CRIMINAL LAW (UNLAWFUL CONSORTING) BILL 2020

Second Reading

Resumed from 17 June.

MR S.A. MILLMAN (Mount Lawley) [10.24 am]: I will conclude my remarks from yesterday. I spent most of my time earlier concentrating on the work of organised crime gangs in perpetuating the repugnant and pernicious practice of sexual slavery—a practice that counts the lives of women and girls disproportionately as its victims. I want members to remain focused on the importance of standing up for victims. In that vein, I am disappointed with the contribution from the member for Hillarys on the role of the unions. The poor old Liberal Party is not sure what it stands for, but it sure knows what it stands against. It stands against workers and the unions that represent them.

Mr A. Krsticevic interjected.

The ACTING SPEAKER: Member for Carine! Carry on, member.

Mr S.A. MILLMAN: As I said, I spent the lion's share of my contribution yesterday going through, in detail, the consequences of the exploitation of vulnerable people. Do members know who stands shoulder to shoulder with the exploited? Do members know who stands shoulder to shoulder with the vulnerable? Trade unions. This bill has a defence for people engaged in legitimate union activity. This is a narrowly crafted exemption to permit lawful union activity in a bill that is otherwise designed to constrain freedom of movement and association. We had a vociferous attack on unions from the member for Hillarys; he gave us both barrels.

Mr P.A. Katsambanis interjected.

Mr A. Krsticevic interjected.

The ACTING SPEAKER: Member for Hillarys! Member for Carine!

Mr A. Krsticevic: He's misleading the Parliament!

The ACTING SPEAKER: Actually, he is not. I was listening as well. Carry on, member.

Mr S.A. MILLMAN: But what a shocking misfire. He has shot himself in the foot through the sloppy advocacy of his case. Firstly, he says that he wants this legislation to succeed, but he is seeking to put freedom of association as an issue, which he knows was precisely the issue before the High Court in Tajjour's case. He wants to put that as an issue. He wants to give the opponents of this legislation—none other than those outlaw motorcycle gangs—an opportunity to get together with their clever lawyers to see whether this act can be challenged in the High Court. I have news for the member. We will not have it. We will pass legislation that will survive a constitutional challenge, despite that member's best efforts to thwart us and support the criminals and their lawyers. We will do it because that member ran a weak argument about union malfeasance.

Member for Hillarys, evidence is important when we present a case, and here in WA we want to hear evidence that is relevant to WA. The member for Hillarys' tall tales from the trade union witch-hunt—sorry, royal commission—make for good copy, but they have nothing to do with WA. The member for Hillarys could not name a single serving union official implicated in the royal commission. The member for Hillarys could not name a single serving union official charged in relation to matters arising. The member for Hillarys could not name a single serving union official who was convicted. Does the member know why he could not? It is because the cases against the union officials were either lost by the prosecuting authorities or they were dismissed.

On 18 May 2018, Michael Inman wrote an article in the *Sydney Morning Herald* about Johnny Lomax titled "Canberra union official wins payout over TURC arrest". He was awarded compensation and legal costs. Other articles include "Prosecutors to drop charges against CFMEU official and former NRL star John Lomax"; "AFP ordered to pay bulk of CFMEU's court costs over illegal Canberra office raid"; and "Charges against CFMEU pair dropped in blackmail case". Of all these charges that were brought under the cover of the trade union royal commission, none went anywhere. None of these prosecutions succeeded, and that is why the member for Hillarys could not name one single official who was charged, convicted and sentenced.

I spoke about the exploitation of cleaners. I spoke about the exploitation of labourers. I spoke about the exploitation of fruit pickers. Do members know who steps in and stands up for cleaners? It is none other than the union United Voice. Do members know who steps in and stands up for fruit pickers? It is none other than the Australian Workers' Union. Do members know who steps in and stands up for building labourers? It is none other than the Construction, Forestry, Maritime, Mining and Energy Union. These unions have worked tirelessly to expose the evils of modern slavery, yet they stand condemned by the member for Hillarys. I disagree with the member for Hillarys. I will support the principle of freedom of association and I will continue to fight for justice for victims.

Although the member for Hillarys might stand shoulder to shoulder with wages thieves, exploiters and criminal gangs and their clever lawyers, I stand shoulder to shoulder with construction workers, fruit pickers and cleaners, and I stand shoulder to shoulder with the unions that represent them, and that is why I am proud to support this legislation.

MR K.M. O'DONNELL (Kalgoorlie) [10.29 am]: Greetings, Mr Acting Speaker. I was not ready for that! The member for Mount Lawley was on a roll!

The ACTING SPEAKER: I was ready to give him an extension!

Mr K.M. O'DONNELL: I will speak briefly and fairly quickly on the Criminal Law (Unlawful Consorting) Bill 2020, based on my experience as a police officer. I remember back when I first joined the police department in the 1980s. In the detectives we had the break squad, the motor squad, the dealer squad and the consorting squad all broken up into specialised units. I think the consorting squad looked forward to the race round in Kalgoorlie every year. That is how I first found out how various groups and gangs would converge on Kalgoorlie–Boulder at that time of year.

I agree with this bill because it will disrupt communication and networking between convicted offenders who engage in organised criminal activity. When I first started out, organised crime involved fraud, extortion, standover tactics, violence and drugs. From the 1990s onwards, it has involved cybercrime. The bill addresses deficiencies, amalgamates all consorting offences into a single offence and institutes a more detailed scheme that applies to a broader class of offenders, which is good. Sex offenders are coming to the fore now and have been highlighted in the modern day. Many of them like to group together to organise things, rather than being solo offenders. We do have the solo voyagers but, predominantly, a lot of them like to get into a group and interact with each other. This bill is on the way to preventing that.

It is good that a person must be at least 18 years of age and have consorted, be consorting or be likely to consort with another convicted offender. In my travels as a police officer, many times I saw offenders talking together. After 30-odd years in Kalgoorlie, I had arrested a shedload of people, so I knew whether they were conversing. But I would say that 90 per cent of the time it was not for criminal activity. It was just their way of life and they were just passing. But anything that can be done to stop these criminals from continuing to commit offences, planning to commit offences or being in the midst of committing offences, should be done.

I like the idea of including electronic or any other form of communication, especially in this modern age, such as using email and the web. That is fantastic. It includes social media outlets, such as Facebook, Twitter and SMS messaging, which is very good.

Clause 9 provides that it is a defence to a charge of unlawful consorting if it is proved that the consorting was between persons who were family members and it was reasonable in the circumstances. The question I have for the Attorney General is: would parties, whether it be family or friends attending, be classified as reasonable? I think it will come down to a magistrate or a judge to decide whether it is.

Another defence is for Aboriginal and Torres Strait Islander people fulfilling cultural practices and obligations. I think that is a no-brainer and a very good one to have. Who will decide whether a wedding, funeral or party attended by family or friends is included? I take it that it includes family members, but there is no mention in the legislation of friends at funerals or weddings. I know that the government cannot be picky and go through and identify every single thing, but I think that could be an issue.

I will call it stumps there, Mr Acting Speaker.

MR J.R. QUIGLEY (Butler — Attorney General) [10.34 am] — in reply: I shall address some of the issues raised by members in the second reading debate on the Criminal Law (Unlawful Consorting) Bill 2020, and most particularly those raised by the member for Hillarys, the representative in this chamber of the shadow Attorney General, Hon Michael Mischin.

The member for Hillarys first raised the question of the constitutionality of the bill. In raising that, he noted that the question of whether the New South Wales consorting legislation burdens the constitutional freedom of communication was considered by the High Court in Tajjour v New South Wales [2014] HCA 35. That case challenged the constitutionality of the New South Wales consorting laws contained in part 3A, division 7 of the NSW Crimes Act 1900. In that case, the High Court found that the New South Wales law was not invalid. I wish to reassure the member and the chamber that the Solicitor-General has confirmed to me that he is satisfied of the constitutionality of the bill as fitting within the four square corners of criteria laid out by the High Court of proportionality, reasonableness et cetera. On that basis, I am satisfied and the government is satisfied that this bill will meet any constitutional challenges.

The member for Hillarys also spoke about the defences in the bill. Let me start by explaining how the defences work. The defences will guide the police about when a consorting notice should be issued, but will not prevent a consorting notice being issued to people who may have access to a defence, provided that the criteria outlined in clause 10 of the bill are met. That is because a defence will apply only if the consorting was necessary or reasonable in the circumstances, depending upon the defence being utilised. If, for educational purposes, two people attended an educational lecture, that would fall within the defences; however, it would have to be demonstrated that it was necessary consorting in the circumstances. That would mean asking why a person sat next to another person in a lecture theatre that accommodates 300 people. They could have sat at the other end of the lecture theatre to take

the lecture; they did not have to sit right next to the person who is the subject of the consorting notice. Therefore, the defence would fail on the grounds of not being necessary.

The member for Hillarys also spoke particularly about the defence that covers Aboriginal family members. He quite rightly pointed out that this is an important defence provision to prevent further entrenchment of Aboriginal people in the criminal justice system. Clause 9(1) of the bill provides that it is a defence to a charge of a crime of unlawful consorting with a convicted offender to prove the consorting was between people who are family members, and it was reasonable in the circumstances. There always has to be the test that it is reasonable in the circumstances. Clause 5(2) of the bill provides that —

> … a person is a ***family member*** of another person who is an Aboriginal person or a Torres Strait Islander … if, under the customary law and culture of the Indigenous person's community, the person is regarded as a member of the extended family or kinship group of the Indigenous person.

I will explain this as best I can, as best a wadjela or white person can explain it, after having received advice. As a wadjela, I note that a principle of Indigenous kinship system in traditional societies is the equivalence of same-sex siblings. According to this principle, people who are of the same sex and belong to the same sibling line are viewed as essentially the same; thus, two brothers are considered to be equivalent. If one has a child, that child not only views his biological father as his father, but also applies the same term to his father's brother. The same principle applies to two sisters, both being mothers to any child that the other sister bears. As a father's brother is also identified as the father, their children will be brothers and sisters rather than cousins. This system is known as the classificatory system of kinship, because all members of the larger group are classified under the relationship terms. There is no need to expand the range of classifications or relationship terms. Several people are identified by an individual within each classification; thus, a person has several fathers, several mothers and many brothers and sisters. A mother's brother being on the same sibling line but of the other sex is identified as an uncle. A father's sister is identified as an aunt. These types of relationships in the Aboriginal community will be recognised as family for the purposes of applying the family member defence provision under clause 9(1) of the bill.

As an example of the practical application of the family member defence provision as it relates to Aboriginal people, let us take a remote community such as Balgo, which is a small Aboriginal community located off the Tanami Road, approximately 240 kilometres from the nearest town, Halls Creek, in the East Kimberley region of Western Australia. Although Balgo has a wonderful arts centre, it has only a small community store. In order to purchase more substantial supplies, it would be necessary to travel to Halls Creek. We know the difficulties that Aboriginal people face, especially in remote areas, in obtaining a motor driver's licence. In a remote community such as Balgo, it may be the case that only one member of a family is in possession of a valid motor driver's licence. It may therefore be reasonable for persons who are members of the same family and who are convicted offenders and subject to an unlawful consorting notice to commute in a single motor vehicle in order to obtain essentials such as groceries from the nearest town. If Halls Creek does not have the required essentials or supplies, the nearest regional centre is Kununurra, some 380 kilometres from Halls Creek. For a Balgo community member, that is a 620-kilometre one-way trip to Kununurra. This is one example in which the defence provision would be enlivened.

The member for Hillarys also expressed concern about trade unions and the relevant defence provision. Unions play an important role in fighting against the exploitation of workers and ensuring safe work practices in the workplace. We need look only as far as a report of the former Chief Commissioner of the Western Australian Industrial Relations Commission, His Honour Mr Tony Beech, following an inquiry into wage theft in Australia, to see the types of exploitation that some workers endure. I will agree with the member for Hillarys that criminal conduct by anyone, including a minority of union members and officials, is unacceptable, and perpetrators should be brought to justice. However, I reject the member for Hillarys' proposed amendment to delete the defence provision. I stress this point: the defence provision does not exempt a person from criminal liability for offences such as threats, threats with intent to extort, or assaults. The defence contained in clause 9(2)(viii) of the bill is limited in its scope. Firstly, it only applies if both the restricted person and the person named in the unlawful consorting notice are members of the same registered organisation under the state or federal industrial relations systems. Secondly, consorting must be for the purposes of the business of the organisation. That is the lawful business of the organisation—for example, industrial action. Thirdly, the consorting must be necessary in the circumstances. This test will be applied rigorously. As an example, two members of a union who are the subject of an unlawful consorting notice, and who want to take part in a WorkSafe rally, might be consorting in the sense of being in the same crowd. The test of whether their consorting was necessary or not might fall short if they are together in the same crowd. That is not for the purposes of advancing the lawful business of the registered organisation, which might be to hold a mass rally to highlight unsafe work practices.

The purpose of this defence is that if two offenders are jointly participating in protected industrial action, as provided under the commonwealth Fair Work Act 2009—perhaps because their employer is failing to pay the correct wages as specified in a registered award or agreement—they can be excused from the charge of unlawful consorting provided the consorting is necessary in the circumstances.

I draw the member for Hillarys' attention to other legislation that provides exemption on industrial grounds. I refer firstly to section 75A(3)(c) of the Criminal Code, which deals with an out-of-control gathering and provides an exception for "a gathering that is primarily for the purposes of political advocacy, protest or industrial action". In the Criminal Code, there is an exception for unionists gathering for industrial action. We have that already, member. Secondly, I refer to section 9 of the Emergency Management Act 2005, which states that the act does not authorise the taking of measures directed at ending industrial action. Thirdly, I refer to section 4(2) of the almost defunct Criminal Organisations Control Act 2012, which was introduced by the former Liberal government, which states —

> … it is not the intention of Parliament that the powers in this Act be used in a manner that would diminish the freedom of persons in this State to participate in advocacy, protest, dissent or industrial action.

Member, there we have it in the former Liberal government's own legislation.

Mr P.A. Katsambanis: Which section are you referring to?

Mr J.R. QUIGLEY: Section 4(2).

The former conservative government's legislation, designed to break up criminal groups, is not to be used to diminish the freedom of persons in this state to participate in an advocacy protest, dissent or industrial action. By including unions, we are doing no more than the former Liberal government did in its almost defunct Criminal Organisations Control Act 2012. We did not want to make it any harder or tighter than the Liberal government had done. I return to the point that not only does it have to be a lawful industrial action, but also the attendance of people who are subject to a criminal consorting notice must be necessary in all the circumstances.

The member for Hillarys also spoke about the functions of the Ombudsman. It is important to remember that the New South Wales Ombudsman documented the misuse of the New South Wales law against Aboriginal and Torres Strait Islander people, people experiencing homelessness, children and other vulnerable members of the community. We want to prevent that from happening here, so we have included a number of safeguards in the bill. The overwhelming number of anti-consorting notices in New South Wales were issued against those classes of people—that is, Indigenous people, homeless people, vulnerable people and children—which was never the intent of the legislation. Rather, junior police officers were using this law to break up or move on vulnerable people. In Western Australia, we have what are called move-on notices. This bill is aimed at serious criminal activity that is being planned by people identified as having already committed serious indictable offences. We have stipulated that the notice should be signed off by a commander so that the notices are not misused, and the number of them will be far less than in New South Wales. They will be targeted at figures within organised criminal groups who are planning, or are believed to be planning, further criminal activity. Accordingly, oversight by the Ombudsman is one safeguard. That is to be found in clause 24(2) of the bill, which allows the Ombudsman to draw to the attention of the Commissioner of Police any unlawful consorting notice following inspection, if he is of the opinion that the requirements of clause 10(2) are not met. Once the recommendation is made, the Commissioner of Police must consider whether he is satisfied that the notice was validly issued and that there has not been a change in the circumstances such that the requirements in clause 10 are no longer met. A recommendation by the Ombudsman must be made in writing whilst the notice is in force and include the reasons that the Ombudsman formed the opinion that the requirements for the issue of the notice were not met. This is a very important and robust safeguard, because the issuing of such a notice will curtail the freedom of some citizens to associate. It will be signed in circumstances in which those people have already been convicted of serious indictable offences and, on reasonable suspicion, are believed to be planning further criminal activity.

The member for Hillarys also questioned the resources of the Ombudsman to perform the monitoring and compliance functions under the bill. I note that the Ombudsman has received resources for the purposes of monitoring compliance functions outlined in the Criminal Organisations Control Act 2012. The Criminal Organisations Control Act was never utilised. In fact, both the statutory review of the act and the Ombudsman's report found the object of the act, to disrupt organised crime, remains valid, but the act is not achieving that purpose. Therefore, any gap in the resources already funded for the Ombudsman to carry out those functions and the functions under this bill will be considered as part of the budget process, because allocations were made so that the Ombudsman's office could have oversight of the Criminal Organisations Control Act. That capacity, which has been idle, should be there for the Ombudsman to utilise in his superintendence of this bill. But, if further resources are required, they will be supplied.

The member for Geraldton, in his contribution to the debate, queried the ability of the police to monitor and track encrypted electronic communication between convicted offenders, as electronic communication is becoming increasingly advanced. I am assured by the Western Australia Police Force—I do not want to reveal the details—that investigative practice will allow the monitoring of such communication. I am also mindful, given the sensitivity of this subject, that it is not appropriate for me to reveal to this chamber the investigative methods employed when investigating those electronic communications. I will say, however, that I am advised that, increasingly, some of the heads of criminal organisations are locating themselves in overseas jurisdictions such as Dubai, Thailand or other countries and are using electronic communications with associates in Australia. What has been very difficult and is not even contemplated by the Criminal Organisations Control Act is the interference with those associations, or those members of associations, when one of them is out of the jurisdiction. But it will be here with this bill.

Consorting by electronic communication with, say, the head of a gang member in Dubai—last year, people were extradited from Dubai back to Australia, to New South Wales, because they were shown to have been involved in a conspiracy involving the importation of drugs—will now be able to be interdicted. The police can then hit the person in Australia with an anti-consorting notice. They can even send it to the person overseas and those people will not be able to consort. If whoever they have their hands on in Australia picks up further electronic communication, they can be arrested for breaking the anti-consorting notice.

Another question the member for Geraldton raised was about overseas convictions. The definition of "convicted offender" under clause 3 of the bill confirms that it is a person who has —

> (v) an offence against a law of another State, a Territory or another country that, if committed in this State, would constitute an indictable offence or child sex offence;

The conviction could have happened overseas; it will be an applicable conviction if the conduct would have constituted an offence in Western Australia, even though the conviction has happened in another jurisdiction. The construction of this definition is twofold. Firstly, for a person to be deemed to be a convicted offender for the purposes of this bill, that person must first have been convicted of an offence; in this context, in another country. Secondly, if the conduct that constituted the offence in the other country had been committed in Western Australia, that conduct must also be an offence in Western Australia.

The member for Geraldton raised concerns about political regimes of certain foreign countries. I point out that being a convicted person in and of itself is not sufficient for the unlawful consorting notice to be issued. In addition, under clause 10(2) of the bill, the person must have consorted or is consorting with another convicted offender, or the police officer who is or is acting as a commander of an officer or rank more senior than a commander must suspect on reasonable grounds that the person is likely to consort with another convicted offender, and the senior officer must consider it is appropriate to issue the notice in order to disrupt or restrict the capacity of the offender's name in the consorting notice to engage in conduct constituting an indictable offence. It is not just for the purposes of keeping convicted people apart; as part of the test, under clause 10(2), the senior officer must consider that it is appropriate to issue the notice in order to disrupt or restrict the capacity of offenders named in the consorting notice to engage in conduct constituting an indictable offence. We can easily see when this would apply to gang members, who are notorious for their distribution of narcotics.

I might conclude my comments by reflecting on some comments of those who spoke previously. The community expects laws passed by Parliament to keep the community safe and to address the scourge of organised crime groups that create misery for those affected by their criminal activities. We know the horrible effects of drugs in our community. This bill aims to target those who make their fortune from destroying the lives of others. All this must be done in a manner that prevents against its misuse, and is responsive, robust and strong enough to withstand challenge in the High Court. I am pleased to stand before Parliament today and say that this bill meets these objectives.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Mr P.A. KATSAMBANIS: Clause 2 is drafted rather unusually. Paragraph (a) says that part 1 will come into operation on the day on which the act receives royal assent. That is relatively common. Paragraph (c) is also relatively common, stating —

> the rest of the Act—on a day fixed by proclamation.

I understand that regulations and the like will need to be proclaimed. Paragraph (b) states —

> section 38—on the day after the period of 12 months beginning on the day fixed under paragraph (c).

Section 38 will come into force effectively one year after the rest of the act comes into force. I seek an explanation from the Attorney General of why that 12-month delay is required in these circumstances.

Mr J.R. QUIGLEY: There are existing consorting notices in the Criminal Code. We want those preserved while this system is getting up and running. We do not want those consorting notices to expire. This will allow the transition period, as set out in clause 39 of the bill, to take effect. The Western Australia Police Force has advised that the transition period of 12 months is required to deal with the approximately 620 consorting notices issued to child sex offenders under section 557K(4) of the Criminal Code, which are referred to as former notices. During this transition period, WA police will issue and serve new notices under the terms of this bill. When such notices are issued and served, the former notices cease to have effect, as outlined in the transition clause of this bill—clause 39. At the same time, the new notices cannot be given under section 557K(4) of the Criminal Code after the

transition period. All former notices have no effect and the consorting provisions in relation to child sex offenders in the Criminal Code will then be repealed because they will be applicable by this legislation. The WA Police Force has advised that due to IT system requirements that need to be configured for the scheme to be operational from the commencement of the scheme, it cannot take place prior to 1 February 2021.

Mr P.A. KATSAMBANIS: That is quite important. More than 600 of these notices currently apply to child sex offenders. The IT upgrades cannot happen until February next year. That allows only a very small window. Let us say that proclamation of the rest of the act, not part 1, happens around August or September this year—hopefully; it only allows a small window of time for police to reissue new notices under this act to these child sex offenders. It might be a year; it might be only six months because we do not know when the operating provisions will be proclaimed. Do we run the risk that the police, using the best of intentions and endeavours, end up in a circumstance in which they have not reissued all the notices? Do we then run the risk that some child sex offenders who were under a consorting notice may end up slipping through simply because the police have not got around to reissuing a new notice, with all the thousands of things they have to do? That is my fear. Despite the best of intentions of the police, there may be a circumstance in which some offenders slip through the cracks and there may be a period in which they are not subject to any form of consorting notice either in the existing scheme or under the new scheme that is being introduced.

Mr J.R. QUIGLEY: I thank the member. It is a fair concern and a concern that my office certainly tested with WA police, and the Department of Justice did, too. Let us be clear: it will take until 1 February to get the whole scheme up and running. From proclamation, the transition period will run for 12 months, so the police will have 12 months to attend to that. The anti-consorting notices already issued to child sex offenders under the Criminal Code will still be running for that 12-month period after proclamation. The police assure us that that 12-month period is sufficient for them to deal with those 600-odd notices and issue new ones under the new act. That whole scheme under the new act—all the IT and everything—will be in place by 1 February.

Mr P.A. KATSAMBANIS: I accept those assurances and, as I said, I know they will be using their best endeavours, but it does open up a risk. I seek clarification from the Attorney General about why we would not use a longer period than 12 months just simply to avoid the potential that some of these notices have not been updated. It sounds as though there is an intention to simply update a lot of the notices from the existing scheme to the new scheme. It would be horrific if, despite the best of intentions, all of a sudden one of these terrible offenders, at the highest level of offending, slipped through and was not subject to a consorting notice for a period of time.

Mr J.R. QUIGLEY: That certainly will not happen, given the conscientious nature of the police, and especially the police child abuse squad. The police are firmly of the opinion that the child sex offender provisions currently before the Parliament are superior to the provisions contained in the Criminal Code, and they are anxious to issue new notices to those people. As soon as the new notice is issued, the other one will become defunct. We do not want the old system to hang around any longer in case someone uses it. We want the new system. We are assured by the Western Australia Police Force that within that 12-month period, new notices will be issued to all people currently on consorting notices. I can only say that that is what the police have told us is their time frame. The government is running with the advice it has received from the police. That is fair enough, is it not?

Mr P.A. KATSAMBANIS: I thank the Attorney General. That is now on the record and we will see how it works in practice.

Clause put and passed.

Clause 3: Terms used —

Mr J.R. QUIGLEY: I move —

Page 3, line 2 — To delete "who has been convicted of" and substitute —

against whom a conviction has been recorded for

Mr P.A. KATSAMBANIS: Is this amendment substantive or does it simply play around with the form of words that were used; and, if it is substantive, can the Attorney General outline in what way it is substantive?

Mr J.R. QUIGLEY: Parliamentary Counsel's Office recommended this minor amendment to the final print version. Members may note that in clause 3 the term "conviction" is defined but that the definition of "convicted offender" uses the phrase "a person who has been convicted of". We are trying to align the two. Just to be clear, the definition of "convicted offender" in the bill currently uses the phrase "a person who has been convicted of". Although, under section 9 of the Interpretation Act 1984, the definition of "conviction" would still be imported into the definition of "convicted offender", this amendment will make the bill more readable for a layperson because they will not have to rely on the Interpretation Act. It brings the definitions into alignment in clause 3.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 4 put and passed.

Clause 5: Meaning of family member —

Mr P.A. KATSAMBANIS: Clause 5 defines the meaning of "family member". We know this is really important because specific consorting offences relate to family members. I think, in all circumstances, there will be a lower test for family members than the test relating to other people. If family members are consorting, the consorting needs to be reasonable in the circumstances, whereas in other defences under this bill, the consorting needs to be necessary in the circumstances, which I am sure the Attorney General will accept is a higher test than reasonable.

Mr J.R. Quigley: Yes.

Mr P.A. KATSAMBANIS: The Attorney General said yes by interjection; I think we all agree with that. The definition is in two parts. There is the ordinary definition, which includes a spouse or de facto partner; a person with whom the person shares personal responsibility for a child; a parent or step-parent of the person; a child or stepchild of the person; a grandparent or step-grandparent of the person; a grandchild or step-grandchild; a sibling or step-sibling; and a guardian or ward of the person. That is relatively comprehensive. I am interested in the drafting of this clause compared with the drafting of other legislation we have seen recently, particularly in the family violence sphere. The term "spouse or de facto partner", which is relatively recognised and has a specific meaning, was extended a bit further in the family and domestic violence legislation than just simply people who are spouses or in a de facto partnership to include people who are more generally cohabitating. My question is: by not including that broader definition in this clause, are we likely to end up having a debate about whether someone was a de facto partner or was cohabitating but was not necessarily a de facto partner?

Mr J.R. QUIGLEY: It is a balancing act, and there are not the same considerations under the Family Violence Legislation Reform Bill. Under that bill, people who are cohabitating in the one household should be protected. Here, we do not want bikies who live in a share house saying, "We were cohabitating. They weren't my partner, but I've got a defence because we all lived at the clubhouse and were cohabitating." I agree that it is a narrower definition, but it is so for a purpose. It would be unreasonable to say that a husband and wife cannot be together or a de facto couple cannot be together. But it would also be unreasonable to say, "All you chaps living in this share house have a defence because you're cohabitating." We do not want that, and that is why it is a narrower definition.

Mr P.A. KATSAMBANIS: I acknowledge that and it is important to have that on the record, because we are trying to prevent people from using loopholes to get away with nefarious activity. I note that clause 5(2) provides the broader definition of "family member" that applies to an Indigenous person—that is, an Aboriginal person or a Torres Strait Islander. That is the definition of "Indigenous" in this subclause. I had some questions on that but the explanation the Attorney General gave in his summing up was detailed and complete. I think we all recognise that there are aspects of cultural and customary law as it applies to Indigenous people that extends the family relationship a little further. We would not, of course, want that to be exploited, and I am sure that the courts will be cognisant of that when considering these matters. I am certainly sure that police will also be cognisant of the matter when issuing notices in any prosecutions they might want to undertake for breach of a notice. I am happy to accept the explanation that the Attorney General read on the record in summing up, so I will not go any further on that clause now.

Clause put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Unlawful consorting with convicted offenders —

Mr P.A. KATSAMBANIS: Clause 8 is the first clause in part 2. It is the offence clause. It is interesting that we have the offences at the start of part 2 and the notices coming after the offences, but in practice notices would have to be issued first before there is an offence. That is okay; that is a matter of drafting. I do not have a particular problem with that but I note it because it is interesting that the bill goes straight to the offences.

The penalty for the offence of unlawful consorting, if you like, with convicted offenders is imprisonment for five years and a summary conviction penalty for subsection (1) is imprisonment for two years. There is no mention of a monetary penalty. Does that mean that in these circumstances a court cannot issue a monetary penalty either in conjunction with a custodial sentence or in preference to a custodial sentence? Or do other rules apply that would still give the court flexibility to issue a monetary penalty?

Mr J.R. QUIGLEY: The Sentencing Act provides for a fine of $1 000 per month of the sentence. A two-year sentence in the Magistrates Court under the Sentencing Act would allow the court fine an offender up to $24 000.

Mr P.A. KATSAMBANIS: Was applying a heavier penalty as well as the jail term, rather than relying on the Sentencing Act, considered? In a lot of legislation, we see maximum sentences of X number of years and maximum monetary penalties of Y dollars. Why is it that we do not see that in this particular case?

Mr J.R. QUIGLEY: Firstly, the monetary penalty has been considerably increased from what it was in the Criminal Code by doubling it. If two years' imprisonment or a maximum fine of $24 000 is not considered

sufficient, having regard to the gravity of the circumstances of the offending, the director can then proceed by way of indictment; therefore, the person will be subjected to a maximum penalty of five years' imprisonment or unlimited fine on indictment. Sorry; the highest penalty for the jurisdiction of the District Court.

Mr P.A. KATSAMBANIS: I want to explore the intention around what sentencing would look like. Is there an expectation that people who are found to be unlawfully consorting, who breach the notice and consort two or more times, would be sentenced to a custodial sentence?

Mr J.R. QUIGLEY: These penalties now prescribed are the highest penalties in Australia. The government expects that the courts will look at this legislation and see that these are the stiffest penalties in Australia and think that the Parliament expects serious sanction. There is a provision for a fine. There is the provision for other orders under the Sentencing Act. We will not stand at the ministerial table and dictate to the independent judiciary how they should act in a particular case, because a particular case will depend upon the facts and circumstances of the offender before the court.

Mr P.A. KATSAMBANIS: I accept that we are sending a message by passing this bill that this is offending on a serious scale and ought to be considered that way, and that in each circumstance the judiciary will determine what the penalty is. That brings us to subsection (3) of clause 8 that essentially—I am paraphrasing—creates a strict liability offence, because it says —

> Nothing in subsection (1) —

Subsection (1) refers to proving that there was an unlawful consorting notice and that during the period it was enforced the person consorted with a convicted offender stated on the notice on two or more occasions —

> requires the prosecution to prove —
>
> (a) that the consorting occurred for a particular purpose; or
>
> (b) that the consorting would have led to the commission of an offence.

Simply, a person is issued with a notice that tells them not to talk to or hang out with certain people. The person does so on two or more occasions so they have breached the notice. I have no problem with that philosophically. We are trying to stop bad guys from getting together to do bad things. But we come to an intersection between laws that are properly calibrated for the good order, peace and security of society and infringing on matters of constitutional and human rights that enemies of this type of legislation want to prosecute in courts, particularly in the High Court. Has the Attorney General received specific legal advice from the Solicitor-General or others that this type of strict liability clause would not fall foul of those normal rules around freedom of association and the ability for two people to get together and talk about the weather or football or their interest in gardening, which is the sort of argument that would be raised in any High Court challenge? I am not asking this pejoratively or, as was unfortunately suggested by the member for Mount Lawley in his contribution, because I want to somehow or other defeat this legislation. I want this legislation to succeed and I want to make sure that it will withstand the toughest scrutiny. Given that the legislation is creating such a strict liability offence, do we have good solid legal advice that it would withstand that sort of challenge?

Mr J.R. QUIGLEY: I do not want to go too far into the legal advice unless it is considered that I have in the chamber waived privilege to that legal advice, and I do not want anyone who challenges the legislation to then demand that I provide that advice to them by way of me having waived privilege. I will say in a general manner that this bill was drawn with one eye on what we are seeking to achieve here in Western Australia and one eye on the judgement of the High Court in Tajjour v NSW, which withstood a challenge in the High Court. I wish to reassure the member that in general terms, the advice that I received from the Solicitor-General is very comforting about what might happen if a person who was subject to these notices were to challenge it in the High Court. The bill will not hinder a convicted person's ability to be free in the community. It will not restrict their general freedoms in any way. Its effectiveness lies in part with the cultural characteristics of outlaw motorcycle gangs. That includes their hierarchical nature, their use of insignia to identify themselves, and their propensity to gather regularly in places open to the public and elsewhere, such as clubhouses. In order to enliven the offence, under the provisions contained in this bill, a restricted person must have consorted with a known person on two or more occasions. The intent of the offence is not to criminalise everyday relationships, but to deter those people from associating with the criminal milieu, or criminal society.

We are very comfortable with where we stand constitutionally. I note that under clause 8(3), it is not necessary to prove that the consorting was for a particular purpose. If that were not the case, we would be locked up in having to prove a criminal conspiracy, and we might have a drug conspiracy trial on our hands, or we would be locked up in having to prove that the consorting would have led to the commission of an offence under the Criminal Code. These provisions will intercept, or interdict, those criminal organisations at a level below having to prove a criminal conspiracy or an attempt to commission an offence. The intent is to break up these organisations in the way that was intended by the Criminal Organisations Control Act. The problem was that because of the arcane nature of its provisions, that act could never be used. It required massive police intelligence and massive court time just to prove that an OMCG was an OMCG and that the person was a member of the OMCG. Under this bill, these people

can go to a bar, and if it is identified from their patches and from the number plates on their motorcycles that they have committed indictable offences, they can be issued with a notice. It will not be necessary to prove that the consorting was for the purpose of committing a particular offence.

Mr P.A. KATSAMBANIS: I think it is more complex than the Attorney General makes out. It is a lot more complex than simply noting the patches and writing down the numbers. However, I take the Attorney General's point that the intention is to break up criminal gangs and to stop members of criminal gangs getting together. We all know what that leads to, irrespective of whether they have a strong interest in gardening or in picking a winner at the seventh race at the Mandurah dogs, or whatever they would claim they were trying to do. We all want to be on the same side on this legislation. I note, having read the debate on the Criminal Organisations Control Bill, that the Attorney General was very keen to examine whether that bill was bulletproof. The point that was made at the time by Hon Christian Porter, the then Attorney General and now federal Attorney-General, was that despite our best endeavours, and the best legal advice, we cannot make legislation bulletproof. It is interesting that being on one side of the chamber rather than the other leads individuals, irrespective of their political flavour, to temper their words. I note that the Attorney General is tempering his words. I am not asking the Attorney General to prove that this legislation will be bulletproof, for the same reason that the former Attorney General of this state and now federal Attorney-General explained to the Attorney General back in February 2012 that we cannot stand here hand on heart and say this legislation will be bulletproof. We need to be cognisant of the fact that the people whom this legislation is intended to deal with are extremely motivated, financially resourced and highly likely to bring legal challenges to this sort of legislation. The reason for these discussions is that although we cannot ensure that this legislation will be bulletproof, we can ensure that it is as fit for purpose and function as it can be. I accept that that is the intention of this bill. I am not seeking the Attorney General to waive privilege in this case, although he has done that in a past, especially back in 2017. I accept the Attorney General's reassurance that he has sought legal advice at the highest levels, and I am comfortable with that.

I want to clarify the point that the person must be found to have breached a consorting notice on two or more occasions, but those breaches may relate to separate breaches against separate named individuals in those consorting notices. Is that feature contained in the New South Wales legislation or is it unique to Western Australia?

Mr J.R. QUIGLEY: I do not have an answer about whether that applies in New South Wales, but my advisers will. We are allowing for one slip. We are allowing for two people to get together once. They will be warned, and, the next time they do that, they will be charged. We think that is appropriate, bearing in mind that we have to show only that they are subject to an anti-consorting notice, not that they are getting together for the purpose of planning a criminal offence. My brilliant advisers have identified for me that in New South Wales, a person commits the offence if the person consorts with at least two other convicted offenders on at least two occasions. Under this bill, it will be with one other person on the notice, not two other persons, so it is a bit tighter. It will apply if a person subject to a notice consorts with any other person on that notice on two occasions. If four people are on the notice, and the convicted person consorts with the second person, that is the first occasion. The second occasion does not need to be again with the second person. It may be with the fourth person on that notice. If they breach the notice on two occasions, they can be prosecuted.

Mr P.A. KATSAMBANIS: That confirms that the drafting has been guided by what the High Court told us was right with the NSW legislation. However, we have moved beyond the New South Wales legislation. That legislation effectively requires four strikes. This legislation effectively requires two strikes. Therefore, we are moving beyond exactly what was considered in the High Court in the Tajjour case. It is important to have that on the record as well, because it gives rise to the question of what the fate of this legislation will be. I wish this legislation the best fate possible—I seriously do. It is important to put on the record for the public of Western Australia that we are introducing a bill that pushes the envelope a little bit beyond what was considered in the Tajjour case in relation to the New South Wales law and what was considered by the High Court. Again, hopefully, the legal advice that the Attorney General received will be affirmed if or when this is challenged in the future.

Mr J.R. QUIGLEY: If the Solicitor-General is a respondent to an application before the High Court, he is very comfortable with Western Australia's position on this legislation. I do not want to go further.

Clause put and passed.

Clause 9: Defences to charge of unlawful consorting —

The DEPUTY SPEAKER: I note there is an amendment on the notice paper to clause 9. I would like to let the Attorney General and the opposition know that when moving these amendments, members do not have to read out the whole thing. I am foreshadowing that there is a big amendment on the next page of the notice paper. Members just need to refer to the amendment on the notice paper.

Mr P.A. KATSAMBANIS: I want to seek clarification on clause 9, "Defences to charge of unlawful consorting". It is not a defence to being issued with a notice; it is simply a defence to any charge of unlawful consorting. As I said yesterday in the second reading debate, the first limb of the defence in clause 9(1)(a) is "between persons who are family members" and the consorting is "reasonable in the circumstances." Will we let courts determine what is reasonable in those circumstances? We could come up with many factual scenarios; attending a father's or

grandfather's birthday is probably reasonable. If the two bad guys are family members and they attend each other's birthday parties, we will let a court determine whether it is reasonable in each set of circumstances. Therefore, I will not tease that out any further with the Attorney General. But I think the public can already see the sorts of lines of inquiry that perhaps some nefariously minded people might have and how this legislation will operate in practice.

A few of the nine defences listed in clause 9(2) make sense, but there are issues around how they would operate. Again, I will let the court determine that. An issue that I raised yesterday concerns clause 9(2)(viii). The Liberal Party, as a responsible opposition, certainly has an issue with it. It is the defence for —

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

The member for Mount Lawley spoke about the need for us to respect freedom of association and trade unionists getting together. If that were the case and we wanted to respect freedom of association, why would we not incorporate defences for everyone who wanted to claim freedom of association, such as a trade union, a political party, an employers' organisation or broader community organisations? This is a specific carve-out for trade unionists; it has nothing to do with freedom of association. If it did, it would save people who were getting together for the purpose of freedom of association in any form of association and not be restricted only to trade unions.

The minister in his summing up tried to equate this to the protections in the Criminal Organisations Control Act around advocacy, dissent, protest or industrial action. Advocacy, dissent, protest or industrial action are not confined to trade unionists. I point to the gathering in Langley Park last Saturday, which was about the discrimination of Indigenous peoples, following on from the Black Lives Matter protests in the United States. That was not a protest for trade unionists. It was not business of an organisation. There is no defence for engaging in protest in this bill. There is no defence for industrial action broadly because industrial action can be taken by anybody and those people do not need to be trade union members, but often they are. There is the concept of "protected industrial action" but that is a separate subset of industrial action. It is not all industrial action.

I put to the Attorney General that this is a discriminatory clause, specifically for trade unionists. It does not necessarily provide the protections that were provided in the previous bill that we have spoken about consistently, so why is it only trade unionists who are given this protection? Why would the people who protested last Saturday not be protected by this sort of defence? But if it were a trade union protest, they would be protected?

Mr J.R. QUIGLEY: I emphasise it is typical for legislation of this nature to provide an exemption on industrial grounds. We have crafted a particularly narrow exemption here. None of these defences will protect anyone from accountability for criminal conduct. To make this crystal clear, we have included clause 10(3) in the bill, which provides that consorting is not reasonable if the purpose of the consorting relates to criminal activity. Therefore, if people are involved in industrial action for the purposes of criminal activity, the association or the consorting would not be exempt. I have already emphasised the important role that the unions play in fighting against the exploitation of workers. To include a defence for employment without including a targeted defence for industrial action is nonsensical. Employment and protection of workers' rights are inextricably linked. We emphasise how limited the scope of the defence contained in clause 9(2)(viii) is. Firstly, it applies only if both the restricted person and the person named in the unlawful consorting notice are members of registered organisations under state–federal industrial relations systems. Secondly, the consorting must be for the purpose of the business of the organisation. Thirdly, the consorting must be necessary in the circumstances.

I want to speak a little bit more on what is necessary in the circumstances. Take, for example, two members of a union who are participating in industrial action. Although it may be necessary for them to be in the same room for a meeting, it may not be necessary for them to sit next to each other. Similarly, it may be necessary, under the circumstances, for them both to take part in a protest, but it may not be necessary to walk with each other as they do so. This will be a question of fact to be determined by the court. We want them to be registered members of these unions; we do not want bikies who are just going along. We have seen these protests over the road at Solidarity Park. Say there is a protest at Solidarity Park and a few bikies say, "Well, look, there's an industrial action; we can just jump in there and start chatting to each other and avoid the consequence of the anti-consorting notice." No. They will be exempt only if they are a member of the registered union that is at Solidarity Park conducting the protest. There will then be a further test of whether it was necessary for them to stand shoulder to shoulder or could they have shown their support and solidarity by being at the other end of the crowd. We are trying to restrict the availability of this defence so that members of outlaw motorcycle gangs cannot, under the ruse of joining industrial protests, escape the consequences of the law. They will have to demonstrate that they were a member of the registered union either under state or federal law and were there for the purpose of union business, conducting industrial action, and that they positioned themselves in a place and manner that is thought to be reasonable by the court.

Mr P.A. KATSAMBANIS: It is interesting that the Attorney General continues to talk about the business of the organisation being industrial action, but the business of the organisation is broader than simply industrial action.

In the information that I read in yesterday and the many volumes of the Heydon Royal Commission into Trade Union Governance and Corruption it was quite clear that some trade unions—a minority—had, effectively, conscripted outlaw motorcycle gang members to be their debt collectors, which the union would consider to be business of the organisation. They collected debts and acted as muscle for the union. That was a large part of what came out of that royal commission—a very large part!

This exemption is narrow in one way; it applies to only trade unions. It does not apply to any group other than trade unions. However, it is broad in the sense that it is well beyond industrial action. This bill will cut out protections that were in the previous act for anyone to conduct advocacy, dissent, protest or industrial action. It will limit it to only trade unions. They can do all that and anything they deem to be business of the organisation. In any other piece of legislation or agreement this would be called a preference clause, and that is what it is—a union preference clause. It is a clause crafted by a Labor government to give a special exemption to the trade union movement that does not exist for anyone else. As I said yesterday, this will not apply to the vast majority of trade unions. The member for Mount Lawley might have picked it up yesterday, but he clearly did not, because he came in here and verballed me in his contribution. I said very clearly that the vast majority of trade unions would be aghast if OMCG members came anywhere near them, like most organisations would be. They would bat them away. They would push them away.

Mr S.A. Millman: How many convictions were there?

Mr P.A. KATSAMBANIS: Does the member want me to run through a list of convictions of Construction, Forestry, Maritime, Mining and Energy Union members over the last decade? How many days does he want me to stand here and speak about it? How many convictions does he want me to talk about? That royal commission —

Mr S.A. Millman interjected.

The DEPUTY SPEAKER: Members! Member for Mount Lawley and member for Hillarys!

Mr P.A. KATSAMBANIS: It is not my fault.

The DEPUTY SPEAKER: Both of you! Member for Hillarys, do you want to continue your question or have you finished?

Mr P.A. KATSAMBANIS: Thank you. I sure do.

This is a union preference clause that clearly has some sort of internal Labor Party thinking behind it that none of the rest of society can see. It is a union preference clause that does not allow other groups to claim the same protections that were in the Criminal Organisations Control Bill 2012, despite what the Attorney General says, because there is no reference in this bill to advocacy, dissent, protest or industrial action. Those things are not in it; it is just of the business of the union. It is not offered to anyone else. In particular, it discriminates between the two groups in the Western Australian Industrial Relations Act and the commonwealth Fair Work (Registered Organisations) Act. It applies it to only employees, but not to employers. I am not arguing that it should apply to employers; I am arguing that it should not be in here. That is why I will move an amendment to clause 9 that will simply remove that subparagraph. It deletes the lines so that the union preference provision will be taken out. Trade unions will have exactly the same standing as all other organisation in this state. I would hope that every single trade union in the state would stand united with the rest of society in not wanting OMCGs to infiltrate their organisation or any other organisation. I know that good union leaders and members want that as much as we do. I think my amendment will improve the bill. Lest anyone say otherwise, the Liberal Party supports this bill and its intention. We will vote for this bill, but we believe that this preference subparagraph should not be in there because it has no right to be in this legislation. I move —

Page 8, lines 22 to 27 — To delete the lines.

Mr J.R. QUIGLEY: There is a little to be said on this. If we had a general provision that said there is an exception if someone is just going to advocate for a particular cause, such as the Black Lives Matter protest on Saturday, or any other general clause, we have no doubt that OMCG members would exploit it. They would think that they could just go on to something like the Black Lives Matter protest last Saturday and, amongst the throng, get together and have their little chats because it is a general protest and they can be excluded from the harsh provisions of the anti-consorting legislation. Although it is unlikely, they could go to a Greens environment protest down at the beach or one of those protests against shark culling that they had down at Cottesloe, where there was a throng on the beach protesting against the shark boat that the former Premier had out there. The bikies could get amongst that crowd, talk to each other, and be exempt from the legislation because they were amongst an advocacy group. Indeed, the Chamber of Commerce and Industry of Western Australia might have a convention and bikies might go along and sit amongst the people at the convention. Bikies do not always wear patches; they often drive what look like mafia staff cars. They pass themselves off as businessmen, as other organised criminals do. They could say that they were at the CCI convention and that would be their defence. No, no, no! We are making a very small exception, which I notice that the member is not opposing, for the purpose of employment. We will not prosecute people who, in the course of their lawful employment, are together despite the consorting notice. We are making a very narrow exception for them. They can go along to industrial protests or other lawful business of their union if they are a registered member of the union. The people that the member for

Hillarys referred to from the royal commission into unions—the heavies and hoods used by unions to extort money—would have to show, to try to get within this exemption, that they are a member of that union. Any union admitting those people as members would be putting itself at immediate risk of deregistration. Furthermore, we have to turn the page to clause 9(3). If someone passes the tests of, first, being in a union, and second, undertaking an activity that is the ordinary course of the business of the union, we then have to turn to clause 9(3), which provides —

> Consorting referred to in subsection (1) or (2) —

That is at the union rally —

> is not reasonable or necessary … if a purpose of the consorting —
>
> (a) is to avoid the operation of an unlawful consorting notice …

So, if a person goes along to a rally for the purpose of avoiding the unlawful consorting notice, even though they are a member of the union, the defence is not there. They can go along to the rally and stand 30 metres apart.

Mr S.A. MILLMAN: Deputy Speaker, I would like to hear further from the Attorney General in his defence of this outstanding clause.

The DEPUTY SPEAKER: Certainly, member for Mount Lawley.

Mr J.R. QUIGLEY: We have to look at 9(3)(a). If someone is attending a rally for the purpose of avoiding the operation of the unlawful consorting notice, the defence is not there. They would have to demonstrate why they were standing next to the other person at the rally. Clause 9(3)(b) relates to criminal activity, which is what the member referred to as extorting moneys by threat, intimidation or otherwise. That is all criminal, so the defence is not there. This is a very narrowly targeted exception to say that if someone is a member of the union and is there on lawful union business, and—clause 9(3)(b)—it is not to avoid the operation of the unlawful consorting notice, then they have a defence. But it has to be looked in the context of 9(3)(a) and (b). We do not want to make it a general exception to all these other outfits, or we will soon find organised crime going along to these conventions and places for the purpose of avoiding the unlawful consorting notice.

Mr P.A. KATSAMBANIS: It is interesting that the Attorney General, when first challenged, gets up and says that this is very similar to what was in the previous bill; then, when it is pointed out that it is not, he comes back and says that this is very narrow and is only about trade unions.

Mr J.R. Quigley: I didn't.

Mr P.A. KATSAMBANIS: You did. The Attorney General talked about advocacy, dissent, protest or industrial action. He said, "Oh, it's very similar to what we had." Then, when he is challenged and it is pointed out to him that it is not, he comes up with the justification that this is very narrow and only for trade unions. That is what we are objecting to. Why should trade unions be special? Why should they be separate? Why should the law of the land that applies to everyone else, including every other organisation, not apply to trade unions as well? It is as simple as that. We do not believe that this preference clause should be in here. It is open to exploitation and it will be exploited. Evidence from the royal commission suggests that it is already being exploited. That is why we are moving this amendment. We think it strengthens the legislation and makes it better. It closes one more door of potential malfeasance to people who want to commit malfeasance. I am not suggesting that trade union leaders or members are doing that whatsoever, but by taking this out, we protect trade unions from infiltration.

If we want to start talking about infiltration, we can probably open up all sorts of other cans of worms that have been opened up by *60 Minutes* on Sunday night on the Labor movement more generally. We will not go into that today, although I am sure a lot of people here can give us chapter and verse on it. I have no take on that. I will allow the Independent Broad-based Anti-corruption Commission to look into that. I think it will have a lot of fun, although I am interested in reading all that stuff and seeing it on the television. We think that this is actually a protective mechanism for the vast majority, I would say almost every single trade union that does not want to be infiltrated by outlaw motorcycle gangs. There is no logical reason that this particular exemption should be in here ahead of any others. We are not convinced that the government is doing anything other than simply looking at this legislation and saying, "We had better protect trade unions." I do not think they need this sort of protection. Why would they need it? Every organisation worth its salt would bat OMCGs away. The royal commission has told us that there are issues. Let us not hide those issues or walk away from those issues; let us deal with those issues. Removing this clause would go a long way to dealing with any such issues if and when they arose.

Mr J.R. QUIGLEY: There is a misconception here. Let us be clear: this is not giving an exemption to any trade union. This is not giving preference to the trade union movement over the Chamber of Commerce and Industry of Western Australia. Let us be quite clear what this clause does: it provides a defence for someone who attends an event in the course of industrial action or the lawful course of business whereby another person is present who is the subject of an unlawful consorting notice. It will provide a defence if it is reasonable that that person attends, and it is not for the purpose of avoiding the unlawful consorting notice or relating to criminal activity. To wrap it up with the

inflammatory language of what is happening in Victoria or other jurisdictions only invites an inflammatory response, because we have seen infiltration of the Western Australian state parliamentary Liberal Party room by the "Black Hand Gang", whose black hand has been deep in the taxpayer's pocket funding overseas Asian sex tourism —

Several members interjected.

Withdrawal of Remark

Mr Z.R.F. KIRKUP: The clear imputation from the Attorney General is a poor reflection on members of the upper house. On behalf of the Liberal Party, I ask that he withdraw that remark.

The ACTING SPEAKER (Ms L. Mettam): Attorney General, I think you should withdraw that remark.

Mr J.R. QUIGLEY: Could I speak further on the point of order?

Several members interjected.

Mr J.R. QUIGLEY: I just wanted to speak in my defence on the point of order; that was all. I never mentioned members of the upper house; I mentioned only people with black hands deep in the taxpayer's pocket.

The ACTING SPEAKER: Attorney General, can you temper your remarks and get back to the business of the bill, please.

Debate Resumed

Mr J.R. QUIGLEY: I was provoked to them. Members opposite know which buttons to push. When it comes to the covering up of corruption, they know which buttons to push.

This is not an exemption for trade unions. This provides a defence to a person who is the subject of a notice and attends to the lawful business of a trade union that is reasonable and necessary in the circumstances. We do not want to include any other group like the Chamber of Commerce and Industry because if these bikies go along, they have no lawful business being there. Organised crime has no business being there. But we know that some people with criminal convictions might be working in the construction industry or in manual labour and might want to go to a safe workplace rally. We oppose the amendment.

Division

Amendment put and a division taken, the Acting Speaker (Ms L. Mettam) casting her vote with the ayes, with the following result —

Ayes (18)

Mr I.C. Blayney	Dr D.J. Honey	Mr W.R. Marmion	Mr D.T. Redman
Mr V.A. Catania	Mr P.A. Katsambanis	Mr J.E. McGrath	Mr P.J. Rundle
Ms M.J. Davies	Mr Z.R.F. Kirkup	Ms L. Mettam	Mr A. Krsticevic *(Teller)*
Mrs L.M. Harvey	Mr S.K. L'Estrange	Mr D.C. Nalder	
Mrs A.K. Hayden	Mr R.S. Love	Mr K.M. O'Donnell	

Noes (30)

Ms L.L. Baker	Mr D.J. Kelly	Mr J.R. Quigley	Mr D.A. Templeman
Dr A.D. Buti	Mr F.M. Logan	Ms M.M. Quirk	Mr P.C. Tinley
Mrs R.M.J. Clarke	Mr M. McGowan	Ms C.M. Rowe	Mr R.R. Whitby
Mr R.H. Cook	Ms S.F. McGurk	Ms R. Saffioti	Ms S.E. Winton
Ms J. Farrer	Mr S.A. Millman	Ms A. Sanderson	Mr B.S. Wyatt
Mr M.J. Folkard	Mr P. Papalia	Ms J.J. Shaw	Mr D.R. Michael *(Teller)*
Ms J.M. Freeman	Mr S.J. Price	Mrs J.M.C. Stojkovski	
Mr W.J. Johnston	Mr D.T. Punch	Mr C.J. Tallentire	

Pair

Dr M.D. Nahan	Mr M.P. Murray

Amendment thus negatived.

Clause put and passed.

Clauses 10 to 14 put and passed.

Clause 15: Correcting minor errors in unlawful consorting notice —

Mr J.R. QUIGLEY: I move —

Page 12, line 5 — to delete "an error" and substitute —

a mistake

This amendment removes "an error" from clause 15(1)(b) and replaces it with "a mistake" in order to ensure consistency in drafting. I will explain this amendment, together with the following amendment, regarding the heading

of the clause. The effect of these amendments is into ensure that a consorting notice that contains a mistake, including a material mistake, has the same validity and effect as if the mistake or error had not been made. If, for example, a person who is not a convicted offender is mistakenly named on an unlawful consorting notice, this provision, as amended, will enable the prescribed officer to remove that named person from the notice and preserve the validity of the notice. To explain, if five people are named on the notice and the fifth person put on there did not in fact have an indictable conviction recorded for them, the commissioner can then strike off the fifth name that was there as a mistake, but the notice would remain valid vis-a-vis the other forenamed persons.

Amendment put and passed.

Mr J.R. QUIGLEY: I move —

Page 12, line 16 — to delete "or error".

This amendment is, of course, linked to the previous amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 16 put and passed.

New clause 16A —

Mr J.R. QUIGLEY: I move —

Page 13, after line 26 — To insert —

16A. Variation of unlawful consorting notice

(1) A person (the ***restricted person***) on whom an unlawful consorting notice is served may apply to the Commissioner of Police to vary the notice to remove the name of a person (a ***specified person***) specified for the purposes of section 11(b) in the notice.

(2) The application must be made —

(a) in writing; and

(b) during the period that the notice is in force.

(3) The Commissioner of Police must determine the application within 60 days after the application is made.

(4) The Commissioner of Police must, by written notice (the ***variation notice***), vary an unlawful consorting notice to remove the name of a specified person if the Commissioner is, on an application under subsection (1) or on the Commissioner's own initiative, satisfied that —

(a) the requirements for issuing the notice under section 10 are no longer met in respect of the specified person due to a change in the circumstances; and

(b) the unlawful consorting notice still specifies for the purposes of section 11(b) the name of at least 1 person who is a convicted offender.

(5) The variation notice takes effect when it is made.

(6) The variation notice must specify 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;

(f) any other matters prescribed in the regulations.

(7) The Commissioner of Police must, as soon as practicable after making a variation notice —

(a) serve or cause to be served, by a prescribed service method, the variation notice on the restricted person; and

(b) make a record of, or cause to be recorded, the particulars referred to in subsection (6) relating to the variation notice.

Mr P.A. KATSAMBANIS: This is a new clause that has been added to the legislation. It permits the variation of unlawful consorting notices by the Commissioner of Police. I think we require an explanation from the Attorney General of the intention of this clause. Why is it being introduced and how will it work?

Debate interrupted, pursuant to standing orders.

[Continued on page 3935.]