were between 1300 and 1900 victims of slavery in Australia, such as those exploited into labour or sex and forced into marriage.
>
> In the two-year period, just 414 of those victims were known.
>
> "There are estimated to be four undetected victims for every detected victim in Australia, meaning that between 928 and 1493 victims remain undetected," the report said.

Although it is well, good and important for us to focus our attention on the perpetrators of these crimes, we must consider the impact on the victims of the crimes as well. Considering that between 928 and 1 493 victims of modern slavery in Australia are undetected gives us all the motivation we need to do more to tackle this issue.

The Attorney General quite rightly said in his second reading speech —

> Organised crime entities are heavily involved in domestic and global illicit drug markets, —

We have seen evidence of the McGowan government tackling the scourge of meth —

> as well as fraud, smuggling of goods and people, sexual exploitation of children, violence and intimidation, corruption, money laundering, firearm offences and cybercrime. The nature of those offences can be highly organised and sophisticated, with reliance on trusted networks and modern communication technologies to organise, plan and execute crimes.
>
> Those crime entities operate under a veil of secrecy designed to avoid law enforcement attention and to ensure their criminal operations can continue. The very nature of an organised crime group requires considerable communication and networking. This bill targets that very reliance on communication and networking.

Communication and networking provides the mechanism by which these organised crime gangs can achieve their nefarious purposes of engaging in human trafficking and modern slavery. In that regard, I want to highlight to members two excellent resources from the Parliamentary Library. One is titled "Human Trafficking and Slavery" from the *Issues in Society* series. It is getting a bit dated now, but a number of excellent articles were produced by authorities in this field. One article is from World Vision Australia in 2012, titled "Trafficking for the Purpose of Sexual Exploitation". It outlines that combating human trafficking for the purpose of sexual exploitation requires grassroots, national and international efforts. Governments need to address the contributing factors to engage with and empower vulnerable communities. Factors on the supply side need to be addressed along with efforts to reduce demand and end the impunity of traffickers—those profiting from the exploitation of others.

I said I would mention the story of one of those people who profited from the exploitation of others. This is a terrible story, from an article by Joanna Menagh on 28 November 2017 on the ABC news website, titled "Malaysian woman jailed after trafficking friend for sex work in Perth brothel". This story demonstrates that this is not a matter far removed from our experience here in Western Australia. It is not a matter that occurs on the other side of the country

or the world. These sorts of things are happening right here and right now, and need to be tackled. By taking out the knees of organised criminal networks, we will be striking a blow against human trafficking. I will tell members about this terrible story. I quote —

> A former prostitute has been sentenced to more than three years' jail for the "sexual servitude" of a childhood friend who she lured from Malaysia to Perth to work in a brothel.
>
> Lay Foon Khoo, 38, was found guilty by a District Court jury of arranging for the 26-year-old woman to fly to WA in December 2015.
>
> The woman told Khoo's trial she believed she was coming to Australia for a 10-day holiday, however she said she was taken straight to Sarah's Massage Parlour in East Perth where "it was made clear" to her that she had to work as a prostitute to repay the cost of her travel.
>
> Her passport was also taken and she was told she would not get it back until she had repaid all her debts.
>
> The woman testified she worked at the brothel for the next seven days and, in that time, Khoo arranged for her get loans with exorbitant interest rates through "loan sharks" and also demanded she hand over her mobile phone to cover her costs.
>
> The woman also paid $900 for the cost of her airline ticket—double what Khoo had paid.
>
> She decided to go to police on January 4 last year after talking to a friend in Malaysia.
>
> …
>
> Judge Julie Wager said the offences of slavery and people trafficking were "amongst the most abhorrent of all crimes" and were "major violations of human rights".
>
> She said the victim was "engaged in sexual servitude from the night she arrived" and must have felt "helpless".
>
> The court heard Khoo—who worked as prostitute after coming to WA in early 2015—was friends with the woman because they had grown up in the same Malaysian village.
>
> Khoo had discussed the possibility of her working in the sex industry, but she said she was not interested.
>
> Despite that, before the woman's arrival in Perth, Khoo had texted the boss at the brothel saying: "I have a friend arriving tomorrow. Will bring her to 124 …

I will stop reading the article there because it is very heavy material and it goes into detail. It speaks in incredible volume to exactly why it is incumbent upon us to take the steps to make life difficult for organised crime networks so they cannot continue to perpetuate this pernicious scourge on Western Australian society.

The second resource from the Parliamentary Library that I want to refer members to is *Trafficked*. I commend the author of this text, Kathleen Maltzahn. She is a leading activist on behalf of trafficked women. The book contains personal stories, to which I referred. They highlight in no uncertain terms exactly why any steps that we can take to tackle this scourge will be for the greater good of the community of Western Australia.

Modern slavery is not a new issue for the Parliament of Western Australia, or even the fortieth Parliament. Last year, my good friend Hon Matthew Swinbourn, member for East Metropolitan Region, introduced a motion without notice into the other place. The motion was —

> That this house notes the existence of modern slavery in Western Australia, the pernicious form that it takes in practices like domestic servitude and forced labour and the need for both the state and federal governments to stamp it out where it occurs and to remain vigilant to ensure it does not ever become prevalent.

In his contribution, the honourable member went through the lengthy history of slavery in Western Australia. He talked about the repugnant Atlantic slave trade in the south of the United States of America in the eighteenth and nineteenth centuries, and commended the work of the Minderoo Foundation's Walk Free initiative. He said that the Minderoo Foundation's Walk Free initiative estimates that there are 40 million people living in various forms of modern slavery across the world, including traditional chattel slavery, forced labour, debt bondage and human trafficking. The sexual slavery that occurs in Western Australia takes some of the attributes and elements of debt bondage and human trafficking.

The honourable member spoke at great length about something that is dear to his heart, which is the exploitation of indentured labour in the construction industry. Hon Samantha Rowe, another good friend of mine and another of our excellent representatives from the East Metropolitan Region, spoke in support of the motion that was moved by Hon Matthew Swinbourn. She said that in 2012, the then United States President back in the good old days, Barack Obama, commented at the Clinton Global Initiative annual meeting that the fight against modern slavery is one of the great human rights causes of our time. Unfortunately, that is still the case today. She referenced statistics from the International Labour Organization website—these are the same statistics that Hon Matthew Swinbourn

referred to—that at any given time in 2016, an estimated 40 million people are in modern slavery, including 25 million in forced labour and 15 million in forced marriage. It means there are 5.4 victims of modern slavery for every 1 000 people in the world. Of the 25 million people trapped in forced labour, 16 million are exploited in the private sector in areas such as domestic work, 4.8 million are in forced sexual exploitation and four million are in forced labour imposed by state authorities.

Returning to the point that I was making before about sexual slavery affecting women and children disproportionately, according to the International Labour Organization website —

> - **Women and girls are disproportionately affected** by forced labour, accounting for 99% of victims in the commercial sex industry, and 58% in other sectors

I want to highlight for members two of the case studies that Hon Samantha Rowe referenced in her contribution to the motion that was moved by Hon Matthew Swinbourn. The first is about Maria, who is 24 and originally from the Philippines. The article states —

> ***Why did Maria come to Australia?***
>
> In the Philippines, Maria worked in a factory earning $10 a week. She had split up with her husband and had to support her young son and her mother. A family friend said she could help Maria get work in Australia. This friend had relatives in Australia and said that they would give her a job in their shop and enrol her in English classes in their spare time. In return, Maria was to marry an Australian man and she would have to give him some money for the visa and airfares.
>
> ***What happened when Maria got to Australia?***
>
> When Maria arrived, her Australian fianc took her passport. Maria had to work in the family shop seven days a week and wasn't enrolled in English classes as promised. Maria was only given $20 every fortnight or so but was never paid a wage. Maria spent all her time at the shop or at her fiance's house cooking, cleaning and gardening.
>
> Maria wasn't allowed to leave the house and felt like she had to do whatever they told her to do. If she didn't, Maria's finace threatened to hit her or made threats about hurting her family in the Philippines. Maria had no money, and was told that if she contacted her family or tried to go back to the Philippines, they would find her and hurt her. She didn't want her mother to worry. Maria didn't speak much English and she didn't know anyone else in Australia. She was trapped.

That is just one example. Another example is that of sex workers. This is an article from the Anti-Slavery Australia website, and it relates to Sun, who is a 22-year-old from South Korea —

> Sun had started studying Chinese language at a University in Korea but dropped out because she wasn't able to afford to continue. Sun started doing sex work—the pay was reasonable and the hours flexible. However, sex work is illegal in Korea, so there was the constant threat of being arrested, fined or imprisoned.
>
> Another sex worker introduced Sun to an 'agent' who promised to help her in finding safe and legal sex work in Australia with a place to live, good working conditions and a fair rate of pay. Sun thought this would be a great opportunity. Sun calculated that if she worked in Australia for 1 year she would be able to save up enough to pay for her studies and still have some left over. Sun also wanted to experience a different culture and learn some English. The agent said he would organise everything.
>
> ***What happened when Sun got to Australia?***
>
> When Sun got to Sydney, she was placed in a sex parlour where the owner told her she had to repay a $25,000 debt for her flight and visa. Sun would not be paid any money until her debt was paid off. Sun worked 14 hours a day, 6 days a week. Sun was also pressured to work on her day off and to perform sexual services without a condom. Sun lived in an apartment adjoining the parlour and was not permitted to leave the premises unsupervised.
>
> The boss threatened Sun with deportation if she complained too much, refused a customer or tried to go to the authorities for help.

These stories highlight the depth of human depravity that is on display in the activities of these outlaw criminal gangs. They highlight exactly why it is imperative for us to act decisively.

[Member's time extended.]

Mr S.A. MILLMAN: I am grateful for the extension. They highlight why I am speaking in support of this legislation and they highlight why it is important that this legislation receives the support of this chamber.

Since 2001, we have seen significant efforts by the Western Australian state government and other state governments, particularly New South Wales, and by the federal government to tackle the issue of modern slavery. I want to talk

about a refugee who died at the Villawood Detention Centre in 2001, whose death served to highlight the issue. Puongtong Simaplee's death at the Villawood Detention Centre in 2001 put the issue of trafficking for prostitution in Australia on the national agenda for the first time. That was almost 20 years ago. Gradually, the full extent of the problem and the details of the web of criminals who trade in women was revealed. Within months, the federal government had introduced a $20 million package of policing initiatives, promised to change the law, and offered support to trafficked women. Seven years later, more reforms were introduced. Then, in 2018, the commonwealth Parliament passed the modern slavery law. We still have the provisions within division 270 of the commonwealth Criminal Code Act that deal with slavery and sexual servitude crimes.

The issue is that although excellent efforts have been undertaken in other jurisdictions and this jurisdiction to tackle modern slavery, and there is work that can be done here to do the same, we need to not only send that message to the community, but also take away the ability of criminals to engage in this behaviour. In passing this unlawful consorting legislation to target criminals who engage in this behaviour, we will make life incredibly difficult for them to continue to achieve their aims and objectives. Every time we make those criminals struggle and every time we make life difficult for them, we are making life better for people like Puongtong Simaplee and Sun. We are making life better for people like Maria. We are making life better for all these victims.

I started my contribution by saying that oftentimes, when we come to debate criminal law amendments or crime legislation, we spend so much time focusing on the perpetrator. One of the great things about serving in the McGowan government is that this government has assiduously worked towards balancing the scales of justice to the victims as well. It is worth highlighting these stories so that the suffering of victims is put front and centre as we consider this legislation. If nothing else, it provides us with the incentive to do the right thing. It is always the right time to do the right thing. With this legislation, provided we do not get distracted with side issues, provided we remain focused and see it through and provided we carry this legislation, we will be contributing to doing the right thing. The evidence we have to continue that endeavour is the evidence that I presented today, and it is not evidence from far away, overseas or other jurisdictions. Tragically, it is evidence from Western Australia. It is evidence of stories from the Western Australian District Court. It is evidence of cases and convictions. It is evidence of what is happening in our very own community. When we make decisions about whether this legislation is worthwhile, we should not have regard to evidence from faraway places or far-off jurisdictions but we should have regard to what is happening in our own community. Fundamentally, we are here to make sure that we represent the interests of our constituents and, by doing so, the interests of the community of Western Australia. If we take that task to heart and we apply ourselves with vigour and dedication, we can only but serve the people of Western Australia who have sent us to this place. If we do it in a way that takes the knees out of these outlaw criminal gangs, that disrupts their operations, that makes it impossible for them to continue in this vein and makes it impossible for them to engage in this pernicious behaviour, the base disgraceful activity that ruins people's lives, how much better are we at our job and how much more worthwhile is our contribution to the community of Western Australia?

I am more than happy to once again support fantastic legislation that has been brought to this place by the Attorney General and I am more than happy to speak at great length about the consequences of that legislation and the positive benefit that it will have for our community. If I focus the attention of this chamber, even if it is just for one small contribution, on the effect of sexual servitude and sexual slavery in Western Australia and the dramatic effect that has on people's lives, I will have made what I hope to be a worthwhile contribution.

Debate adjourned, pursuant to standing orders.