DRAFT SECOND READING SPEECH

HON. MICHAEL FERGUSON MP

Police Offences Amendment (Consorting) Bill 2018

check Hansard for delivery

Madam Speaker, I move that the Bill now be read a second time.

The Government remains committed to ensuring that Tasmania Police has the tools it needs to combat organised crime in this State. This Bill is a further addition to the suite of legislation implemented by this government to achieve that aim. Alongside the *Removal of Fortifications Act 2017*, the *Police Offences Amendment (Prohibited Insignia) Act 2018*, the *Terrorism Legislation (Miscellaneous Amendments) Act 2015* and the *Community Protection (Offender Reporting) Act 2016*, this Bill will give Tasmania Police another essential tool to break up existing criminal gangs and hinder the expansion of national and international organised crime into Tasmania.

Madam Speaker, I recently emphasised the insidious danger organised crime presents in my second reading speech regarding the prohibited insignia legislation. The House may recall that I highlighted the 2015 Australian Crime Commission's research report on organised crime which noted the cost of serious and organised crime in Australia to be at least $36 billion a year. That is $36 billion dollars spent trying to fix the serious physical and mental health problems caused by gangs dealing methamphetamine. $36 billion dollars spent dealing with the impact of crime by people who are drug addicted and forced by gangs to pay off debts. That is $36 billion of damage caused by professional facilitators used by organised gangs to help them retain and legitimise proceeds of crime.

Madam Speaker, the government has discussed at length the danger presented by organised Outlaw Motorcycle Gangs as major distributors of methamphetamine in Tasmania. The evidence for this is incontrovertible, with senior gang members in Tasmania having been charged and convicted of some of the most significant methamphetamine importations in the State's history. Of course they are not the only groups operating in, or seeking to, gain a foothold into the State. Tasmania Police intelligence also indicates that other groups are active in the trafficking of drugs, firearms and stolen goods.

The fact that these groups are organised, hierarchal and well-funded, makes them difficult to stop via traditional law enforcement methods such as with conspiracy offences, especially when targeting the heads of these organisations. The Australian Criminal Intelligence Commission notes that criminal syndicates in Australia are 'diverse and flexible, with high threat organised crime groups sharing a range of common characteristics, in particular transnational connections, activities spread over several markets, and the intermingling of legitimate and criminal enterprises'.

Madam Speaker, modern consorting legislation is an important crime fighting tool to break down the networks and fabric of organised criminal syndicates and criminal gangs.

Consorting is currently an offence in Tasmania, located at section 6 of the *Police Offences Act 1935*. It states that a person shall not habitually consort with reputed thieves. If they do, they are liable to a term of imprisonment of up to 6 months.

Madam Speaker, this legislation is well past its use-by-date. Tasmania Police advise it is impractical, difficult to prosecute and has not been effectively utilised for many years. The offence punishes repeated association with people who need not have a criminal conviction, but instead just have a reputation as a thief. The offence applies to everyone no matter their relationship to the other person. As it currently stands, a parent cannot keep company with their teenager if one of them is a reputed thief. Equally of concern, is that the offence does not apply to more serious types of crime that are normally the focus of organised criminal gangs, such as extortion, firearms offences, prostitution and drug offences.

All other states have updated their consorting laws in recent years to recognise that interrupting the criminal networks that traffick drugs, firearms and even people, are a much bigger concern than people who have a common reputation for stealing things. This Bill recognises that times have changed since 1935, and modernises the current consorting offence.

To achieve this objective, Madam Speaker, the Bill draws upon consorting legislation introduced by New South Wales in 2012. New South Wales was deliberately chosen because that law has been tested by the High Court. In 2014 the High Court found that the offence was constitutional, noting it was 'reasonably appropriate and adapted' to serve the legitimate end of the prevention of crime in a manner compatible with the maintenance of the constitutionally prescribed system of representative government.

The New South Wales model currently prohibits any person over the age of 10 years from consorting with a person convicted of an indictable offence, once they have been given an official warning by a police officer that they are not to consort with that person. Warning notices can be done orally or in writing and have no set time limit or expiry date.

Madam Speaker, it is important to note that the New South Wales legislation was thoroughly examined by the New South Wales Ombudsman in 2016. The Ombudsman did not recommend repealing the offence, but did make a number of recommendations for improvement, which have been recognised in the drafting to this Bill. Certain suggestions obtained from the public consultation undertaken by Tasmania Police have also been incorporated into the Bill. In this regard the Bill has a number of additional safeguards that are not found in the legislation of other states.

Madam Speaker, I will now turn to the specifics of the Bill and those differences.

To ensure that the aims of this Bill are clear, an objective has been inserted into the Bill. The Bill states the objective of the consorting offence 'is to prevent serious criminal activity by deterring convicted offenders from establishing, maintaining and expanding criminal networks'. Such pre-emptive crime prevention laws are no longer a novel concept. The New South Wales Ombudsman review noted that 'laws that limit associations between people to prevent future wrongdoing already exist, including apprehended violence orders and laws providing for the continued detention of high-risk offenders'. In the Tasmanian context, we can include police issued family violence orders and orders issued by parole and probation officers to this list.

Clause 5 of the Bill replaces the current consorting offence. The new offence states that a convicted offender must not habitually consort with another convicted offender, within five years after having been given an official warning notice in relation to the other convicted offender. A convicted offender is a person, aged 18 years of older, who has been convicted of a serious offence.

It is important to note that this new offence will not apply to children. Unlike New South Wales there is also a 5 year time limit on the warnings, which recognises the importance of balancing crime prevention against the potential for people to eventually reform. These changes were adopted from the recommendations of the NSW Ombudsman.

The Bill also recognises that organised criminal gangs are not just reputed thieves, but people who commit crimes as well as a common range of serious summary offences. So the Bill defines a serious offence as any indictable offence or any breach of:

- the *Firearms Act 1996*;
- the *Misuse Of Drugs Act 2001*;
- the *Sex Industry Offences Act 2005*;
- Part 8 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*; or
- any offence from another jurisdiction, that if it occurred in Tasmania, would have been a breach of one of those Acts.

Consequently, the provisions cannot be used to prevent associations between persons never convicted of an offence, or persons convicted of offences that fall below this threshold.

Madam Speaker, one of the concerns with the current consorting offence is that a person does not have to know the person they are associating with is a reputed thief. The new offence addresses this by adopting aspects of the New South Wales warning system. A convicted offender cannot be charged with consorting, unless they have already been issued with an official written warning notice from a police officer. However, official warning notices can only be authorised by a commissioned police officer, and a commissioned police officer can only authorise the notice if they are satisfied that issuing the notice will further the objective of preventing serious criminal activity, by deterring the person from establishing, maintaining or expanding criminal networks. Thus, this Bill allows police to do what they do best every day and exercise their professional judgement about whether certain behaviours are reaching a level that should be addressed by a consorting warning notice.

Whilst giving police the discretion they need to do their job, it is important that safeguards are in place to protect vulnerable groups and people. Consequently, the Bill also allows for a number of reviews of warning notices. In the first instance, a convicted offender who is issued a warning notice may make an appeal to a more senior commissioned police officer that it does not meet the threshold set by the legislation. That senior officer must review the decision and then uphold or revoke the notice.

As warning notices are administrative decisions of individual members of Tasmania Police, albeit very senior members, issued to individual persons the government has inserted a further review

mechanism. This approach is consistent with the Organised Criminal Groups Legislation Position Paper that was circulated for public consultation.

Unlike most of the other states, this Bill allows for a further review to the Magistrates Court. A convicted offender who is unsuccessful in their appeal to a senior commissioned police officer, may then make an application to the Magistrates Court for a further review of the original decision. Such appeals will be determined under the *Magistrates Court (Administrative Appeals Division) Act 2001*.

To ensure that confidential criminal intelligence is protected, the Bill also mirrors the provisions found in the *Firearms Act 1996*, the *Sex Industry Act 2005*, the *Registration to Work with Vulnerable People Act 2013*, and the *Security and Investigations Agents Act 2002*, all which prevent criminal intelligence from being disclosed as part of the review.

Consorting is not defined in the Bill as it is already well defined by the High Court and is a case specific test best left to the courts. However, it should be noted that the mere fact a convicted offender meets another convicted offender, after having been served with a warning notice, is still not enough to satisfy a charge of consorting. In a small state it is easy to meet another person by coincidence in the street or at a coffee shop. It is not the intention of this Bill to criminalise encounters where a convicted offender is not mixing in a criminal milieu or utilising, creating or building up criminal networks. The High Court has held that consorting means associates or keeps company and 'denotes some seeking or acceptance of the association on the part of the defendant'. Mere coincidental meetings are not enough, it must be habitual and sought out. To ensure that this is clear, the Bill includes a clause that for habitual consorting to occur, the consorting must occur on at least two occasions within the 5 year period, after having been served a warning notice.

Madam Speaker, it is not the intent of the Government to criminalise every day innocent relationships. The Bill takes account of exemptions from other jurisdictions, and adds additional exemptions which may be raised as a defence to consorting. These exemptions include:

- consorting with family members;
- consorting in the course of lawful employment;
- consorting for training and education purposes;
- consorting for the provision of health or legal services; or
- consorting in the context of lawful custody or complying with a court, probation or parole order.

These exemptions will also apply for convicted offenders who are utilising these services for their dependents. For these defences to be made out, they must be shown to be reasonable in the circumstances. What may be reasonable in a major metropolitan area, may not be reasonable in other situations. This Bill gives the courts the flexibility to decide on a case-by-case basis if the exemption is a reasonable one.

Finally the Bill takes into account all the technological changes that have occurred since 1935 when the offence was first created. The offence has been extended to include consorting by electronic or other forms of communication. Cheaper and more advanced technology continues to provide organised criminals gangs with a diverse range of resources to conduct their activities and impede law enforcement investigations. These provisions will ensure that criminal networks established through Facebook Twitter or SMS messaging will not be immune from these provisions.

The Department of Police, Fire and Emergency Management will conduct a future assessment of the effectiveness and practicality of the legislation, with a view to determining if its reach should be increased at a later date.

Madam Speaker, this Bill sends a strong signal to organised criminal groups in Tasmania, or those thinking to expand their networks into our State, that their activities will not be tolerated. This Bill is constitutionally robust, fair, efficient and effective and I commend the Bill to the House.