

CRIMINAL ORGANISATIONS CONTROL BILL 2011

Third Reading

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [5.30 pm]: I move —

That the bill be now read a third time.

HON GIZ WATSON (North Metropolitan) [5.30 pm]: I rise to express the position of the Greens (WA) on this Criminal Organisations Control Bill 2011. We have taken some time to debate this bill through this house, and there have been some amendments, a number of which we have supported, and a number of which we have initiated. We acknowledge that the government has accommodated at least a couple of the amendments that I have moved. Nevertheless, we find ourselves unable to support the bill as it stands, and I want to make a few comments about why that is the case.

As was discussed at length during the committee stage of this bill, the bill breaches a number of key principles that currently exist in the legal system. In a number of places, the bill makes the rules of evidence inapplicable. The operation of the bill will rely heavily on covert intelligence. That is information that will not be subject to cross-examination and can indeed be based on hearsay evidence. It will create a novel entity—a designated authority—which will be a decision maker with the powers of a royal commission. However, it will also operate in a private capacity. It will also operate, for all intents and purposes, in a way that could otherwise be described as judicial; that is, it will make judgements about whether to rule an organisation to be a declared criminal organisation. In that way, this entity will be fundamentally different from a royal commission, which is not a decision-making body but only makes recommendations following an inquiry.

Breaches of control orders will result in mandatory prison sentences, and for this reason alone we cannot support the bill, because we do not support mandatory prison sentences. Mandatory sentencing removes judicial discretion and breaches the integrity, independence and authority of the courts. Control orders will make an offence of simple human interactions, such as two people having a cup of coffee together, if those persons are subject to a control order. It will also create a precedent whereby a person can be imprisoned because he or she has associated with another person. The police in Western Australia already have significant powers to charge people when it is suspected that they are planning to, or are about to, commit an offence. It is not as though we do not already have provisions in this state to deal with suspicions about people's intentions. In this state we also have exceptional powers to surveil people. We have exceptional powers to remove fortifications. I have been in this place long enough to have debated all those changes to the laws in Western Australia to provide exceptional powers to the police. It is interesting to note that regardless of all the chest-beating about the marvellous powers that we might effectively have, particularly against bkie gangs, it is my understanding that the fortification removal powers—which were initially in a stand-alone bill and were then incorporated in the Corruption and Crime Commission Act—have never been used successfully in this state. Further, the notion that groups or gangs can be wiped out is, I think, thoroughly questionable. This bill is much more likely to drive these people further underground and outside the reach of the law. That has certainly been the experience with similar legislative changes in Canada.

This bill, when it passes this place, as no doubt it will very shortly, and then goes back to the other place, and no doubt eventually becomes law, will also attract some headlines in our media, saying that this will make the people of Western Australia safer and we can all sleep safer in our beds at night. This sort of legislation does not make me feel any safer. In fact, it makes me feel very concerned that we are dismantling some very longstanding and important aspects of our justice system. I think it is highly likely, and it has been acknowledged by the parliamentary secretary, that when this bill becomes an act, it will be subject to a High Court challenge. I made the point during the second reading debate, and when I moved for the bill to be referred to a standing committee, that it is the role of the Parliament to thoroughly scrutinise bills of this nature. We have done our best job—or some of us have done our best job—in this place to scrutinise this bill. But it has not had the benefit of the level of scrutiny of a standing committee inquiry, and that is a significant concern.

I conclude by quoting from the former President of the Law Society of Western Australia, Mr Hylton Quail, who said the following —

Over the decade and a half that I have been involved in considering parliamentary criminal bills on behalf of the Society, most of them have promised 'tougher' laws in what seems to be a never-ending 'law and order' auction. As these initiatives are often perceived as electorally popular, they have rarely been subjected to close parliamentary scrutiny by major parties other than the Greens. Yet, with each passing year these new laws change the nature of our essential liberal democracy.

I reiterate that the Greens cannot support this sort of legislation. We believe there are ample powers in the statutes to deal with organised crime. It is always disappointing when we know that there is significant concern

about this sort of legislation, but that members are constrained from putting that on the record, and ultimately we end up with bad laws. For that reason, we will be opposing this one.

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [5.37 pm] — in reply: In speaking on the third reading of the Criminal Organisations Control Bill 2011, I will not take up much more of the house's time. But I do have to say that the submissions made by Hon Giz Watson during the course of the second reading debate and the committee stage, and reiterated just now, demonstrate the length, breadth, height and depth of the misunderstanding of not only so-called fundamental principles of law and justice, but also the operation of this bill; the scrutiny that this legislation has had from courts, such as the High Court in looking at the South Australian legislation and the New South Wales legislation; and the need for action to be taken against what is patently a public menace. The mind boggles as to the sort of government the Greens (WA) might form and what they might do when they are faced with a public menace to safety but are so concerned about so-called fundamental principles that they would deny the authorities the power to deal with these sorts of novel occasions. No doubt, come the next election there will be full-page advertisements supporting the Greens' stand on civil liberties, proudly sponsored by organisations such as the Coffin Cheaters, the Finks, the Rebels, the Comancheros, the Gypsy Jokers, God's Garbage, and the others, along with the "search for your rights" group, the CFMEU, which some weeks ago came out complaining about how this will affect law-abiding citizens. I have no doubt that various church and Rotary groups will also put their names to those full-page ads complaining about the infringement of their civil liberties! The government makes no apologies for dealing with organised crime. If there is a necessity for additional powers to deal with the question of organised crime in a measured way, this government will do it. This government has made its best effort to ensure that criminal organisations are dissolved and that life is made as hard as possible for them. We heard the wonderful argument that somehow the provisions in this bill will drive these criminal organisations underground. That may be possible; it may be a likely outcome that they will find it more difficult to intimidate law-abiding citizens by parading down the streets of Perth, flexing their muscles publicly and showing their power and that they are a force to be reckoned with; but that is a situation that will be dealt with in due course.

I commend the bill to the house and move that it now be read a third time.

Question put and a division taken, the Deputy President (Hon Col Holt) casting his vote with the ayes, with the following result —

Ayes (29)

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| Hon Liz Behjat | Hon Phil Edman | Hon Alyssa Hayden | Hon Linda Savage |
| Hon Matt Benson-Lidholm | Hon Sue Ellery | Hon Col Holt | Hon Sally Talbot |
| Hon Helen Bullock | Hon Brian Ellis | Hon Robyn McSweeney | Hon Ken Travers |
| Hon Jim Chown | Hon Donna Faragher | Hon Michael Mischin | Hon Max Trenorden |
| Hon Peter Collier | Hon Adele Farina | Hon Norman Moore | Hon Ken Baston (<i>Teller</i>) |
| Hon Mia Davies | Hon Philip Gardiner | Hon Helen Morton | |
| Hon Ed Dermer | Hon Nick Goiran | Hon Simon O'Brien | |
| Hon Wendy Duncan | Hon Nigel Hallett | Hon Ljiljana Ravlich | |

Noes (4)

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| Hon Lynn MacLaren | Hon Giz Watson | Hon Alison Xamon | Hon Robin Chapple (<i>Teller</i>) |
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Question thus passed.

Bill read a third time and returned to the Assembly with amendments.