Wednesday 26 September 2018

The President, **Mr Wilkinson**, took the Chair at 12.00 noon. and read Prayers.

TABLED PAPERS
Select Committee on Tasmanian Irrigation - Report

Mrs Rattray presented the report of the Legislative Council Select Committee on Tasmanian Irrigation along with a copy of the evidence taken by the committee.

Report received and printed.

POLICE OFFENCES AMENDMENT (CONSORTING) BILL 2018 (No. 37)

Second Reading

[12.05 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council - 2R) - Mr President, I move -

That the bill be now read the 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) Regulations 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.

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 spent trying to fix the serious physical and mental health problems caused by gangs dealing methamphetamine; $36 billion spent dealing with the impact of crime by people who are drug addicted and forced by gangs to pay off debts; and $36 billion of damage caused by professional facilitators used by organised gangs to help them retain and legitimise proceeds of crime.

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 in, 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, hierarchical 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.

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, which 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 six months.

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 so 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 traffic drugs, firearms and even people is 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, 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.

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 made a number of recommendations for improvement that 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.

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 or 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 five-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 summary 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 had 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.

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 judgment about whether certain behaviours are reaching a level that should be addressed by a consorting warning notice.

While 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 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 Offences Act 2005, the Registration to Work with Vulnerable People Act 2013, and the Security and Investigations Agents Act 2002, all of 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 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 five-year period after having been served a warning notice.

It is not the intent of the Government to criminalise everyday 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 defences 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 defences will also apply for convicted offenders who are utilising these services for their dependants. 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 criminal 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.

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.

Mr President, I commend the bill to the House.

[12:22 p.m.]

Ms FORREST (Murchison) - Mr President, when we deal with legislation taking away some personal liberties, it is important we fully consider it fully and in doing so not only weigh up the potential benefits to the broader community, but the rights, privileges and protections individuals should be able to expect and access in our society.

Generally there are differing views about consorting laws, but overall the people I have spoken to - people in the street as well as those much more knowledgeable in the application of the law - universally agree that we need legislation in this area to assist the police in managing organised crime.

We are not only talking about bikie gangs, but anyone engaging in organised crime. It is really important we remain focused on this. When you look at some other countries - even other Australian states - serious criminal networks are undertaking all forms of major crime and people just disappear on a relatively frequent basis, if what I am told is correct.

As well as money laundered, threats made and the coercion of people to participate in those networks, we know many of these offences are related to selling, trading and using addictive drugs. None of us want to see young people being dragged into that world, from which it is really hard to escape.

It is important not only to keep our focus on the big picture, but also to look at and consider what is in the best interests of all Tasmanians. When you step on the rights and privileges of a few, even though they might be a small number, there must be adequate protections. There need to be adequate protections to ensure they have rights of appeal and protections that prevent them from being unfairly treated, even though they may well be criminals or may have a criminal conviction in their past. That has been the challenge in dealing with this.

Mr President, I appreciate the briefings provided and the opportunity given to people to present to us. I have sought the counsel of others who understand aspects of this area of law enforcement more clearly than me. I appreciate the Government again giving access to the police to explain their role and function. Another important aspect is understanding the role of the courts. It has been helpful to hear from a variety of groups that have direct interest and experience.

A number of questions are raised about this legislation. Is it needed? Yes it is. Does it provide appropriate checks and balances? At the moment, no, particularly in the court process. I foreshadow one drafted amendment that members have a copy of. We will debate it at a later time.

It provides protections in terms of the process required before a person can be charged with consorting. New South Wales laws were heavy-handed when they were brought in and created a lot of problems. Notices could be issued in writing; they could be issued by a junior officer; there was no court appeal process. I am surprised they let the legislation get through in the first instance.

The NSW Ombudsman looked at the operations of the NSW legislation and made a number of recommendations, which are reflected in the bill before us. There is a more rigorous process around the issuing of a warning notice and what habitual consorting means.

In the briefing other members raised the question of habitual consorting or what 'habitually consort' is. The High Court of Australia made a determination of that and this section of the bill is drafted to recognise the High Court's comments.

The real concern raised by almost everyone with concerns about the bill is: what does a 'serious offence' mean? In Part 2, clause 5, dealing with proposed new Division III, the definition of serious offence is, under (a), 'an indictable offence, whether the offence is tried on indictment or summarily'. This picks up what we might consider to be minor criminal offences such as minor stealing offences, drug charges or similar things.

The amendment from the other place is to require a review that will assist in seeing whether the police are trying to overstretch their powers in this area. That is partly because of proposed section 20B -

> The object of this Division is to prevent serious criminal activity by deterring convicted offenders from establishing, maintaining and expanding criminal networks.

It is up to the police to demonstrate to the inspector or above that the object of this bill is being met - for example, if there has not been what we might consider a number of more serious offences. The person has the right to appeal that to the commissioner and also a right of appeal through the court.

Some of the work the police are doing in this area - trying to manage or prevent organised crime - contains a lot of police intelligence or evidence that should be kept confidential. It needs to be protected because if released publicly or even to the person who has lodged the appeal, it could put other people's lives or health and safety at risk.

I understand this, but my proposed amendment will make sure the court makes the decision about what should be protected. This will also give the police the opportunity to withdraw the evidence if they disagree before it goes through the more public process. It should be the court that decides rather than the police being the judge and jury on what should be protected. It is about the separation between the judiciary, the policy and the application of the law.

Do we need this legislation? Yes, we need something in this area. Are there appropriate checks and balances? On balance there probably are. The review clause will ensure that if it is not being properly administered or people are being unfairly targeted, as in New South Wales, it will become very apparent after review. I agree with Chris Gunson, from the Tasmanian Bar - it is better to be done in the next term of government. It is always hard for a current government to say, 'Sorry, we had this wrong.' Even if it is the same party in government next term, it has had time to go through a process and can be looked at in a different light. The time frame is appropriate - it has to be completed within the four years, not started, it has to be completed. This means they have to start their work earlier, if they have these big delays getting the work done as the member for McIntyre talked about in the briefing. With a legislative requirement to do it, they will have the resources to do it.

Ms Rattray - I am going to ask that a commitment to resource it is given, otherwise what is the point? It potentially will be 408 days for a review.

Ms FORREST - They probably need to employ staff to do this. I believe the Government supported this amendment downstairs?

Mrs Hiscutt - They did.

Ms FORREST - They should be also willing to support the resourcing required to see it happen. If the checks and balances are not adequate, or if people are still being issued with warning notices, perhaps leading to a conviction for consorting later, that we would reasonably say were unfair or unjust, it will be picked up and those changes can be made. Yes, I know those people will be adversely affected along the way if this is the case. Look at New South Wales where the majority, if not all, of recommendations from the Ombudsman's report trying to deal with those injustices have been picked up in this legislation.

In the Committee stage we will deal more fully with the carve out of Magistrates Court (Administrative Appeals Division) Act 2001 provisions that do not apply in relation to the application referred to in proposed section 20E, which is the appeal to the Magistrates Court. We were told this provision exists in a number of other pieces of legislation, including the Firearms Act and the Sex Industry Offences Act. However, it is differs from those because it includes subdivisions 2 and 3 of Division 2 of Part 4; Subdivision 2 of Division 2 of Part 4 relates to the issuing of a stay.

I can see the police's point of view. We will prosecute this more fully in the Committee stage. A person is innocent until proven guilty. A person shall only be issued with a warning notice when they really deserve one, for want of a better word, or when the evidence is there to suggest this

warning notice is needed. A person may not be able to consort with other people during that period if there is no option for a stay. The police say the stay can delay proceedings; it could take some months, up to a year, in which time the person could continue to work on building up their criminal networks. That is the concern for the police. I understand and respect their concern, but this is a process of giving someone notice that says they cannot do something. If they accept it and say, 'Yes, okay, I deserve that' - I do not imagine many of them will do that, but if they do - there is no issue from there. If they reject it and appeal, you would think they may either be trying to play it to see if they can get away with it or there is a legitimate concern and they feel they have been unfairly targeted.

A lawyer told me about a case that could happen in Tasmania or anywhere: there were two people of the same name with the same date of birth, and one was the criminal and the other was not. This could easily happen in those kinds of circumstances when information is being presented.

When I was married many years ago, there was another Ruth Emmerton, a nurse who worked at the Mersey Hospital in ICU. I was Ruth Emmerton and worked in the ICU in the Burnie Hospital, so when I got married the Nursing Board 'married her off' as well and I started getting all her mail from the Nursing Board.

Mr PRESIDENT - That is a crime, you know.

Ms FORREST - Yes, bigamy actually. Anyway, I did not realise what was happening for a while. I was thinking, 'Why am I getting two renewals and two this and two that?' When I looked a bit more closely, I noticed her second initial was an A, while mine is a J. So I contacted the Nursing Board and said, 'I am not sure this is right'. I do not know if the other Ruth had remembered to renew her registration without being reminded, but she could have been practising unregistered, thus illegally, because she had not received a renewal notice because they had married her off - changed her name - and sent her mail to me.

Those sorts of things can happen. There are legitimate reasons where people may be issued with a warning notice and it could be the wrong person, or it could be for a legitimate reason that, in the right of appeal and during the appeal, it will be found to be not an appropriate application and it will not go ahead.

My view is that the stay should remain and that both parties have to clearly give evidence to the court on why the stay should or should not be granted. I think that protection is already within the courts - the courts already do that - and that is a matter for another time. As far as injustice and whether the appropriate checks and balances are here, that is one area where the benefit may be too heavily weighted with the police and not with the individual.

It is not an overly long bill; it is only to replace a small matter of someone being a reputed thief, but it has a lot more checks and balances than other legislation has. Aspects of it, particularly if the amendments succeed in relation to clause 20E of the bill, and the provisions in that form have been tested in the High Court in Western Australia in *Gypsy Jokers Motorcycle Club v Commissioner of Police* - we know it will stand up in the High Court because it is basically the same as that one. We also have an obligation to do as well as we can to ensure that legislation we put in place is, first, needed; second, does what the policy position intends it to do; and, third, will not adversely impact on the members of our communities unnecessarily or inadvertently.

Some people need to see the actions of the law against them because they do the wrong thing. The opportunity for people to be remediated or to move away from a life of crime is a positive thing. You would like to think that could happen without having to send them to prison because that often does not work anyway.

If we can use a much more preventive approach where we stop people from engaging in criminal activity and help them to see another way, I think we will have a good outcome.

Part of this, as explained in a number of different ways, is that if a young person has found themselves involved in a network of criminals, particularly with regard to drugs, they are drawn into that world and then become a victim of that world because they need money to fuel their drug habit. They do not have the drugs and they are then provided with the drugs, but they have to do other stuff to earn the money. If you can put in place something that helps them distance themselves from that without putting them in jail - to find another way to do it - we might be saving their life and saving them from a whole heap of other unfortunate circumstances. We have to look at the whole picture. Yes, we are potentially threatening and infringing on the rights of some individuals, but we could also be helping some criminals who have done the wrong thing, are involved in the drug network and cannot find a way out. I can only imagine how difficult it is for young men to extricate themselves from such a situation even if they want to. Gangs and motorcycle groups have strict membership rules. I will never be a member of any of them because I am female.

There is real potential to have positive benefits from this aspect of the legislation, and that should not be overlooked. I support the principle of the bill. It needs some amendment. Other members may have some amendments that I will be happy to see as soon as we can, but I will listen to the other members' contributions on those matters.

[12:41 p.m.]

Mr DEAN (Windermere) - Mr President, I support the bill. I will put forward two or three amendments if the legislation gets to the Committee stage, which it probably will from what I am seeing and hearing.

Ms Rattray - Will the member touch on those in his second reading speech?

Mr DEAN - Yes, I will touch on them briefly.

Mr Finch - You do not have them available?

Mr DEAN - I have them. They are done and can be circulated as soon as we have the opportunity. Mr Baily probably has not received them as yet.

Mr Finch - I would like to see them.

Mrs Hiscutt - Would the member like your amendments sent around now?

Mr DEAN - Yes. They can be distributed. That would be good. Thank you.

We have had a consorting bill in place for a long time.

Ms Rattray - Eighty-four years.

Mr DEAN - As the member for McIntyre said, since 1935 and I do not think it was a later insertion into there. It was there when it was first brought out, but is clearly antiquated. This current bill repeals that legislation and we start over again with this bill.

It was mentioned this morning during one of the briefings, while the consorting bill had been used - in fact, I used it myself when I was a detective - in the last two or three decades it has not been because it is antiquated and needs revision.

Mr Valentine - Is the person still in prison?

Mr DEAN - I do not think so.

This is another reason I have continually asked for a rewrite of the Police Offences Act 1935. Many of its sections are outdated and look quite silly. The consorting section is not the only one - language offences and so on no longer apply. We need to address this with a current, contemporary piece of legislation.

I was a member of a consorting squad in New South Wales for a time. I was seconded to the squad as a detective when I was at Devonport. At the time the squad was under the command of the infamous Roger Rogerson. Most people in this place would have heard the name. An infamous character indeed who will die -

Ms Rattray - A whole TV program on Roger Rogerson.

Mr DEAN - He is an infamous character who will die in jail, doing time for one of the murders he was caught for. When I look back at that time and taking into consideration some of the activity witnessed and was part of through association with the New South Wales Consorting and Licensing Squad, Roger's following criminal activities did not surprise me. Murder did not surprise me. The squad would take over restaurants; it would take over dens of iniquity, move people out, take over and pay for nothing. It was certainly a strange squad.

I was reading an article in the *Examiner* on 20 September 2018, in which the Australian Lawyers Alliance stated that some outlaw motorcycle gangs had told them that up to 97 per cent of their members would not be affected by these new consorting laws if they were enacted. If that is the case, why would the OMCGs be afraid of this legislation? If what some of them tell me is right, that any member involved in serious crime is decoloured, has their colours removed, defrocked, whatever you like to say, and kicked out of the club, why would they not welcome the legislation? It will help them keep their club clean and of good repute. I am not quite sure why we would have that. Maybe the 97 per cent just might not be right, particularly with some OMCGs.

I note with interest the Lawyers Alliance opening statement on who they are. I thank them for the briefing this morning. I thank all other personnel for their briefings on this bill. They have satisfied a lot of questions and problems I had with it.

The opening statement in the Lawyers Alliance document provided to us says -

> The Australian Lawyers Alliance (**ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

Nowhere does it say that they have a position on making the community safer, protecting victims or the rights of victims, or supporting laws that will provide safer communities. I would have thought it ought to be.

Mr Valentine - You might find that it is the next time they make a submission.

Mr DEAN - Maybe. I would advise them that we need some equality in the position. Sure, the alleged crook's rights need to be protected, but the safety, welfare, livelihood and lives of other people and the protection of law and order come first. That is my view. If we have good laws, we will have fewer victims. If you are acting lawfully, have acted lawfully and are doing the right thing, you need not fear this law should it become law.

Item (5) of the Lawyers Alliance document says -

> The proposed law, in its definition of 'convicted offenders', is so wide that it will be ripe for abuse, as has occurred in other Australian jurisdictions.

We were told in the briefings that a great deal of effort was put into it in the initial stages. Many things have changed since it was first enacted in some of those other states.

Item (6) says -

> The proposed law risks bringing the Magistrates Court of Tasmania into disrepute by the foisting upon the court [of] a sham-jurisdictional process.

I raised that in the briefing this morning, and we were told this brief/bill/draft had been sent out to magistrates, judges or a number of organisations for comment. Had these documents had issues or problems, I think we would have at least heard from these other people. As I said this morning, because we have not received anything back does not necessarily mean they support the bill, but it does indicate they do not foresee any real issues or problems with the bill.

I thank the Australian Lawyers Alliance for what they have done - they put a lot of work into this and put through another bill for our consideration. I have considered the bill, but I have issues with it. In fairness to them, this is a workable bill. They have put a lot of work into it, which should be recognised.

Ms Forrest - They did not suggest it was the solution?

Mr DEAN - No, in the briefing this morning they did not, as was well put by their spokesperson. It was interesting they did not see this as the real answer, but as another option that could have been considered.

The Tasmanian Law Society does not support the bill. I refer to the submission from the Tasmanian Bar. We were given an exceptionally good briefing this morning by Chris Gunson, which covered many points and areas within the bill. It was extremely well done and I thank Mr Gunson for his presentation this morning. He pointed out issues for us; I might refer to one or two of those in a moment when I look at the briefing.

I do not disagree with their observations regarding some of the issues they raised in the written document. They raised the issue of the serious offence. I was concerned shop stealing or smoking

a joint could be a part of the whole process if everything else came together under this legislation. The explanation given this morning satisfied me to some extent that it probably ought to be in there. We talked about the shop stealing gangs. If we read what is going on around the state at the present, police have put concentrated efforts into preventing the shop stealing currently occurring. It is being done on a huge scale. When I was in the consorting squad in Sydney, we raided a house in relation to shop stealing and recovered nearly half a million dollars' worth of stolen property from businesses and recovered several hundred thousand dollars in money. I am satisfied this ought to cover some of those things.

Marijuana smoking ought to be there. It is a policy that police will not charge anybody with smoking cannabis unless they have been given three previous cautions or warnings in relation to that. The police could charge them with the first one if they wanted to. As we were told this morning, this can lead to bigger and better things.

Ms Rattray - I would not suggest better.

Mr DEAN - Bigger and worse things. I mean it in that context. You are right; it probably was not the right word.

Drug traffickers are always on the lookout for people they think will become involved in their activities, usually vulnerable people. Probably a younger person.

This morning I raised a point about foster-parents. I am reasonably satisfied with the explanation provided by police. My point is that in this definition a foster-parent in some situations plays an almost identical role to that of a parent. Some foster-parents have children from close to birth right through to age 18. There is a defence for the protection of parents and siblings, but some foster-parents play an almost identical role.

There were eight people in my family. It was a big family yet we had two other people take up residence with us. That made topping and tailing in the beds interesting. There were only two girls in the team. They had their bedroom and the rest of us had the other one.

Ms Rattray - Plenty of room.

Mr DEAN - One of those two was not related, but was brought up by my family. Protections are not there for those circumstances; however, the police told us today they would use their discretion and sort it out. Police do that all the time, so it is unlikely they would jump in and take action unless it was an extremely serious case.

I support the objectives of this bill to deter convicted offenders from establishing, maintaining and expanding criminal networks. All of this must go together in this process. There is more to it than just a person who has committed a serious offence talking to another person who has committed a serious offence.

One of my amendments, which was raised by the member for Mersey this morning, concerns the word 'habitually'. It is the wrong use of the word in this bill. The dictionary definition of 'habitually' is 'constant', 'regular,' 'as a habit' and so on. I cannot see where consorting with somebody on two occasions in five years - say, in the first year and then in the fourth year - could satisfy the word 'habitually'. My amendment removes 'habitually' from clause 5, proposed section 20C(1) and (2). It will not weaken the legislation. I do not believe, contrary to what we were told

this morning, that it strengthens it either. I will explain that more when we get to the Committee stage and I get that opportunity to do so.

My other amendment relates to what I think was an oversight.

Sitting suspended from 1 p.m. to 2.30 p.m.

POLICE OFFENCES AMENDMENT (CONSORTING) BILL 2018 (No. 37)

Second Reading

Resumed from above.

[2.32 p.m.]

Mr DEAN (Windermere) - Mr President, my second amendment has been circulated to members. This amendment relates to the requirement of the commissioned officer providing the written notice or warning to the subject to advise that person of their right to appeal the situation for a review to the Commissioner of Police.

As I said in the briefings, built into this legislation are greater opportunities for the protection of individuals who might fall under this legislation. The warnings in this legislation are important because not only does a commissioned officer have to be involved in this process, but the constable also has to satisfy the commissioned officer that their evidence is strong enough for a warning to be issued. If my amendment gets up, advice will then have to be given to that person so they can appeal to the Commissioner of Police. The next step is that the Commissioner of Police will delegate a more senior officer than the commissioned officer who issued the order in the first place. That person then goes through a process to be satisfied the warning being issued is realistic. An appeal to a magistrate must also be advised in writing to the subject at the time.

That last step takes it outside of the police, which is necessary. During discussions on the insignia bill we talked about having someone outside of the police and the processes these people had to go through. I have the greatest respect for police, but people can rightly feel concerned if all the processes are dealt with by police. It gives people comfort when an outside person of experience and expert knowledge, such as a magistrate, becomes involved in the process.

The protection of information and intelligence in the process before a magistrate has been referred to in the briefings. People who do not understand how police operate and the information and evidence they need to proceed against people might find it difficult to understand why information should be withheld from an offender or suspect, or, as in this case, a person who has been warned or cautioned. Some information must be privileged and kept in confidence. Police depend on the information they receive from other people. If that information is not protected, these people will not come forward because they feel at risk of repercussion.

I recall a case before the criminal court in Hobart in which I was challenged on very serious charges on information I had received. The lawyer pressured me in the court to divulge the information I had received. It went on for some time. I was becoming very upset because I had indicated in the right and respectful way to the court that if I divulged that information it would put a person in jeopardy and the information would not likely come forward to police. I almost stated

that to protect my informant I would probably go to jail if I were held in contempt of the court. There is a need to protect informants.

Mr Gaffney - How do you strike a relationship with most informants? Do they work within the criminal organisation as well or are they just associated?

Mr DEAN - Towards the end of my time informants needed to be registered to make sure everything was right, fair and reasonable. I think that registration still applies. Maybe the Leader might be able to answer. It is a good process. People come forward for a number of reasons. A classic case is where a person knows another person has committed a serious crime - they will normally speak to a police officer they know and trust. Police officers, particularly detectives, have a good idea what is happening in the criminal world and they nurture certain people. I had a number of very good informants who used to come forward. They can receive monetary gain, although there are other ways of assisting these people.

Mr Gaffney - Do you ever have minor criminals being informants against major criminals? What is the relationship?

Mr DEAN - On many occasions, offenders come forward and give information in relation to other issues. Sometimes it might be to protect their area. But, yes, that happens, and is a regular occurrence.

Mr Gaffney - Do you think with this legislation that there is a chance an informant might not point out what is happening with somebody higher up the food chain because they will be concerned they might get a note saying they cannot consort with that person? The police might be actually getting rid of some of their informants saying, 'You are not allowed to consort with a known criminal.' Is this an issue?

Mr DEAN - That is a good point and it could happen. The police would assess the situation very clearly and weigh up whether the information is vital and good evidence. If they need it and have been tracking a matter for a long time, they would use discretion. They might not even mention it to the informant. Instead of saying they would commence an action against them under the consorting legislation, they would simply say, 'No, thank you very much for what you have done. We will move with the information, and use it'. That is more likely to happen.

That is not to say that all the information from these people is absolutely accurate, as the Australian Lawyers Alliance said this morning. Occasionally it is not absolutely right. In fact, I have had that happen, as has every police officer or detective. However, if you treat people with respect, most will give you fairly accurate information.

The first briefing was on 20 September. I appreciate all these briefings. The police made it clear it was fair and reasonable for people in a community to have balanced safeguards built into legislation. That is what has happened with this legislation, although similar safeguards have not been built into other legislation.

Within the last few weeks we have been told of the Nomads setting up in this state. We need to do everything possible to ensure the police have the tools they need to stop these people from becoming the criminals of the future in this state as they are setting up for this purpose. We need this legislation as it is a strong part of that.

We were told about the New South Wales legislation and given figures for that state and South Australia. In New South Wales, from 2012 through to the present time, 513 people were warned in that state - I think I have that right; the Leader will probably correct me if I am wrong - and 91 persons were charged with consorting, with 64 convicted. Of those 64, 13 were found guilty - these might be additional, but I think they part of those 64 - but no penalties were applied. That happens. A court can find a charge is proven but elect, for whatever reasons, not to provide a penalty or take some other action. There were six not guilty pleas and nine were withdrawn.

I do not think it is right to say that the legislation in the other states has not been successful at all on the information and evidence we have been given. We were told that South Australia, in the time its legislation has been in existence, had issued 500 cautions with no charges preferred, as I understand it. That indicates to me that it is very successful and the cautions issued had an effect. One can say that many crimes probably did not occur as a result of action taken by police to break up those relationships and change that behaviour. As Assistant Commissioner of Police Frame told us this morning, it is about breaking up that behaviour.

One could probably say that is a demonstration of the success of this legislation. If that is so, we should also look at the number of victims they might have saved as well in the circumstances.

This legislation was modelled on the New South Wales legislation, we were told, because that was seen as good legislation that has been tested in court. We were told about the tests in the court and the fact it was found to be constitutional. Our legislation, to some extent, mirrors that legislation.

We were told about the Ombudsman's report and recommendations - or some of those - being implemented in our legislation, to inform us as well.

During the briefing, members might recall, some evidence was given about the need to protect intelligence. Warrants were referred to, where a police officer can go to a justice of the peace to get a warrant to search a person or to arrest persons in certain circumstances. The police officer must be able to convince the justice of the peace, as the member for Launceston and any other JPs we have here would know, that there is evidence to support the issues in relation to which they are seeking the warrant. When that warrant is put into place and executed, there is no requirement of police to provide to that person the reasons the warrant was issued in the first place or the intelligence around it. They would normally give them a bit of an idea of what is going on, but they do not have to and would not provide all the intelligence around it.

Ms Armitage - You mentioned the justice of the peace. It is good that your name is not now on the sheet they give to the alleged defendant, as it used to be. Now it is on the sheet the police keep, which is certainly an improvement.

Mr DEAN - That is a sensible change. You can imagine some of these very vicious criminals have no compunction at all about carrying out acts of violence and retribution.

Ms Armitage - We are concerned about signing for some of them.

Mr DEAN - There is a need to protect people. That is a good point. We are protecting justices of the peace in relation to what they have done. There is a need to protect others. The member for Launceston has made a good point about that. There is a very strong reason for protecting informants and other intelligence.

I thank those members for the briefing this morning. I thought the briefings were well done. The Australian Lawyers Alliance's presentation was colourful and passionate. There is nothing wrong with that and I appreciate it.

I thought the briefing from Shaun Kelly was well done also. Shaun raised a number of interesting points that were worthy of consideration. One point he made was about making it easier to catch these people. That is not quite right, as we said in the briefing, but this is how many people understand this legislation. I spoke to some people at Waverley on Monday and their comment was, 'This is going to make it easier for the coppers.' I said, 'What do you mean it'll make it easier for the coppers?' They indicated the shop at Waverley; I think Shaun mentioned that shop.

Ms Rattray - The one and only shop.

Mr DEAN - That is true, it is the only shop. The person at Waverley I was talking to said, 'All the coppers have to do is wait down at the Waverley shop until I walk in'. This person has a criminal conviction. He regretted it and has moved on, but he has a criminal conviction that could put him into this position.

Ms Armitage - It should not be held against him if he has served his time.

Mr DEAN - No, it would not be. As I said, police would use their discretion. We should never forget that. He was saying he would not be able to meet his mate down there who also had a conviction. I am not quite sure what that was for; I think it was for assault or something. I said, 'Well, no, it is not quite like that. Other things have to go with it to constitute that,' I said, 'and that is not what this is about.'

People do not quite have it right in many instances. It is hard for us at times even with all the briefings we are given to get a full grasp of exactly what the situation is. It is important we have these briefings.

As the assistant commissioner said this morning, it is about changing behaviour. The legislation is there for that purpose, not to make it easier for police to charge somebody.

Having said that, I will be supporting the legislation. It is quite good legislation; however, I have foreshadowed a couple of amendments, and I understand some other amendments will be coming forward as well.

[2.53 p.m.]

Mr GAFFNEY (Mersey) - Mr President, I also thank the Leader for organising the briefings, especially the one I requested earlier on. It was good to have that.

It does not surprise me that we have another bill tabled this week as part of the Government's 'tough on crime' agenda, nor will it come as a surprise to hear that, as with the prohibited insignia bill, I do not intend to support this legislation at this stage.

I am, however, looking forward to hearing contributions from my fellow members and to debate the amendments being proposed.

I have a number of concerns regarding the Police Offences Amendment (Consorting) Bill 2018, which I will now detail.

The key consideration for me when assessing new legislation is to review it at length and determine whether a bill can realistically be expected to achieve its stated intention.

I definitely do not want or wish to detract from the hard work of Tasmania Police in expressing my concerns regarding this bill, nor do I wish to underplay the threat organised crime poses to individuals and the community, but plainly I do not believe the impact of this bill is reasonable and proportionate to the issue it purports to resolve.

The Leader stated in the second reading speech -

> The fact that these groups are organised, hierarchical 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.
>
> Modern consorting legislation is an important crime-fighting tool to break down the networks and fabric of organised criminal syndicates and criminal gangs.

I concur with the Leader's remarks regarding the difficulty in stopping organised crime. The issue with this bill, however, is that in attempting to achieve one thing, it will impact on other rights that as a society we believe are important. In his letter of reply to Civil Liberties Australia the Premier stated his commitment to the protection of rights enshrined in the constitution and in the common law. In particular the Premier cited the freedom of religion, the right to vote, the protection against the acquisition of property on just terms and the prohibition of discrimination on the basis of state residency. Aside from the Government's introduction of this legislation contradicting such a stated commitment to maintaining our liberties, the Premier's position fails to account for how simply and rapidly parliament can extinguish our rights.

We heard this morning from the Tasmanian Bar that with regard to common law rights this is quite easy. I am speaking about the freedom of individuals to associate with whom they please. It can be argued that it is prudent to be wary of laws that curtail liberty in exchange for public safety. The fact that our freedoms are not enshrined in a bill of rights means that this parliament should always exercise caution when enacting laws that may impinge those freedoms we hold dear.

As I alluded to earlier, one of the most fundamental of our liberties that this bill encroaches on is freedom of association. I am aware there is no constitutionally enshrined right to free speech in this country, but we do have an implied freedom of political communication. In its submission, the Australian Lawyers Alliance has rather eloquently explained the importance of the implied freedom. It says -

> The content of 'political communication' necessarily involves association, communication and organisation, because these are the things critical to formation of voting blocs. Protest is also … a necessary part of political

> communication, as is the right to resist cooperation with government, where law allows choice.

These are all essential democratic functions that should not be taken for granted, nor should they be compromised with restrictive legislation. It would be understandable that those who may likely be subject to this bill may wish to engage in some of these activities in order to oppose it. Ironically, and this is a concern I share with ALA, the legislation could then be used to extinguish the ability of those who seek to oppose it.

Such individuals will not be able to associate, communicate or organise voting blocs if they have been warned under this legislation. It has also been pointed out by the community legal centres of Tasmania that freedom of association is recognised in the International Covenant on Civil and Political Rights, to which Australia is a signatory. Mr Richard Griggs of Civil Liberties Australia provided us with the following quote from Alexis de Tocqueville, who said in his 1835 work *Democracy in America* -

> The freedom most natural to man, after the freedom to act alone, is the freedom to combine his efforts and those of his fellow man and to act in common … The legislator cannot wish to destroy it without attacking society itself.

I consider this to be a simple yet eloquent statement of the importance of freedom of association to society. I must ask in light of Richard Griggs's commentary regarding the Victorian Consorting laws, and from the sentiments of the Australian Lawyers Alliance, 'Why is it not possible to enact these laws in a way which does not encroach on freedom of association?' The Leader may also like to answer the following questions raised by Mr Griggs -

(1) What precisely does it mean to prevent a criminal network and how much broader is this than preventing commission of an offence;

(2) Was the Victorian model and wording of 124D of the Criminal Organisations Control Act of 2012 considered? If not, why not? If so, why was it not adopted?

For the record, could the Leader answer the following questions as raised in briefings? Would environmentalists, union members or members of community groups who may be specifically targeting a legitimate enterprise to interrupt, delay its activity or progress and cost it money, constitute a network? Many of these individuals are generally law-abiding, but may habitually consort to engage in the organisation of an indictable activity. Could those individuals fall foul of this legislation?

I will outline some of my concerns regarding the way this bill is drafted. The term 'serious offence' in proposed section 20A is too broad, particularly in the sense it includes indictable offences tried summarily. Some of these offences are not of the kind most people would consider serious. An example would be where a young person shoplifts and subsequently reforms their behaviour. In theory, this legislation could be used against this person later in life. We are a society that gives people second chances.

Secondly, the definition of 'habitually consort' in proposed section 20C(2) is too easy to fail. It simply requires consorting on at least two occasions in a five-year period. This is a concern shared by the Tasmanian Law Society in its submission. I am not convinced in a definitional sense that two occasions in five years could be regarded as 'habitual'.

Additionally, concerns have been raised by the Australian Lawyers Alliance regarding the institutional integrity of the Tasmanian Magistrates Court being undermined by this legislation. Of particular concern to the ALA is proposed section 20E(5), which states -

> the Magistrates Court (Administrative Appeals Division) -
>
> (a) is to ensure it does not, in the reasons for its decision or otherwise, disclose the existence or content of any criminal intelligence report or other criminal information ...

The removal of an obligation to give reasons may in some instances naturally undermine the integrity of the court. Giving reasons is a key judicial function. The Australian Lawyers Alliance spokesperson this morning highlighted the concern it is difficult to defend yourself if you do not know what the accusation or the evidence is against you. The Australian Lawyers Alliance said we should be concerned about the closing off of courts, as it will undermine public confidence. I share this concern, together with the lack of safeguards.

Another general point is the bill relies on the continued goodwill of police officers to prevent the powers it confers being abused. This is particularly the case given the limitations the bill places on the review process. A constituent expressed his concerns in this area as follows -

> The largest issue I have is that this bill requires us to accept police will use their authority competently and in a non-malicious manner while tending to discredit the professional judgement of magistrates by significantly curtailing their powers of review.
>
> I personally find it very hard to accept that police can be trusted to do the right thing in regards to consorting bans if magistrates can not also be trusted under the legislation with their own discretion on matters relating to the appeal.
>
> I find this a glaring, logical inconsistency within the legislation that needs rectifying.

I note the impact this bill might have on Indigenous Tasmanians. Community Legal Centres Tasmania pointed to the NSW Ombudsman's report, which found the NSW legislation disproportionately impacted Indigenous peoples, with approximately 40 per cent of those subjected to the consorting provisions being Indigenous. This is despite Indigenous peoples making up approximately 2.5 per cent of the NSW population. This was attributed to the NSW legislation's failure to recognise Aboriginal kinship ties are broader than our own.

This bill undermines principles of criminal justice. I stated earlier that we are a society that gives people second chances. A key aspect of imprisonment is the deprivation of liberty as a form of punishment - both the offender's movement and ability to associate are drastically reduced while serving their sentence. It follows that once an offender is released from prison, these liberties are returned to them. By curtailing the offender's freedom of association following release, this bill continues the punishment of the offender after their sentence has been served. When prisoners are released and perhaps make an effort to meet new people and start afresh, this legislation may cause people to withdraw themselves from ex-prisoner contact if they believe they will attract the scrutiny of local police.

For some individuals released from prison after serving their time, it may be difficult to strike up friendships and social network. Many members of their support groups may be still in prison or soon to be released. Social isolation is one of the main factors that lead to a raft of social problems and ills within our community.

Community Legal Centres Tasmania has also expressed concern that this bill defies the presumption of innocence, and may result in situations where otherwise innocent people may be implicated in criminal activity by association.

My final point relates to potential exemptions under the bill. Given the broad nature of the provisions, it is clear there will be instances where exceptions must be made. With regard to transitional crisis or emergency accommodation, Community Legal Centres Tasmania submitted the following -

> Finally, the Bill currently fails to recognise circumstances in which persons may be housed in temporary or emergency accommodation. Shelters for the homeless and emergency accommodation for victims of family violence should be exempt from the Bill to ensure that disadvantaged and vulnerable persons are not further marginalised.

Could the Leader advise whether the Government has considered the concerns raised by the Community Legal Centres? If so, what has it done to address that concern? I am sure other possible exemptions will be suggested as this debate progresses.

To conclude, my objection to this bill does not arise out of an unfounded sympathy for criminals. Likewise it does not surface from a lack of sympathy for victims of crime. My objection arises from my recognition of the fundamental rights of every human being and the need to balance these rights with law and order. The preservation of our liberties depends on the will of people in buildings such as this one to ensure we maintain them. It is therefore critical that caution is exercised when dealing with any legislation that attempts to curtail our liberties. For these reasons I will not be supporting the bill.

[3.07 p.m.]

Ms RATTRAY (McIntyre) - Mr President, I am willing to support the bill into the Committee stage. There will be amendments that, if they pass the House, will make the bill more palatable to me. Depending on where those amendments go is where I will place my support at the end.

This has been a challenging bill. Only a few weeks ago we also faced a challenging bill. Unfortunately that bill pointed the finger at outlaw motorcycle groups. In the briefing this morning we were asked how many of us knew what outlaw motorcycle gangs had been charged under criminal gang legislation. The answer was: there were not any.

I said to the police that the first few lines in the Leader's second reading speech pointing the finger at outlaw motorcycle gangs should have been left out. Criminal gangs are not always outlaw motorcycle gangs. Other people are involved, and they do not necessarily belong to a motorcycle club.

Ms Armitage - Can the Leader say whether outlaw motorcycle gang members riding together could be caught up in this, if they are just out for a ride?

Ms RATTRAY - That is something the Leader addressed in her second reading speech, which said that the Police Offences Act 1935 had included consorting aspects for the last 84 years. The member for Windermere, who has quite a history of expertise when it comes to policing, indicated he had used the consorting laws at a previous time.

When I first addressed this bill and the principle of it, I thought, 'We already have these laws in place, so why would we not take the opportunity to modernise them?' That is the question when we are dealing with a bill particularly to amend legislation like that. This was my starting point and as I worked through some of the valid issues raised.

I struggled to work through the serious and minor offences. If you have been charged with a minor offence, this stays with you forever. I appreciated the suggestion this morning that this should have a time frame. If somebody spent time away from the state and then came back, possibly you would need to use the time frame; in a serious criminal offence, if they had spent time in Risdon Prison and then went back into the community, possibly the time frame should not apply either.

It is difficult to try to distinguish between where something is going to work and whether it is not going to work. Once you start trying to put in and take out, it becomes confusing and complex. The keep-it-simple approach is usually the best option.

Mr Dean - As the President said this morning, there is legislation dealing with this now. With the right legislation, it cannot be used in certain circumstances beyond a certain age and then there is discretion for the police and all the convictions.

Ms RATTRAY - Thank you, member for Windermere. This leads me to an email we received recently at 2.49 p.m. from somebody who presented this morning. This email makes a good point, and we would have to make a judgment about whether we support this legislation into the Committee stage. The second dot point of the email reads -

- A lot of faith is being placed in the police to use discretion correctly in deciding not to issue a warning and in deciding not to prosecute. Parliament should pass the laws that do not depend on faith in particular office holders. Checks and balances exist because there may come a point when discretion is not correctly exercised.

It goes on to say -

> The definition of serious offence is hopelessly broad. On a single night for instance, police could issue official warnings to probably every single person in a homeless shelters or in housing commission locations such as Stainforth Court.

I do not know the place.

> This is an extraordinary level of power to be given to police when the case for this tool being needed has scarcely been made.

Mr Dean - Just on that point - it has to get through four levels: the police officer at the bottom, then the commissioned officer, then the next higher officer delegated by the commissioner, and then the magistrate.

Ms RATTRAY - The first line was interesting -

> A lot of faith is being placed in the police to use discretion correctly in deciding not to issue a warning and in deciding not to prosecute.

We put a lot of faith in our police officers and 99.9 per cent of the time they do us justice in putting our faith in what they do.

I am not casting aspersions but from time to time things could go south. As a member of this House, am I willing to put my faith in police officers to use their discretion and not be overzealous and not to issue consorting notices willy-nilly? For example, if a young person charged with smoking marijuana then started to hang around with a known trafficker, if I were a family member, I would want them to receive a consorting notice to stay away from that trafficker. As a member of the community that would be a reasonable thing to expect. They are looking out for a younger person who may not be looking out for themselves.

I believe we can put our faith in our police officers because when things go wrong, who do we call? The police. If we do not think we can handle a situation or we feel threatened or we feel unsafe, we call the police. If there is an accident, we call the police. We have been brought up in this society to rely on our police officers to do the right thing.

I appreciate the opportunity to again address that issue because it is a valid one, as is every point made through this process.

Mr Dean - After six o'clock at night when everything else closes down, the police have to work.

Ms RATTRAY - Police and TasNetworks. When the power goes off, it is TasNetworks; when we are in trouble, it is the police.

In regard to serious offences, while there are lower level offences in these acts, there are also significant offences such as trafficking and supplying of drugs, manufacturing and cultivation of drugs and precursor chemicals, and carrying of firearms with criminal intent. We have to make sure we cover the whole range of offences here, particularly serious offences that could potentially lure somebody in who may have committed only a minor offence and we do not want them caught up in it. If it is another person on the same level as a serious offence, putting them together, goodness knows, with a fair bit of grog or whatever else goes with it, you do not know what sometimes people can cook up. We want safety for our community.

I have looked at the member for Murchison's amendment that relates to the stay of proceedings. That is quite a complex amendment. It was three pages long, from memory. I believe that will be fleshed out in the Committee stage. I will be very interested to hear from the member about that. That is another area that I will be looking at.

Quite a bit has already been mentioned about the New South Wales Ombudsman. There is that bit of confusion around consorting and being registered as a criminal group. That was clearly articulated by others.

Another area I was keen to explore further is the review of the division. It has been suggested that the Ombudsman is to review the operation of this division. I understand an amendment was

put forward in the other place. It was originally for the minister in the department to review, but there was an amendment in the other place so it is now the Ombudsman. I have some concerns about the Ombudsman, not because he cannot do the work, but because he has no time and no resources - he at this stage; it could be a she in the future. I want to share with members -

Mr Dean - This is one where I think he would delegate to another officer -

Ms RATTRAY - He may delegate, but I need a commitment from the Government about the resources they are given. Perhaps it is something that would be outsourced. This morning I asked what other department or independent statutory body would be able to undertake a review such as this. It was suggested the Integrity Commission would be able to it. I would like the Leader, in her reply to the second reading debate, to clearly articulate why the Ombudsman, not the Integrity Commission, is the office to perform that review role, and also to provide a commitment for resourcing. I certainly do not need it in legislation, but -

Mr Dean - I cannot see where it would fall under the Integrity Commission Act.

Ms RATTRAY - That is exactly what was said to me. Because I have asked the question, I would like the answer placed on the record.

Mr Dean - I would be surprised if it did. It is not an integrity issue.

Ms RATTRAY - I am looking for the email that I received this morning. If I cannot find it, I am happy to wing it here.

Mr Gaffney - Which one was it?

Ms RATTRAY - It only came to me. It was something aside from this bill, but it was in regard to the work of the Ombudsman undertaking reviews. This person has been told that it is a 408-day wait for the Ombudsman to undertake a review.

Mr Dean - I am waiting for one, and it would be almost 400 days now.

Ms RATTRAY - That is probably why it is 408, yours is included. That does not give me a lot of confidence that a review of the operation of this division could be completed within four years after the commencement. I need clarity on that. We must be confident that if this legislation passes the House with the amendments proposed by members, particularly the member for Murchison, that the checks and balances are in place. That was the message Chris Gunson left with me at this morning's presentation. We have to decide whether the checks and balances are good enough not to impinge on people's rights while protecting our community. I believe the member for Murchison's amendment does that.

I also note that the email we received, which I just quoted from, says-

> Whilst the Forrest amendments probably cure the constitutional issues, they still will result in a court not providing key information to a party. A court cannot know how important the information is to the party without hearing from them.

People see that as a sticking point. The other side of the argument, where information provided to police needs to be protected, is where we are trying to get the balance.

This piece of legislation impinges on civil liberties. However, we have a lot of impinging on civil liberties - you cannot carry alcohol in public, you have to wear a seatbelt, you must stick to the speed limit.

I do not have a lot more to add. There will be an extensive debate through the Committee stage in regard to the amendments. I will be interested in the arguments for the member for Windermere's amendment to 'habitually'. It will be explored during the debate, should it get into Committee.

Mr Valentine - Committee stage.

Ms Rattray - That is what I am trying to say, thank you. We received some information today from a young gentleman who wrote to me after I was appointed to the seat of McIntyre and told me I should resign immediately. We are lucky in this country we can say what we think, and I am still happy to take on board the information he has provided to me today.

Mr Valentine - Did you say that you would take it on notice?

Ms RATTRAY - I can take it on board. It is around the processes of the warnings and countersigning by a justice of the peace. The member for Launceston, by interjection, said no longer is a justice of the peace named on -

Ms Armitage - Your name is no longer on the sheet given to the person on the search warrant.

Ms RATTRAY - This young gentleman shared with me -

> Having a Justice of the Peace countersign the warning notice would decrease the possibility that problematic consorting bans are issued. Such a measure should require that police present relevant evidence regarding criminal networks to a Justice of the Peace in a similar manner as they would for a warrant.

This has been suggested; he goes on to say -

> This would be an important safeguard, as it should reduce the risk of misuse of the consorting ban. Since the ban cannot be stayed by the Magistrates Court -

That will be addressed in the member for Murchison's amendment.

Ms Armitage - Justices of the peace would be harder to find of a weekend and daytime if their name were actually to be countersigned -

Ms RATTRAY - Possibly they would be. The young gentleman's information continues -

> … a poorly-considered ban could be in place for some time before a hearing occurs and is able to set aside the ban. However, this could be avoided with the requirement that a Justice of the Peace countersign the ban. The independent assessment of the Justice of the Peace would provide a safeguard against the issue of poorly-considered warning notices.

It goes on with a number of other matters. This young gentleman has certainly taken some time to look at this piece of legislation. I thank him and expect he will be very interested in what

happens. I looked at his conclusion but there is nothing; it only said to contact him if I needed to. I have already responded a couple of times to his emails so, again, thank you.

Something else I have continued to think about it, which has been stressed to us in briefing after briefing, is that before an official warning notice can be issued, the objectives of the legislation must be met, which is to prevent serious criminal activity by deterring convicted offenders from establishing, maintaining or expanding criminal networks. In light of that intent, I am comfortable with proceeding to the Committee stage with my support, but obviously the next stage will depend on what is put up in the way of amendments and supported.

At this time, the only amendments are from the member for Murchison and the member for Windermere. There is possibly another, so we have some more time to consider what other checks and balances are put forward by members who have, as always, addressed in a considered way this and every other legislation before us. I will support this bill into the Committee stage.

[3.35 p.m.]

Ms LOVELL (Rumney) - Mr President, I appreciated listening to the contributions of other members. I think a couple of members are still to contribute; I hope there are because this is proving to be a bill into which people have put a lot of thought. That can only be a good thing.

A lengthy debate on this bill has already been held in the other place. As we said there, Labor supports the intention of the bill, but a couple of still unresolved issues leave us a bit uncomfortable - not comfortable enough to support it as it is.

The member for Murchison has an amendment that I believe will address a significant part of our concern. I will go into more detail about an amendment we will be moving that I circulated in the Chamber a moment ago.

Ms Rattray - Is it in regard to the Indigenous community?

Ms LOVELL - Yes, that is right; that is the one.

A number of other members mentioned that this is a bit of a tricky bill. I agree with that; it is a bit of a tricky bill for me, too, because it is a bill that impinges on people's civil liberties and the right to freely associate with whomever they choose. That is something most of us take for granted and would consider to be a basic human right.

As we heard, we already have laws that impinge on our civil liberties as it is with seatbelts, speed limits and other things. It is always about keeping ourselves and other members of the community safe. As a number of members said, it is about getting the balance right. Whenever we consider a bill that will impinge on our civil liberties, it is important we make sure we achieve the right balance, and that we have the right checks and balances in place to prevent legislation being used in a way it is not intended to be used.

One aspect of this bill that provides us with a great deal comfort in that regard is the inclusion of an objective. That objective of the bill is to -

> … prevent serious criminal activity by deterring convicted offenders from establishing, maintaining and expanding criminal networks.

In itself that objective addresses many of the concerns with this bill brought to us and how it may or may not apply in practice.

The right to appeal through a court is another important aspect of the bill. We are not quite there with that yet, but I believe the amendment from the member for Murchison will get us there, should that be supported by the Council.

The right to appeal a decision imposed on you that impinges on your right to associate with the people whom you may choose to associate with is crucial. Without that appeal process, we would not have considered supporting the bill at all.

A concern yet to be resolved that has not been discussed in any great detail in this Chamber is the definition of 'family member', in particular in relation to the Aboriginal community. An amendment was proposed in the lower House, and that had a lengthy debate. I understand the minister committed to seeking further advice. I acknowledge the work the minister has done in regard to that. As recently as 10 minutes ago we had a conversation about this in the hallway. I said to the minister that I would ask these questions in the debate to ensure they are on the record so that this work can be reflected.

The definition of 'family member' in this bill as it stands is far too narrow in terms of the Aboriginal community and does not align with the Aboriginal definition of what constitutes a family member. The bill fails to take into account the complex family relationships central to the Aboriginal community, their traditions and way of life. While there has been some debate about how that could be addressed, I want to be very clear now that our intention is not to incorporate an Aboriginal definition in the confines of the definition of family already in the bill. This is a concern for the Government. Our intention is to expand that definition to include the broader family relationships that are so critical in the Aboriginal community.

I am pleased that the member for Bass, Ms Houston, is Aboriginal and was present for the debate in the lower House. As the only Aboriginal person in the parliament, she is in a better position than anyone else to advise on -

Mr Valentine - She would not be. There is somebody here that is.

Ms LOVELL - My apologies, in the lower House. She is in the best position in that place to capture what is most appropriate for that community. With the short time frame we have had to consult on this bill, it is important we have input from an Aboriginal person.

The member for Bass, Ms Houston, has had significant input into this amendment. The definition we have landed on is the definition we feel best captures what is needed to be captured to ensure this legislation does not impinge on Aboriginal culture and the way Aboriginal people deal with conflict and issues within their community and within their own families.

The Queensland consorting law includes an extended definition of family that recognises Aboriginal family and kinship and how that differs in Aboriginal culture and tradition. We do not believe the definition in that legislation can be replicated in our own legislation and captured to the same intent because the definition of family in the Queensland consorting laws is much broader than the proposed definition here.

My questions to the Leader are: What is the Government's position in regard to those questions raised in the lower House? What consultation process have you been through?

It is also important to note that this concern was raised by the New South Wales Ombudsman in his review of that consorting legislation. The member for Mersey touched on that in his contribution, in particular the concerning statistics about the over-representation of Aboriginal people in the consorting notices that have been issued.

With those questions and subject to the response from the Government, we will move that amendment in the Committee stage. As the member for McIntyre implied, there will be a lengthy debate to come. I appreciate that members have put a considerable amount of time and thought into their contributions and into amendments. I think we will land on a piece of legislation we can all be comfortable with.

[3:43 p.m.]

Ms ARMITAGE (Launceston) - Mr President, I, too, find this a confronting bill. I accept some parts of it and have concerns with other parts. I will support it into the Committee stage because I look forward to some of the proposed amendments. I thank the Government for the ongoing briefings we have had over the past couple of weeks. It has been very good. The information received this morning from Chris Gunson from the Tasmanian Bar, Tasmania Police and, of course, Shaun Kelly was very good. It was good to hear everyone give their opinions.

Chris Gunson told us this morning that by necessity this bill impinges on civil liberties. However, he pointed out parliaments do this all the time when making laws. As mentioned by other members, we impinge on movement - among a variety of things, you cannot drive when drunk, you cannot drive wherever you want and you have to wear a seatbelt.

As Chris Gunson stated, checks and balances are needed for the necessary impingement of civil liberties to be balanced against the rights of people. The reality of policing today is that police need modern tools to disrupt and destroy criminal organisations or associations. In the mind of the Bar, we were told it is necessary, but that there should not be unintended consequences for people who could be picked up in the system.

The Government has put a requirement in the legislation requiring the Ombudsman to review it. We know the current pressure on the Ombudsman and the amount of time it will take for issues to actual go before the Ombudsman. Chris Gunson said the Integrity Commission Tasmania could look at that area.

A commissioned officer must consider the matter following a constable serving a warning on a person he considers to be consorting. When making the decision to make an official warning, they must be sure it would further disrupt the criminal organisation. I am concerned people must prove innocence rather than the police having to prove them guilty. Following the issue of a warning by the commissioned officer, on appeal it would go to a higher commanding officer or a commissioner, depending on the level of the commissioned officer, and then on to a magistrate.

Chris Gunson advised it can be difficult for a person warned if they are unable to access the evidence held the police. A range of criminal intelligence should be provided to people seeking to review the informants who should be protected.

I have a better understanding and appreciation of this now. I put on the record a question I asked this morning: if two people charged with indictable offences have served their time in prison and are not on parole see each other regularly as friends, but are not necessarily consorting, can they do this without feeling they will get a warning from police who believe they might be members of a motorcycle group?

Ms Rattray - Or not.

Ms ARMITAGE - Or not, but they might be. As mentioned by other members, in some ways motorcycle groups are targeted by this bill. Am I correct that these people may feel they cannot have a BBQ or keep each other company? It might be difficult if they have been friends for a long time and then be warned that, 'If you continue to do this, there will be charges against you and you could go to prison or have a substantial fine if you meet with someone twice within five years.'

I would like to put on the record the answer I received this morning - it will not be the case and police will not target people who have had indictable offences and are not consorting, and they can meet with their friends and comfortably go about their business.

My other question is with regard to the motorcycle groups. This question has been asked of me in the community. Some people undertake criminal activity regardless of whether they are in a motorcycle group. If two or more people in a particular motorcycle group were charged in the past with indictable offences, but have served their time, are they still able to ride, whether it be 20 or 30 on a national ride, without being warned by the police they are not allowed to ride because they might be seen as consorting? That issue was raised with me.

Mrs Hiscutt - To be clear, are you asking are two people -

Ms ARMITAGE - Two or more.

Mrs Hiscutt - For this example, a motorcycle gang -

Ms ARMITAGE - Riding along together -

Mrs Hiscutt - Who have a consorting order against each other, if they are in the gang riding, are they allowed to? Is that what you are saying?

Ms ARMITAGE - I am not saying if they already have a consorting order, no. People are concerned that if they are riding with their friends in a motorcycle group, they will be pulled over because they are not allowed to ride together because they are classed as criminals.

Mrs Hiscutt - They are criminals, but they have no consorting -

Ms ARMITAGE - They have been criminals, but whether they still are, or not, is another matter.

Mrs Hiscutt - But they do not have a consorting order against them. Is that your question?

Ms ARMITAGE - That is the question asked of me. Will they be targeted by police who will say they are consorting because they are all riding together?

Mr Gaffney - It is whether this legislation says they can be targeted by police.

Ms ARMITAGE - Yes.

Mr Gaffney - Not whether the police will actually do that, but under this legislation -

Ms ARMITAGE - Whether it is possible.

Mr Gaffney - Whether it is possible.

Ms ARMITAGE - Most police are great. They have a very hard job to do, but you cannot control everyone and what everyone does. It was also questioned under, I think, proposed section 20C of the bill, whether two criminals playing in the same team could be seen as consorting? How do you get around it? Consorting as a concept is the seeking out of the company of a person. I would like it confirmed that playing on a sporting team, or attending official or semi-official functions afterwards, should not be seen as consorting.

It is normal for people after playing a game to get together for a meal or a few drinks. It is the same after training. It is the camaraderie. I would hate to see -

Ms Rattray - What about Mad Monday?

Ms ARMITAGE - What is Mad Monday?

Ms Rattray - The day after they have played in a grand final.

Mr Finch - Through you, Mr President, recently prisoners were let out of prison to play footy. That is a situation where there would be quite a few in contact with other people.

Ms ARMITAGE - That is my main concern - that people can go about their normal lives. As I said this morning in the briefing, if the member for McInytre and myself were in prison together - I think this morning I mentioned the member for Huon - and we had served our time and we were out, we should feel comfortable we can get together, whether it be every day -

Mrs Hiscutt - I will provide an answer. But, yes, the answer is yes, you can.

Ms ARMITAGE - Without feeling they are targeted.

Mrs Hiscutt - It is a good point.

Ms ARMITAGE - It is one of the real concerns. People need to have that relationship with friends and family. The bill mentions family. As I mentioned this morning in the briefings, you might get two brothers or two sisters or family members consorting criminally as much as you might get a couple of friends.

It was said this morning in another briefing that democracy should be justice, that it was distasteful, but necessary medicine. We need to find that balance in protecting the community and also protecting the rights of people.

Shaun Kelly said today that 75 per cent of people spoken to believe if it was only an indictable offence, it would not affect as many people. He was concerned with the theft, the $5000 not being indictable, but once you are over $5000, it being an indictable offence. He also mentioned the firearms. Leader, it would be good if in your summing up you could address some of the issues mentioned this morning about a farmer dropping a shell in the car found by police. I remember when we debated the firearms bill, I mentioned that when my mother passed away, I found a heap of bullets at her home because her second husband had been a shooter. I was extremely nervous about packaging those bullets up and taking them down to the police station, thinking I had to get them there as soon as possible and hoping I did not drop one in the car somewhere. I could remember the charges you could have from the police pulling you over for a random breath test and finding a bullet in your car - things as simple as that.

While I understand it is not intended the police will act in that way, as the member for Mersey says, we have to ensure they cannot act in that way.

This morning the possibility of neighbours and friends having charges was also mentioned. I accept that much of the worry around this bill is more fear of what could happen rather than of what realistically is likely to happen. There is also the fact that people are not aware that legislation has been in place since -

Ms Rattray - Eighty-four years.

Ms ARMITAGE - For 84 years, since 1935. I am quite sure not many people are aware that legislation has been in place. I will pass this legislation into Committee. I have concerns with the bill as it is, but I believe many of the amendments will put some more safeguards into the legislation. I look forward to the debate in Committee on the amendments.

[3.58 p.m.]

Mr FINCH (Rosevears) - Mr President, considering the slowness of the last opportunity to get up, I had better get up because I might miss the call.

This is a tough one. When we started on the prohibited insignia bill and I found my way clear to support that, the warning was, 'Yes, but wait for the consorting bill to come through; that is going to be trickier'. So it was with some interest that I waited for this bill to come forward and for information to enlighten us to come to us.

When we had the first briefing from Assistant Commissioner Frame, David Agnew - I am not sure of his title - from New South Wales, and Mr Keane, I was enlightened. I thought it was a good briefing. I thought, 'Right, this is what it is all about; this is okay. What was the problem worrying them about the consorting laws? It is not an issue.' We were told it was about repealing the old legislation. The impact of organised crime is growing, and this is broader and about criminals. This will be a criminal-to-criminal situation. It is based on New South Wales legislation, which has been challenged. It is constitutional - that was the assurance. It was successful. The New South Wales Ombudsman did a big investigation in 2016.

This legislation is to make sure it is fair and reasonable for the community; it is not only about bikies. It was highlighted that the Nomads had moved into Tasmania - which we have to be concerned about. That is my bit. With that group and its history of violence, we heard about organised crime and drugs et cetera - a name was given and linked to the Nomads. The police have had two years to prepare, so the understanding from the briefing was this has not been rushed. They

have given plenty of time to think about this - two years in preparation and all states updated. I am not sure if they mean all the states updated their legislation. I am getting some nods from over there, so all states have updated their legislation.

This legislation is tighter and stricter. The beauty we have in Tasmania is that we are able to a look at what has occurred in other states and tailor it to suit what we need in Tasmania. I am as comfortable as anything. The note I have made says that it is tighter and stricter.

Warnings must be in writing - at least a police officer of 30 years experience, a commissioned officer or an inspector and above will actually be part of the process. The process has to meet the objectives of the bill.

Page 7 - I must be on the briefing notes we received - trying to cut out organised gangs or networks is a good thing. Serve the notice, then they can appeal to the commander or the commissioner. Operational and administrative decisions - I am not sure what that was in connection with.

The warning lasts for five years. Glen Frame stressed this is very time-consuming for police and you can understand why they are not going to run round handing out these warnings willy-nilly because it is a good thing to do. They have other things on their mind and do not have the resources to waste on something bordering on frivolous to overdo this opportunity.

The Solicitor-General advised this legislation is sound. Police will be happy with the review process. The New South Wales Ombudsman reviewed the process after three years. This is the line Mr Frame talked about as time, effort and resources are not available to police to be overt about this. They will not be issuing many of these. There was also talk about the Bandidos expanding into Tasmania.

From those notes I took and from listening to what was presented to us - from Mr Frame, Mr Keane and from our chap from New South Wales - I am quite relaxed about the bill.

Mr Dean - It is a pity we had not dealt with it just after the briefing.

Mr FINCH - However, I have pursued other information, particularly with my legal person who gives me advice. I think how unfortunate it is, Mr President, that you are not able to join in this debate; with your vast experience of the court processes and the legal processes, we have not the benefit of hearing your prognostication on this bill and how it will have impact in the court process. That would have been helpful. Of course we can privately consult with you but -

Ms Rattray - Some of us may well have done that.

Mr FINCH - Members may very well have done that; why did I not think of that earlier? I did take my own legal advice and I hope that will give members some idea of my concerns now. This is the advice that came to me; I will then refer to what we heard today, which was also not entirely positive -

> The consultation period for this critical Bill has been abysmal. Yes, a discussion paper was circulated but meaningful analysis can't take place without knowing the exact legislative form. The Bill was debated in the lower house 2 days after it was tabled and is being debated by the upper house a mere week later. Without

> any disrespect to the members, unless the precise effect of the amendments that have been proposed are made clear, there is the real risk of irreparable harm to the community. This is the kind of thing that should have seen consultation from the Tasmanian Law Reform Institute, which is the body best placed to judge the real-world effects of laws of this kind.

To digress, I do get the sense that there is some uncertainty about aspects of this bill. Further advice could have been helpful -

> A lot of faith is being placed in the police to use discretion correctly in deciding not to issue a warning and in deciding not to prosecute. Parliament should pass laws that do not depend on faith, in particular office holders; checks and balances exist because there may come a point when discretion is not correctly exercised.

I made that point during the briefing as well -

> The definition of 'serious offence' is hopelessly broad. On a single night, for instance, police could issue official warnings to probably every single person in homeless shelters or in housing commission locations such as Stainforth Court. This is an extraordinary level of power to be given to police when the case for this tool being needed has scarcely been made.
>
> Whilst the Forrest amendments would probably cure the constitutional issues, they still will result in a court not providing key information to a party. A court cannot know how important the information is to the party without hearing from them. In practice, every time an informant says he or she is at risk of harm, in the absence of contrary evidence, the court will need to side with protecting that informant. The risk, therefore, is that the Forrest amendments will achieve nothing. The police arguments that when warrants are obtained there is no disclosure is irrelevant. Warrants are not granted through a judicial process but an administrative one. If the underlying material is relevant on the trial of a case, the court will still compel disclosure.
>
> The police argument that one has an opportunity to consort after issuing a warning is dangerously misleading. The elements of the crime of consorting will be proven when there has occurred two occasions of consorting. To suggest that you can commit the first element without consequence and then have to prove your innocence with a defence is an appalling state of affairs. This Bill is far too important to be decided on the fly.

That is information from somebody who briefed us this morning. It is the latest information from Fabiano Cangelosi of the Australian Lawyers Alliance.

The member for Mersey quoted Civil Liberties Australia. I will make a couple of points on that. In the lead-up to the March state election, the Liberal Government expressed its support for freedom of expression. In his letter of reply to Civil Liberties Australia, the Premier stated the Tasmanian Liberal Party's belief in the most basic freedoms of parliamentary democracy - the freedom of thought, worship, speech and association.

In assessing the bill we ask that you hold the Government to its pre-election support for freedom of association. Freedom of association is regarded as a foundational right which serves as a vehicle for people to enjoy other important rights. The member for Mersey provided a quote from Alexis de Tocqueville about that.

I will go to our briefing this morning. I thank the Government and the Leader for arranging the briefings. It was suggested there should be an inquiry into the bill. I am not going to prosecute that. I will wait to see how that sits with other members. My personal legal adviser thinks that is the way we should have gone with this piece of legislation. I do not think there is any urgency with this legislation or need to rush it through - probably before the end of the year would be good.

There might have been an opportunity for an inquiry by us to clarify where this legislation now sits. The briefing this morning by Chris Gunson from the Tasmanian Bar gave me cause for concern. He explained that the role of the Tasmanian Bar was independent and that the concept of the rule of law weighs heavily with them. If offered a brief, they must take it. He explained the way he operates within his business. He believes this bill impinges on civil liberties. As the member for Launceston said, the balance seems to work out all right. The bill, he stressed, needs to have checks and balances. He suggested they were there and were rights versus civil liberties. He also said he cannot see success with prosecutions with this bill. Think about the impost on the time for people and the cost to people to fight this, to hire a lawyer, to get into the court system.

Mr Dean - New South Wales - and that is what ours is mirrored on - has had success in the courts, and the courts operate similarly right throughout the whole country, do they not? To suggest they will not be successful or might never get through the court is a strong statement to make.

Mr FINCH - I will let Chris know what you said.

Mr Dean - I think Chris would know.

Mr FINCH - You will agree to disagree with Mr Gunson.

Mr Dean - I have admiration for Mr Gunson.

Mr FINCH - There are other messages coming in here, Mr President.

Police need tools to disrupt and destroy. We all agree with that. It was made clear during the insignia legislation that we all supported the police and what they were trying to achieve. That is not an issue. Chris Gunson said that unintended consequences come into play. That is the warning from Chris. He said that this helps police. They are pleased with the safeguard of a commissioned officer to assess the caution. He thought this was a good part of the process. There was benefit in having the review in the next parliament. He thought there were the constitutional issues in respect of keeping evidence or information secret. The member for Murchison's amendments look to address this circumstance. Court proceedings should be in public; the exception is for secrecy. The court should apprise this - in the bill it is the executive of government that does this rather than the courts, and that concerned him.

Ms Forrest - The executive through the police is what my amendment is seeking to address.

Mr FINCH - Yes. I am reading from the briefing notes I made this morning. They are good notes up to a point. Safeguards are being considered with provisions - it is impossible to draft a

proposition for the Aboriginal community. Kinship is different. We will find out about this when we talk about the amendment by the Leader and by the member for Rumney. That was an interesting contribution to the debate from Chris Gunson.

My own lawyer has read this in a fulsome way and in his report he says his concern is that recent legislation appears to be giving more and more power to police, 'tantamount to becoming a police state'. Another concern is all the briefings being given to parliamentarians seem to be from police; there is little briefing from other groups that consider civil liberties. He would not be aware we had briefings from the Australian Lawyers Alliance, the Tasmanian Bar, and also the communications from Civil Liberties Australia.

Mrs Hiscutt - Anyone who wishes to brief us is more than welcome. I have never knocked anybody back.

Mr FINCH - I understand, Leader. That is a misreading of our process. I wanted to highlight this is what came through. The initial legislation - the insignia laws - was reportedly needed to stop criminal organisations. It was directly levelled at the bikies, who are creating concern and trepidation in the community. This gave power to the police to recommend certain groups as being identified associations with the wearing of insignia by participants in the identified association.

Now, the police are seeking a much wider power - that of consorting - which is no longer limited to those nefarious bikies, but is much wider. Then, of course, we have the police seeking power to demand records from various organisations. There is a risk all of this will lead to what has been called 'lazy policing'. There are cost factors for members of the public in all this legislation. There appears to be a lack of understanding about the cost to a person to challenge the notice. That was what I highlighted a moment ago about going through the court process and the cost of actually doing that.

Let us consider the steps in the current legislation of consorting.

(1) A commissioned officer for some reason which is undisclosed satisfies him/herself it is desirable, and in furtherance of the act authorises the giving of a notice, an official warning.

Mr Dean - That is not right? The constable or the other police officer further down in the list has to convince the senior officer of the fact there needs to be an order or a warning given. That is not quite right.

Mr FINCH - No, what happens is a commissioned officer, for some reason which is undisclosed, satisfies him or herself it is desirable, and in furtherance of the act authorises the giving of a notice, the official warning -

(2) This notice is then given to a police officer, not a commissioned officer, to serve the notice.

(3) A reading of the legislation reveals that the notice does not give a reason for the serving of the notice. The sole requirement is that it identifies a particular person who at some time during their lifetime has been convicted of a serious offence and informs the recipient of the notice that it is an offence to consort with that person for a period of five years.

I will digress from that for a moment. Mr President, you would be aware of my concern always about people making mistakes at a young age and then having a conviction on their record which

limits them with their job prospects and with their desires to travel. It tarnishes their future. I am always on the guard to make sure that people be given that second chance, that opportunity to learn from their mistake and not have a criminal record or conviction against their name. As young people, did we never make a mistake? Hello! We have to be careful there.

I know it is a serious offence that has to be committed, but anyway -

Mr Dean - It is very seldom that a conviction is recorded against anybody who has not been given previous cautions and warnings and who has not appeared before a court probably on a number of occasions. They are normally convicted and given probation orders without convictions being recorded. For a conviction to be recorded, it normally has to be a very serious matter and/or there have been a number of offences or serial crimes committed by the person.

Mr FINCH - Apprise me of this: is there a retention of those misdemeanours through the process because the people have a number of situations?

Mr Dean - Court appearances are recorded, yes.

Mr FINCH - I might be overzealous in protecting young people from that circumstance; however, that is still on their record.

Mr Dean - Magistrates protect these people in many instances by not recording a conviction. A magistrate often does that.

Mr FINCH - Yes, but would that charge still remain on their record?

Mr Dean - It may be shown, but it is not a conviction.

Mr FINCH - Yes, but there still is a record of some wrongdoing that might have been simply a mistake.

Mr Dean - Very seldom.

Mr FINCH - I am digressing there, but that is a concern I have. I have noted it before in the House. To continue -

(4) It should be noted that a serious offence is defined as not just being a crime, but any serious offence that is indictable, whether it is heard on indictment or summarily, like dangerous driving, negligent driving, causing death et cetera, but the legislation also defines any offence under specified legislation.

(5) A person convicted of having a packet of bullets in his possession and not being the holder of a gun licence; a person convicted of possession of a plastic gun, just to name a few.

(6) Under the Misuse of Drugs Act, possession of a bong is an offence, and with the current wording utilised in the bill, could be used for the issuing of a notice. It could of course be challenged, but again, at what cost? The Misuse of Drugs Act does differentiate between major and minor offences. Why is this not adopted in the present bill? The serious offence deals with manufacturing, cultivation, trafficking and supply. Is this not what the bill wants to

address? Why are the police pressing for such a wide range of offences if they are concerned about bikies?

Again, as we heard in the briefing, it was about criminal to criminal and not just bikies.

Mr Dean - I covered some of that by the statements about the real criminals nurturing somebody who has a minor offence who they know is involved in drugs, for instance. They start nurturing them to assist them in their criminal escapades. That is another reason for it.

Mr FINCH - Yes.

(7) Question: what is the relevance of including the Sex Industry Offences Act 2005; and

(8) Similarly, why is the Classification (Publications, Films and Computer Games) Enforcement Act included?

We heard that could be about pornography and child exploitation so that might be appropriate to be in there.

(9) And then the catch-all, if a person has been convicted of an offence in another state or country which, if it had occurred here, would have been an offence. The suggestion is the broadness of this paragraph should send warning alarms to all parliamentarians. How can this provision be justified in a democratic country? What has been the reason given for such a broad provision?

(10) The next step in the process is if a person wishes to challenge the notice, they have 28 days to seek a review by notifying the commissioner in writing.

(11) The commissioner does not undertake the review (see section 20D(4)), but he must as soon as practicable require another commissioned police officer of higher rank to review the warning. What does he or she review? A fellow commissioned police officer has authorised the warning and the notice has identified the person as having a criminal conviction. There is no requirement that the offence be revealed, so one would assume the person receiving the notice has to assume it is accurate.

The person cannot seek clarification because it would be a breach of the privacy laws. What does the more senior commissioned officer review? I assume he looks up the police record and then, by notice in writing, says he has reviewed it, and indicates whether in his opinion the notice was justified. Again, he or she is not required to give any reason as to why he or she was satisfied. Can you imagine the outcry if courts where no longer required to give reason for their decision apart from a bland statement that the court was satisfied? This is contrary to the rule of law.

(12) The next step follows that if a person wishes to challenge that notice, they have the right to seek a review in the Magistrates Court. It would appear that the hearing is a hearing de novo from reading section 20E(1).

(14) But then the duties and powers of the court are limited by subsection (2) in that it excludes the application of Division 1 of Part 4, duty to give reasons. Section 21, the duty of decision-maker to lodge material documents with the court where a decision is reviewed, and Subdivision 2 and 3 of Division 2 of Part 4.

(15) Subdivisions 2 and 3 of Division 2 of Part 4 are related to staying orders pending the determination of review and the powers of the court on review.

(16) Surprisingly, having assumed that the hearing is de novo, the bill appears to take away that procedure.

(17) Setting out the relevant section below:

> 26. Determination of review by Court:
>
> (1) A review of the decision by the Court is to be by way of hearing de novo.
>
> (2) In determining an application for a review of a reviewable decision, the Court may exercise all of the functions that are conferred or imposed by any relevant enactment on the decision-maker who made the decision.
>
> (3) In determining an application for a review of a reviewable decision, the Court may decide -
>
> (a) to affirm the reviewable decision; or
>
> (b) to vary the reviewable decision; or
>
> (c) to set aside the reviewable decision and make a decision in substitution for the reviewable decision it set aside; or
>
> (d) to set aside the reviewable decision and remit the matter for reconsideration by the decision-maker in accordance with any directions or recommendations of the Court.

(18) What can the court do apart from rubberstamp the decision made and confirm the notice? This is a total absurdity and the court is being hamstrung by the executive, something which happens in dictatorships, not a democratic society.

(19) To add to this, Part 3 of the bill amends the Judicial Review Act 2000 by taking away any right of appeal to the Supreme Court.

(20) There is a further limitation on the rights of an individual that is contained in section 20E(5), which enables the court to hear evidence in the absence of the appellant, his counsel or the public, a closed court. While the reason for this is understood to prevent disclosure of information relating to criminal intelligence, what happens if the court decides that no such risk is evident? Does the court have power to determine the court should be open to all?

(21) This legislation goes too far and requires a committee to investigate more fully its ramifications on the rights of the individual.

(22) The right to a fair hearing requires that individuals should not be penalised by decisions affecting their rights or legitimate expectations, unless they have been given prior notice of the case, a fair opportunity to answer it and the opportunity to present their own case. The mere fact that the decision affects rights or interests is sufficient to subject the decision to the procedures required by natural justice. In Europe the right to a fair hearing is guaranteed by

article 6(1) of the European Convention on Human Rights, which is said to complement the common law, rather than to replace it.

The advice to me is that this bill in its present form strikes at the very heart of human rights and the rule of law, and goes well beyond what is appropriate to deal with the issue of organised crime. However, I will vote to put it into Committee because of the amendments that have been flagged. I do not know if I am in the minority or majority; however, after it has been through the Committee process hopefully the amendments will make it a better bill. However, I will need a lot of convincing to take away my negative thinking.

[4.32 p.m.]

Mr VALENTINE (Hobart) - Madam Deputy President, I want to thank the Leader for the briefings. I also want to thank the various organisations and individuals who briefed us. Not all of them were pleased with the bill. I appreciate the situation the police find themselves in - needing to make sure that serious crime is combatted and we have laws that support that.

The bill needs to be fair. That is my concern, which has also been expressed by a number of members today.

Mr Dean - Are you suggesting we are all not being fair?

Mr VALENTINE - No, I am saying that it needs to be fair. What you consider to be fair might be different to what I consider to be fair. That is not to say you should not hold your opinion. You are a Richmond supporter; I am a Melbourne supporter. I am embarrassed and ashamed as a Melbourne supporter at the moment. We can have some frivolity, but this is a very serious matter before us.

We received communication from the Community Legal Centres Tasmania, which said it did not have an opportunity to comment during the initial consultation phase. As Leader, you are always fair and offer everybody an opportunity to present to us, and I appreciate that. All members would appreciate that.

It is good to be able to get every side of the debate, but it is important for the Government to bring in groups like the Lawyers Alliance and the Community Legal Centres - the civil liberties groups - to find out what their concerns and issues are. Then at least the Government can say, 'Well, we have heard those concerns. We might not agree with them, but we have heard them.' That way, some of these things raised during the briefings will be able to be dealt with much earlier.

It may not be to everyone's satisfaction. But to my mind, having a briefing today and significant things brought out, we have to be in a situation where we can absorb all and apply it. Quite honestly, it is very difficult. We are dealing with a number of bills over a sitting week. We all know sitting weeks can be hectic, especially when there are many briefings about different bills.

To have proper scrutiny, you need to have time to resolve in your own mind where some of the things raised actually sit in your thinking. There needs to be more of a gap between the time we receive the briefings and the time a bill is brought on. That is just a comment and I do not know whether all members would agree.

Mrs Hiscutt - There are times where I get criticised for doing it the other way around. Whoever asks for a briefing, I will facilitate.

Mr VALENTINE - You do. I thank you for that. That is good. But it would be good if there was just a bit of a gap sometimes to be able to properly resolve things. Nevertheless, it is what it is. We are here today, and it is being debated.

Mr Willie - You could move to adjourn it.

Mr VALENTINE - We could move to adjourn it. That is a possibility. I am not prepared to do that at this point. I have done my thinking. There may be others who also want more time. Some would say maybe it could have gone to a committee and be dealt with. We will see where this leads in other people's presentations. But at the moment I have presented my thoughts for consideration here. It would be good to have those alternative viewpoints up-front in the consultation phase rather than simply during a briefing.

I want to move to the letter from the Community Legal Centres. The part it brings out may have already been read by the member for Mersey - I am not sure whether he did - but I will read it, in any event. From Benedict Bartl -

> Having now had an opportunity to review the Bill we are opposed to it being passed on the basis that it disproportionately infringes on the freedom of association as enshrined in international human rights law.

I will not read a lot, but I will go to Article 20 of the Universal Declaration of Human Rights 1948. I mentioned this at the last bill dealing with the insignia. In fact, an Australian was in the chair when this was passed. Article 20 says -

> … everyone has the right to freedom of peaceful assembly and association. No-one may be compelled to belong to an association.

That is the other aspect of it. Article 29 -

> … everyone has duties to the community in which alone the free and full development of his personality is possible. In the exercise of his rights and freedoms everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

That does not say that laws cannot be put in place to limit things, but it does talk about general welfare in a democratic society. The last part of that article -

> These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

We know that is not law. It can only become law if it is included in a law within Australia but it is something Australia signed up to. It is important to remember that when you are attempting to change the law.

Benedict Bartl in his submission says -

> Consorting laws infringe on international human rights. The right to freely associate with others is an essential component of a democratic society as it

> allows individuals to peacefully assemble, socialise and meet for common purposes. In other words the right to freedom of association is a foundation block for the exercise of many other civil, cultural, economic, political and social rights and is enshrined in the International Covenant on Civil and Political Rights, to which Australia is a signatory.

That document has a couple of points of interest. I will go through two of those. Article 21 is along the same lines to the Universal Declaration of Human Rights. It says -

> The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Again, that little bit at the end might allow laws to be put in place to protect the rights and freedoms of others.

Mr Dean - It is probably a pity that those who are consorting for the purposes of criminal activity do not consider the human rights and requirements.

Mr VALENTINE - I said this last time.

Mr Dean - Do they? I know I should have picked you up on it then and raised it.

Mr VALENTINE - What I am saying is that in the operation of their clubs, it is important they recognise that people have rights.

Mr Dean - The human rights. Do they?

Mr VALENTINE - I said that last time. Article 22 -

> Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety and public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

It goes on. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights both make that statement. Australia is a signatory to both. They were the points made by Benedict Bartl. He says -

> Persons convicted of crimes should not be punished both through a term of imprisonment and upon release by not being able to freely associate with others. As one commentator observed, the proscription of consorting is: 'inconsistent with the principle of justice and fair punishment that a person who has served and completed for a crime imposed by a court should then be subject to further punishment. In this case the person with a conviction is not committing the offence of consorting, but the effect is to punish that person by forbidding others from being in their company.'

Mr Dean - Only people with convictions as well.

Mr VALENTINE - But they have done their time.

Mr Dean - Yes, but the other person has to have a conviction as well.

Mr VALENTINE - Yes, and they have done their time. So you are saying after they get out of prison, they have done their time?

Mr Dean - Is that not reasonable?

Mr VALENTINE - They are now not able to meet with their friends.

Mr Dean - That goes with sexual offenders and lots of other things.

Mr VALENTINE - The point they make is the definition of 'convicted offender'; he says -

> We believe that the definition of 'convicted offender' in the Bill is too broad, allowing persons who have been convicted of shoplifting or minor drug offences to be the subject of the proposed laws. In NSW, where consorting laws have been the subject of review by the NSW Ombudsman, it was recommended that a convicted offender should be defined as someone who had committed 'serious criminal offending' and defined as 'offences punishable by 10 years or more imprisonment'.
>
> It was the view of the NSW Ombudsman that the adoption of this definition would result in serious violence offences, robberies and major drug supply offences being subject to the consorting laws, but at the same time guaranteeing that minor common assault, theft and drug possession were excluded.

I wanted to double-check that because someone can say, 'That is what the Ombudsman said' -

Madam DEPUTY PRESIDENT - You are best to direct your questions to the Leader.

Mr VALENTINE - I am not posing a question.

Madam DEPUTY PRESIDENT - I thought you were, sorry. It sounded like a question.

Mr VALENTINE - Sorry. I want to go to the original document of the Acting NSW Ombudsman. Section 11.3.1 in the report provides some interesting reading -

> Central to clarifying the scope and application of the consorting law …

This is the NSW law, it is not the Tasmanian one, but this legislation was modelled on that -

> … is defining the criminal offending that it is intended to address. The second reading speech for the Bill introduced the new consorting law, stated the intention of the Bill was to equip police to address organised crime and criminal gangs. However, these comments related to the bill as a whole.

> It is possible to define 'serious criminal offending' in various ways, including by reference to the maximum sentence available, pre-existing statutory definitions and/or the criminal procedure required to be used in any prosecution.
>
> During consultations with police and the NSW Bureau of Crime Statistics and Research … we were advised that the activities of those involved in organised crime and criminal gangs are not limited to certain areas of offending or specific offences. It follows that to attempt to contain use of the consorting law to the prevention of specific offences may be counterproductive.
>
> The term 'serious indictable offence' is defined in section 4 of the Crimes Act as an offence that is punishable by imprisonment for a term of five years or more. This definition includes relatively minor offences such as theft and minor property damage. For this reason, the definition is inadequate for the purposes of restricting the scope of the consorting law.

It goes on. I will not read the lot, but I will read the final component -

> Taking into account the NSW Police Force's desire to maintain operational flexibility, we recommend that 'serious criminal offending' be defined in police policy by reference to the maximum sentence available and that an appropriate level would be offences punishable by 10 years or more imprisonment.

Mr Dean - You do not even get that for murder today.

Mr VALENTINE - It goes on -

> This definition captures serious violence offences, robberies, break and enters and major drug supply. It excludes common assault, minor property damage, theft and drug possession. New criminal offences enacted that carry a maximum sentence of 10 years or more imprisonment would automatically fall within the definition without need for additional adjustment.

That is the Acting NSW Ombudsman's opinion there. I have put this, looking at an amendment. I want to see it come back in its final form before I move, but it will cover this.

In reference to the NSW law again, the Acting Ombudsman, Professor John McMillan AO, stated -

> The breadth of the new consorting law means that the main constraint on its application is the sensible exercise of discretion by police officers.

In NSW there was a concern children and young people could be caught up in this. I believe this bill prevents that because it makes it 18 years of age.

I have talked about the definition of serious criminal offending and a possible amendment.

The other thing that concerns me is that Indigenous people have a different meaning to kinship. We must make sure we deal with that. The member for Rumney and the Leader have come up with an amendment that deals with that.

We received a submission from Civil Liberties Australia. It talks about the Government's attitude in the lead-up to the March state election where it expressed its support for freedom of association. It attached a letter from the Premier, the final page of which read -

> The Tasmanian Liberal Party believes that all people should have the opportunity to advance to their full potential. We also believe in the most basic freedoms of parliamentary democracy, the freedom of thought, worship, speech and association.

Civil Liberties Australia points out this does not give freedom of association. The CLA says in assessing the bill that freedom of association is regarded as a foundational right that serves as a vehicle for people to enjoy other important rights.

The CLA makes one last comment that -

> If the Legislative Council is satisfied that inserting more precise requirements into the legislation is appropriate a possible amendment for consideration is to … amend proposed section 20D(1) ...

Instead of -

> A commissioned police officer, if satisfied that it is desirable to do so in furtherance of the objects of this Division, may authorise a convicted offender to be given a notice in writing (an ***official warning***) specifying that -
>
> (a) another convicted offender, named in the notice, is a convicted offender; and
>
> (b) it is an offence to consort with the convicted offender within 5 years after having been given an official warning in relation to the offender -

the CLA proposes -

> A commissioned police officer, if satisfied that the commission of an offence is likely to be prevented if two convicted offenders are prevented from consorting with each other, may authorise a convicted offender to be given a notice in writing (an ***official warning***) specifying that -
>
> (a) another convicted offender, named in the notice, is a convicted offender; and
>
> (b) it is an offence to consort with the convicted offender within 5 years after having been given an official warning in relation to the offender.

After consultation it could be 'two or more', because people do not always meet in pairs. It just means there must be a concern an offence is about to be committed as opposed to just pulling people up at random and asking them if they are consorting. That is another amendment I am having drawn up.

The last is the right of appeal. That is where my biggest concern lies. It runs to a Magistrates Court of administrative appeals, and I am pleased to say it does that. The last bill did not, but when I think about this, I think, 'What is a fair go?' The term comes to mind because we all deserve a fair go. If we cannot have a fair go at the level of an appeals court, that is a great concern. I am referring to the criminal intelligence that may not be shared with the other party. I can understand why the police may not want to endanger somebody. This is serious and could endanger someone's life. If any criminal group found out somebody had ratted on them or given information, their life could be in danger. That is at the high end and not impossible. Most people appreciate that.

If I needed to defend my circumstance, I would want to know everything known. Chris Gunson, a lawyer with the Tasmanian Bar, said this morning there are ways to handle this. I have talked about the amount of time it has taken to handle these things - it is important we are fair; it is important the police have the tools to be able to protect society, but we have to make sure it is a level playing field.

Mr Dean - If you ratted on a violent criminal, you would not mind them knowing you have gone to the police and told them all about it?

Mr VALENTINE - No, this is the point.

Mr Dean - How?

Mr VALENTINE - There is a way of doing it without them ever finding out. This is what Chris Gunson was saying. Did you query him this morning?

Mr Dean - Yes, I did.

Mr VALENTINE - Well, he said there are ways. Those are my concerns and I have placed them on the record. You have had your say. No doubt you will get another say on various things during the Committee stage. It concerns me when we touch on fundamental rights. We have to remember this is not only about outlaw motorcycle clubs; this is about any criminal organisation. This is about the safety of the community.

Mr Dean - That is right - this is about community safety.

Mr VALENTINE - It is. But how far do you go getting the balance right, between treading on the rights of others for the greater benefit? This is on people's minds. At this particular point, I need to hear more. I will listen to the debate. I find it difficult to support the legislation in its current state, in the main because of the appeal mechanism. With the human rights statements made, the door is open for various laws to be put in place. I remain to be convinced it really is the right way to go and have on our statutes.

[4.58 p.m.]

Mr ARMSTRONG (Huon) - Mr President, I thank the Leader for organising the informative briefings. They also raised some questions regarding this legislation which hopefully will be clarified when the bill reaches the Committee stage. One area I was pleased to see changed is that there will be a review of the legislation by the Ombudsman.

Ms Rattray - You are concerned about the resources?

Mr ARMSTRONG - Yes. Whether it should be the Integrity Commission or not, I am not sure but it will be worked out during the Committee stage.

Some of the scenarios put to us this morning were interesting. One was regarding Christmas lunch. If a group of people got together to have Christmas lunch, would it be consorting? It was also raised about picking up kids from the school, meeting at the corner store or meeting at a football match. I would appreciate the Leader reinforcing in her wind-up that this is not what this legislation is about.

We were told in the briefing that the legislation is an additional tool for police to use and that it will require an extensive amount of work to issue a notice. I do not see it being used if it cannot be backed up by evidence.

Other members have touched on many parts of the legislation, and its good points have been raised. Some amendments have been circulated, and it will be interesting to see if they are supported when we get to the Committee stage.

Some comments have been made regarding the Aboriginal community, of which I am a member. That was not acknowledged, for which an apology was made to me, and which I have accepted.

I support the bill going to the Committee stage. I will see what happens, what amendments have been proposed and whether they are supported, and whether I will support the bill at the third reading.

[5.01 p.m.]

Mr FARRELL (Derwent) - Mr President, I have listened to this debate in our Chamber today and I listened to the debate in the other place last week. I feel this is very important legislation. I think there is general will with all members of parliament to make sure that this legislation is as good as it can be.

We have had some comprehensive briefings, and I must thank the Leader's office for arranging all the briefings. I take on board, too, comments other members have made about having the right time for briefings, and that is just terribly difficult because you can have them too early or too late - it never seems to be the right time. That is something very difficult to judge because you do not know what is going to come out of the briefings. I think all members will agree that quite a lot came out of the briefings from all sides on this legislation. I have travelled a path very similar to that of the member for Rosevears. Initially, on first briefings, I thought, 'Right, yes, I am pretty clear with that and that is pretty straightforward.' The more information we got, the more questions were raised.

The legislation has had a fairly quick passage, although I must compliment our colleagues in the other place. It was debated comprehensively in that Chamber. I must also commend the Government for accepting of some of the amendments that were put up in the other place. That indicates there is certainly a will among us all to make this legislation as good as we possibly can.

Members have raised amendments in this place. Some seem fairly straightforward. Others may have consequences we are not really sure about. That is something that, if the legislation does get to the Committee stage, will have to be debated on the Floor. Quite often that is not the most ideal way to prosecute the passage of a bill, particularly one that is as important as this. In many

ways, to make this legislation as fair as possible will be quite a difficult balancing act. Whereas it seems pretty straightforward on the surface, I do not think there will be actions without reactions as we proceed through it.

Others have mentioned that we have not had sufficient time. Even though this bill was tabled and it has been out there for a while, it has had a quick trip through parliament. We have the time to get this right. We have seen other places bring in similar legislation, but having to fix that along the way. What we have here is very good legislation on the whole. It just needs a little refining. We could probably have the best consorting legislation in the country, which our police and ports could use with confidence, but I am not at all sure that pushing it through now and going into the Committee stage and coming up with amendments will be the most successful and efficient way to progress this bill.

It is certainly needed for community safety. It is certainly needed by the police as a tool. There has been a very cooperative approach in the parliament to date with the progression of this bill. I do not think it would take a great deal of time to iron out some of its rough edges so that things can be done properly and evidence could be taken on the record, which is important in backing up a bill such as this. This is important legislation. We want to have something that, in four years time, whatever the government is, whether it is the same one we have now or another one, we can look at the review and say, 'Goodness me, we got that right and it was good that we got it right.'

I would like to float this idea and give members the opportunity: I believe this matter would be neatly handled by a committee, one I do not think would need to sit for a long time, to take on board any police, legal and human rights concerns and come out with some solid recommendations so that we as Legislative Councillors can then pass this bill with a degree of confidence.

Mr President, to do that I would have to move that the debate stand adjourned for the purpose of referring this legislation to a committee. Some members have indicated that would be their thought; others have said no, so now everyone can have a talk about that.

Mr President, I move -

> That the debate stand adjourned for the purpose of referring the bill to a committee.

[5.08 p.m.]

Mr ARMSTRONG (Huon) - Mr President, I will not be supporting that we move it to a committee. We have spent all day today on this legislation. We have had witnesses give up their time to come to us all morning. We have gone this far now; we are almost at the Committee stage and I think we should proceed. I will not be supporting the adjournment.

[5.08 p.m.]

Ms ARMITAGE (Launceston) - Mr President, I support the bill going to a short committee. I do not have a problem with that because, as I mentioned in my contribution, I have some concerns about this bill, some of which would be addressed with the proposed amendments. I appreciate the comments of the member for Huon that people have given up their time. The real purpose behind everything is to make sure that any legislation we pass in this House is the best it can be. While I appreciate people coming in and giving briefings and giving up their time, in the end it is important we come out with some legislation that is the very best it can be. I would be happy for this matter to go to a short committee.

[5.09 p.m.]

Mr GAFFNEY (Mersey) - Mr President, just a point of clarification from the member. When the dying with dignity bill - I think it was in 2012 - came to the Table, a committee was formed to specifically look at the legislation to see if it was -

Ms Forrest - It did not get to this place. It was tabled downstairs and went to a joint committee.

Mr GAFFNEY - It did that so that we could look at the legislation. My question to the member is: are you proposing a committee to look at the legislation or are you proposing a committee to look at consorting laws from around Australia which were actually the basis for this legislation. There are two questions here: are we looking specifically at the bill and the amendments already been proposed or are we looking at it again? I acknowledge a lot of work has already been undertaken by the police and other groups about the actual issue. It would be helpful if you could clarify.

Mr Farrell - I am referring to the bill before us and the amendments proposed to make sure there are no unintended consequences. As good as the briefings have been, there is nothing on record.

Mr GAFFNEY - If through the process of investigating the bill and the amendments, there were some inadequacies or weaknesses, would you then allow any other amendment coming through the process to then be tabled?

Ms Forrest - That is a question for another motion, because this motion is only to adjourn the debate. There would require a separate motion to actually refer it to a committee, which would most likely be Government Administration Committee A with terms of reference.

Mr GAFFNEY - I was asking for a point of clarification; I was not picked up by the President, who is in the chair.

Ms Forrest - There is nothing to adjourn the debate as such.

[5.11 p.m.]

Mr PRESIDENT - Honourable members, there are always the options. I have been advised you can agree with the principle, if that is the wish of the Chamber at the moment. You can agree with the principle and then once it gets to the Committee stage, we can do what the member for Derwent is doing or, alternatively, do it the way you are now.

What has been done in the past is if the principle is agreed, then a committee can be raised. That is after the committee has been agreed upon in the Committee stage. That is a way of dealing with it or alternatively as was requested by the member for Derwent a minute ago, to adjourn the debate right now for a committee. So there are two ways and I raised this for the information of the Chamber.

[5.12 p.m.]

Ms RATTRAY (McIntyre) - Mr President, as an offering to the suggestion we adjourn, my preference would be to see if there is support in principle for the bill. If there is not enough support in principle around the Chamber, a committee is potentially going to be doing a lot of work and might not necessarily give an outcome at the end.

If we work out whether there is enough support in principle for the bill, then we can go to the Committee stage. I appreciate the member's concern, and that the member for Rosevears also has heightened concerns, so in that regard I would like us to continue into the Committee stage. Then we decide as a House whether it is appropriate to proceed, otherwise a committee could. In my time here, it is very difficult to do short sharp anything, let alone committees. Regardless if it is, I am not interested in which committee does it, because both committees work exceedingly well. That is one way it could go, but given we are almost in October, it is probably not necessary to have a short sharp committee. That is my offering; others will have their views and I am happy to listen to their views.

[5.14 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, the member for McIntyre's way forward is probably the best way to go - to move into Committee see if there is support, which I believe there is. Based on that, I would like to say the Government is very disappointed the Opposition is doing this.

In the other place, the Opposition agreed to support the bill if the Government supported the amendments put forward downstairs. That was what was agreed to. If it goes off to a committee, it could be buried there for ages. Organised crime groups would take a lot of comfort from the fact that it is going off to committee. A lot of work has been put into this bill. It is watertight. It has been tested in the High Court. The Ombudsman's report has been thoroughly read and noted and embedded into this bill. It has the most safeguards of all the states and territories in the country.

The police have put an awful amount of work into this. We have had briefing after briefing. I do not think there is any more information that can come forward on this bill. Listening to the second reading speeches, there is still misunderstanding of the bill. You can see I have a fistful of information on some of those concerns. I urge members not to go down this path after the work that has been done. The Legislative Council has done the work. They have listened to the briefings. I want to reiterate that the Government is very disappointed the Opposition is moving this way. The Government in the other place seriously believed that if we adopted some of the amendments of the Opposition, we would have your support with this bill.

Mr President, I urge members to move this into our Committee stage and to further the bill.

[5.16 p.m.]

Mr FINCH (Rosevears) - Mr President, I hope I have not been lumped in with the Opposition -

Mrs Hiscutt - No, you have not.

Mr FINCH - I expressed the same concerns the member here is expressing and I think that may have been a trigger. There has been no discussion about taking this to a committee. I think this has unfolded on the floor of our Chamber. It is not a strategy to pass it down there, then knock it off up here and discombobulate the process. We are a separate process to what goes on downstairs. That has to be kept to the front of our minds. We run our race here in respect of the way we deal with the debate. The way we are going about it is quite appropriate.

You talk, Leader, about briefing after briefing. We have had probably five at the most in a short space of time. The member for Hobart was right in suggesting we are trying to gestate the information we have been given at the last minute.

I have already expressed in my second reading contribution that when I first heard the details of the bill - the member for Derwent has expressed that as well - we were comforted. We were prepared to support the police and the Government, as we did with the insignia bill.

As things have unfolded here and we have our last-minute briefings, we are finding the legal people are advising us there are concerns. You say you have much to answer when you get up. Does that not signal to you that there is a lack of understanding of the bill? That we need more time, that we need more of a process to understand the implications and unintended consequences? That is what we have to live with when we rush things and muck things up. That is dangerous.

Downstairs, the Government has the numbers. Up here you do not have the numbers. We have to be more cautious about the way we make our decisions. I am happy to put it into the Committee stage, to see whether the amendments make it a better bill. I did say I would need a lot of convincing. As I mentioned in my presentation, there was a suggestion that an inquiry would be an appropriate way to go, although I said I would not prosecute that. I would be happy to see how the debate unfolded, then put my vote accordingly. Now the member for Derwent, the Opposition, has come up with his proposition. I like the idea the member for McIntyre has suggested, that we vote on it in the Committee stage. I do not think there is a problem there. I have already said I am happy to see what unfolds, and then see whether it goes to a committee. I am not sure whether it would go to Government Administration Committee A for an investigation, but I take exception to a couple of points you made, Leader. I am happy not to support putting it into a committee at this stage, not adjourning the debate and taking it to the Committee stage.

[5.21 p.m.]

Ms FORREST (Murchison) - Mr President, it is an interesting question as to whether we should adjourn the debate now and debate it at a later time, and whether to refer it to Government Administration Committee A as we have done with other bills when we have had some concerns about them. I want to make a few points because the Leader alluded to the fact that the legislation we are dealing with was moulded on New South Wales legislation and the Ombudsman's review picked out a whole heap of flaws with that New South Wales legislation.

There are also aspects proposed through amendment that reflect Western Australian provisions tested in the High Court. I have listened to all the views. I have not responded to every email we have had from some of the legal fraternity, but their views have been taken into consideration in my decision-making. I think other members have had the same response. This bill has been informed by the overzealous approach of other jurisdictions, which is exactly what we have seen in some other jurisdictions - an overzealous approach, rightly pulled up.

The benefits of a committee process are that it would enable evidence to be taken on the record, it is true. We have a lot of briefings, and I have made this point time and time again and often not been supported by other members when seeking to do this myself with other bills. Briefings are not on the record - they are all very good but they are not on the record, so there is no way of going back and checking or having an informed decision. When we try, as the member for Rosevears did a fairly good job of, to paraphrase the information provided by experts in the field, we do not necessarily do it justice, but if it is on the record we can.

I was also comforted by the fact the review clause was inserted in another place and does give this the opportunity to be reviewed. Some aspects of the bill and the proposed amendments have already been tested by the High Court and shown to be valid and constitutional. The other side of my mind is saying there are many amendments being proposed, some we have not even seen. I

circulated mine as quickly as I could, but that was still only today. I appreciate the cooperation of the police and the minister's office in facilitating working through to get to a point of an amendment that I believe is strong and reflects exactly what needs to happen to give effect to the my desires, but also what the police and the courts need for it to work.

It has been a very cooperative approach, which is a really welcome outcome. The other point is that if and when we refer this to a committee, it would be helpful to get to the end of this debate and hear the Leader's summing up. Regardless of whether it is referred to a committee or not, that information will be really important. If it is going to a committee and the motion is moved to refer it to a committee at that point, the information will be valuable to the committee, because there will be a great deal of information there. It potentially saves the Government putting in a full-on submission.

Whichever way we go, we should proceed at this point. I will vote against the adjournment. Let the Leader respond, unless other members wish to speak. Mostly Labor and Liberal members - I think they are all party members - have not spoken. They may wish to. If they do, they have the opportunity; if they do not, well that is fine. The Leader can do her reply and then we will see where it goes from there.

On that basis, I am voting against the adjournment, Mr President.

[5.25 p.m.]

Mr PRESIDENT - Honourable members, the member for Derwent wishes to stand. After 23 years, you may have an idea as to what he might be doing at this stage. I wonder whether at this stage he wishes to withdraw his motion and allow me to make a call again. The Leader will then stand and sum up. Then there would be a vote on whether it goes into a committee. If the same request is then made, it would have to be dealt with in the Committee stage.

[5.26 p.m.]

Mr FARRELL (Derwent) - Mr President, I feel that I should rebuke the Leader's comments about the Labor Party ploy or plot. I am elected here as the member for Derwent. I might be the member of a party, but I am here as the member for Derwent and I have as much right -

Mr PRESIDENT - Order.

Mr FARRELL - Sorry, Mr President.

Mr PRESIDENT - There is no right at the moment to reply.

Mr FARRELL - No right of reply. When can I have my reply, Mr President?

Mr PRESIDENT - I was giving you the right to stand up and withdraw the motion.

Mr FARRELL - Mr President, having listened to the debate, I withdraw my motion to adjourn.

Motion withdrawn.

Mr FARRELL (Derwent) - Mr President, I did not appreciate the Leader's comments. We do not play politics up here. You may have noticed that in this debate, one member of the Labor Party spoke on the second reading.

If we have legitimate concerns with a piece of legislation, we have every right to put that concern on record. Some from other areas might like to look at how the Legislative Council works and keep all that politicking out of our Chamber as much as possible. That is what we all try to do. It was an unnecessary reply.

[5.27 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I want to clarify some of the comments made by the member Windermere to put it on the record.

The Department of Police, Fire and Emergency Management consulted with a number of stakeholders. They did not directly consult with magistrates, courts and the supreme courts as you alluded to, but consulted instead with the Department of Justice which oversees the courts. I just wanted to make that clear in *Hansard*.

This was alongside the public consultations document, which was widely released. The department does not usually consult directly with the courts unless moving amendments that affect the operations of the court itself. It is not common for the courts to involve themselves in policy decisions about what matters should be criminalised. I want to clarify that.

Mr Dean - Thank you.

Mrs HISCUTT - I will try to work my way through some of these questions and clear up some thoughts that members have.

Protest groups - member for Mersey, it is important to go back to the objective of the bill - to target organised crime. Protest groups, even if committing minor trespass offences, are not organised crime networks. The court is not likely to think that they are, so no notice would be issued.

Consultation - the Department of Police, Fire and Emergency Management undertook a period of public consultation between 24 April and 11 May 2018 on the organised criminal groups position paper. This included the consorting proposals, and the intent has not changed from the position paper on that bill.

We also talked a little bit about Victoria. Victoria Police contends that the unlawful association scheme is unworkable in its current form. The scheme has not been used since its implementation in 2014. Victoria Police contends the existing legislation has a number of significant laws that render it unworkable in practice. Most significantly, the scheme permits an unacceptably high level of contact. The defences available to individuals issued an unlawful association notice are considered to be too broad, and the scheme lacks provision for the protection of criminal intelligence. Victoria Police has sought amendments to the unlawful association scheme, and proposed amendments are currently under consideration.

This bill is based on the New South Wales model. It has been tested in the High Court. I will mention a few of the safeguards in the bill.

Mr Gaffney - Are they my questions and answers?

Mrs HISCUTT - I think some of them are addressed here as well.

The bill offers a number of safeguards that are not available in other jurisdictions, including a defined objective that must be satisfied. I remind members that before an official warning notice can be issued, the objectives of the legislation must be met, which is to prevent serious criminal activity by deterring convicted offenders from establishing, maintaining and expanding criminal networks. This would be why the forest protesters do not come into that.

There is a double review mechanism, including the judicial review. There is an expiry limit on official warnings. Official warnings must be in writing. The official warning must be issued by a commissioned officer. An official warning can only be issued to adults. No children are involved in this legislation. The official warning can only be issued for a convicted offender consorting with another convicted offender, not a convicted offender to a person. They both have to be convicted offenders.

There is to be an independent review of the legislation by the Ombudsman four years after the legislation commences. This bill represents a good balance between civil liberties and the safety of the community. I remind members that the Tasmanian Bar shares this view and I will read out an email from them shortly.

Mr Gaffney - I have one question that they might like to follow up.

Mrs HISCUTT - We have one question?

Mr Gaffney - There is a question about the homeless and emergency accommodation for victims. There is also the situation where two people who have records are forced into the same accommodation because that is where they had to go. Would that be considered consorting if that was the only place they had to go? They might not go somewhere by choice.

Mrs HISCUTT - For clarity, are you saying two convicted criminals who have a consorting notice against each other and the only place they can accommodate is in the one place? This is after they both had a consorting notice issued and they are homeless?

Mr Gaffney - They are homeless and that is the place where they have been sent and they are housed in the same place. How would the police handle that? Would that be seen as breaking the notice?

Mrs HISCUTT - The question is, for clarity: we have two convicted criminals, both with consorting notices against them to each other, living in the one residence because they are homeless. I shall seek an answer for that.

The member for McIntyre spoke about the request for Ombudsman's funding, as did some other members. It may be appropriate; however, the review deadline is four years away. Resourcing for the review will be a matter to be favourably considered by the Government in consultation with the Ombudsman's office at the time.

Ms Rattray - Through you, Mr President, I also asked if it could be placed on the record why the Ombudsman and not the Integrity Commissioner is the preferred review mechanism? I can have that answer in Committee if we get that far.

Mrs HISCUTT - The member for Launceston asked a couple of questions. Anybody, motorcyclists, firearm owners or whoever, can do whatever they want as long as it is lawful. If they

are not served a notice, they can do whatever they want. You can have your cup of coffee with your friend, whether you have both been in prison, as long as there is not a notice served. People who are not building up a criminal organisation cannot be targeted and will not be targeted by notices by the police.

I will go through the scope and the definition of serious offence being too broad in the consorting bill. While some offences may be lower level in isolation, they need to be broad, as organised criminals commit these types of offences, often in bulk, over several years. While one breach of firearms or drug laws is minor, 20 of them are not and need to be captured by this - organised shoplifting crews, white-collar fraud and the like. This is addressing the questions asked by the member for Launceston.

The structure of criminal organisations do not fit well with traditional aspects of criminal responsibility. It is impossible to hold directors of white-collar criminal groups to account for the actions of those who physically carry out the orders. While there are lower level offences in these acts, there are also offences that are significant, such as trafficking and supply of drugs, manufacture and cultivation of drugs and precursor chemicals, carrying a firearm with criminal intent and so on.

Regardless, before an official warning notice can be issued, the objective of the legislation must be met, which is to prevent serious criminal activity by deterring convicted offenders from establishing, maintaining and expanding criminal networks. There are also safeguards in the legislation of issuance by an inspector and review by a court, which will prevent misuse. This is noted in the Ombudsman's report, as we have stated, on page 116, that -

> … to attempt to constrain the use of the consorting law to the prevention of specific offences may be counterproductive.

Ms Armitage - Through you, Mr President, could I just check, you said 'review by a court'. So that, Leader, is only on appeal by the person who has received it?

Mrs HISCUTT - Yes, that is correct, you have to appeal.

Ms Armitage - So there is no review by the court until - so it is the constable, then it goes to the commissioned officer. It is presented though already before it goes any further.

Mrs HISCUTT - Once the convicted criminal gets that notice, they can then appeal to the Magistrates Court, and the magistrate has the final say.

Ms Armitage - He has already had it given to him?

Mrs HISCUTT - After it has been through those checks and balances.

Ms Armitage - Only through the constable and the commissioned officer. He has been found guilty?

Mrs HISCUTT - No, he has not been found guilty.

Ms Armitage - He is if he has been given that.

Mrs HISCUTT - There are specific offences to say that you are establishing, maintaining and expanding criminal networks. The police have to prove that.

Ms Armitage - That is right. I am just getting this. It goes to the court only on his appeal.

Mrs HISCUTT - Yes. That is the appeal mechanism, yes.

A more selective definition, and I quote -

> May be overly descriptive.

I will read the first part again -

> While some offences may be lower level in isolation, they need to be broad, as organised criminals commit these types of offences, often in bulk, over several years. Whilst one breach of firearms or drug laws is minor, 20 of them are not, and need to be captured by this.

We went through this with the one bullet on the floor, and the one joint. It needs to be more than one.

The member for Rosevears and Hobart talked about their concerns and quoted parts from Chris Gunson of the Tasmanian Bar. We have an email here from Chris Gunson to Inspector Keane. I will read this, because the Bar is in favour of this bill. It refers to the member for Murchison's second part of her amendments, which she is going to move forward. This is from Chris Gunson of the Tasmanian Bar. I quote -

> Dear Minister and Inspector Keane
>
> Further to my submission to members of the Legislative Council on behalf of the Tasmanian Bar, I am aware of the significant decision by the Tasmanian government to agree to amendments to the Bill to provide for a review of the operations of the Bill by the ombudsman in 4 years time. While I have not seen the text of the amendments, that largely alleviates my concerns regarding the scope of the proposed consorting laws. In my view it achieves an appropriate balance between the various rights of Tasmanian citizens (including the right to be safe from criminal activity) and the need for Tasmania Police to have modern policing tools at its disposal when attempting to disrupt and destroy criminal gangs and organisations operating in Tasmania.
>
> I am also aware of proposed amendments to the proposed s20E by Ms Ruth Forrest MLA. Those proposed amendments relate to the review of decisions by the Magistrates Court (Administrative Appeals Division). I had the opportunity to meet with Ms Forrest at some length last week to discuss the issues of concern to the Bar. Something along the lines of the amendments proposed by Ms Forrest would similarly alleviate my concerns regarding the constitutionality of the review provisions because it would leave the decision as to what is to be disclosed to an applicant for review to the court and not the executive. The independence and institutional integrity of the court would be preserved, while ensuring that

material and information that is appropriately kept confidential remains confidential.

Whilst I was not involved in the drafting of Ms Forrest's proposed amendments, I did provide her with my views about the type of provisions that would alleviate the Bar's concerns.

In those circumstances I would be more than happy to explain my concerns to you, and why I consider that something along the lines proposed by Ms Forrest will alleviate those concerns.

I think that with those (or similar) amendments, and particularly noting the other protections in the Bill, this will end up being a good piece of legislation which will achieve the intent of providing Tasmania Police with the necessary weapons to attack organised crime at a variety of levels, and at the same time affording appropriate protections to Tasmanian citizens.

I have read this in its entirety for members. With the amendments coming forward, the Tasmanian Bar is completely satisfied with this piece of legislation, as they said a couple of times in this email.

Mr PRESIDENT - When did that come through?

Mrs HISCUTT - This email is dated 24 September 2018 at 19.07 to Inspector Keane and is cc'd other people.

Members, it seems that the Ombudsman has had a big hand in this, and the Tasmanian Government has adopted a lot of the recommendations from the Ombudsman's report. We believe it is watertight, and has been tested in the High Court, so this is better.

Ms Forrest - Not this bill, aspects of it have.

Mrs HISCUTT - Aspects of it has, yes. This legislation has the most safeguards of any state and territory legislation. I know the police have been working on it for a very long time. I believe I have one more answer for you. I urge members to put this into Committee and to continue it through the Committee stage to the end. We have a dinner break factored in if that is the case.

I have the comment on homeless people. Both homeless people would have to have had a notice issued against each of them not to consort with each other. They may have consorting notices issued against them, so they can consort with other people but not with each other. This is a highly unlikely situation as they would not be building up a criminal network. However, if this unlikely situation was to occur, seeking shelter at a homeless facility would not be deemed consorting, as in *Johanson v Dixon* High Court case which held consorting denotes some seeking or acceptance of the association on the part of the defendant, which would not be applicable in this situation. As there is no seeking of the association and as the association is being opposed because they are there because they have to be, they are not seeking each other out.

Mr Gaffney - While your advisers are here, I would like to clarify a point on the environmental question that you answered earlier on. I can see that if, say, an animal rights group trespasses somewhere and illegally enters a place to steal an animal they felt was being abused, because it is

burglary, that would probably fall under the Criminal Code. They might get convicted but because of their philosophical intent to be against animal cruelty or that issue, they would consort to organise the next activity demonstrating their right to protest for animal rights. Would they be covered by this legislation? We have to make sure we have it all on board. They are being charged with something because they are advocating about a certain issue. Let us choose animal rights. They have broken in, they have been convicted, and they go back and meet with their friends again to consort to do the same activity somewhere else. What safeguards are there for them to be able to express their right that they are against animal cruelty or whatever? You may not be able to answer it now; you may have to answer it later. For the record, I would like to hear a response.

Mrs HISCUTT - I will seek some more advice if members are not happy after I have said what I have to say. In doing that, they would have to be establishing, maintaining and expanding a criminal network, which I do not believe animal rights activists would be doing. It is not a criminal network.

Mr Gaffney - I would like to hear that because if they have been convicted of a criminal offence, as in burglary, theft or breaking and entering into a place where they are not allowed to be, and they then go out and get two or three others to help them do that, from what we heard this morning, that might be a criminal network and they only have to do it twice in five years. For the clarity of this bill, it would be handy to hear a response from the police on how that would be viewed. It needs to be put on the public record.

Mrs HISCUTT - Would you be happy if I were to deliver a statement on that during the Committee stage?

Mr Gaffney - That would be fine - any way to get it on the record for a group like that. It is something that could happen and there must not be any indirect consequences of the legislation from the way it is written. The member for Windermere would have been in situations where people will do that knowing they are breaking the law, but they have a passion to protect that group. It is a good point to clarify.

Mrs HISCUTT - I shall seek clarification now because I can see some pens working. I will get that answer.

Trespass is a summary offence and it would not meet the high bar of a criminal network.

Mr Gaffney - Theft. If they stole?

Mrs HISCUTT - They would probably get charged with theft if they were caught, but it is still not growing a criminal network.

Mr Gaffney - Burglary and stealing of a rare endangered species of meerkat over the value of $5000, as we heard this morning -

Mrs HISCUTT - If they were caught, they would be charged with burglary, but is hardly meeting the bar for expanding a criminal network. Is that right?

Mr Gaffney - I think there are two issues. One is about if it is a criminal offence. The second point is whether it is an expanding network if next time they take three or four or five people to do the same thing.

Mrs HISCUTT - I am led to believe by my advisers that they will be charged with burglary, but it is hardly organising a criminal network. It is not establishing, maintaining and expanding a criminal network. It is criminal. We are talking here about people who have a passion for animal rights and liberty. They break the law as they are doing it; they will be charged with burglary if they get caught but they are hardly maintaining or establishing a criminal network.

Mr Gaffney - What you are saying is in that case the commissioner or whoever would not put in a consorting notice because they realise it was not of a criminal intent, it was more an activity?

Mrs HISCUTT - That is correct and that is why the safeguards are built into this bill.

Mr Gaffney - Thank you.

Ms Lovell - Sorry, if I missed it, but I did not hear an answer to the questions I asked in my second reading. Consultation around definition of family for the Aboriginal community and the Government's position on that since the lower House debate.

Mrs HISCUTT - I think we have something here that we can quickly grab for you.

This might address some of your concerns. The Government did not support an amendment from the Opposition in the other place, for the simple reason it was a significant policy change from the bill which deals with immediate family members to a much broader concept of extended family members.

The Government committed to further consider how Aboriginal tradition could be treated so as to find equality with the immediate family definition for non-Aboriginal people. The Government has consulted with Rodney Dillon, Chair of the Aboriginal Heritage Council, and he has indicated he supports the Government's amendment when it comes around, which addresses that.

Bill read the second time.

POLICE OFFENCES AMENDMENT (CONSORTING) BILL 2018 (No. 37)

In Committee

Clause 1 -
Short Title

Mr FARRELL - Madam Chair, I reiterate to members that this is for genuine concerns I have and is not politicking in this Chamber. I listened to what other members have said. I have some concerns. I take on board the comments about sending messages to organised crime, but I would like to make sure this legislation works.

It is not to say we do not want to support it. We have supported it into the second reading. If we wanted to politicise it, there were three other members who could have spoken to the bill. This is about trying to ensure this legislation works as effectively as it can.

We have all been on committees in the past and seen legislation improve through that process. It is a legitimate process of the Legislative Council. I understand there are differences in the other place.

Madam Deputy Chair, I move -

The debate stand adjourned for the purpose of referring it to a committee.

Mrs HISCUTT - I would like to speak against reporting progress and sending this matter off to a committee because of the reasons I mentioned before.

Going to committee will delay the bill for months, giving organised crime free reign in that time. Groups are setting up in Tasmania as we debate this. The bill has numerous safeguards from the Ombudsman and he is supported by the peak legal body, the Tasmanian Bar.

Honourable members, I am happy to go through the safeguards. I reiterate that this is one of the tightest bills in the nation. A lot of the recommendations from the Ombudsman's report based on legislation in the other states have been adopted by this state. We have put numerous safeguards in place. It is the most safeguarded bill in the country.

I will run through some of the safeguards already there to help members think about where they are going to go. I have talked about the objectives of the bill and the objectives must be met. They are there to prevent serious criminal activity by deterring convicted offenders from establishing, maintaining and expanding criminal networks. That is why animal liberationists do not fall into this. They are not a criminal network. This is for criminal networks.

There are double review mechanisms, including the judicial review. There is an expiry date on the official warnings. The official warnings must be in writing so people know what is happening. The official warnings must be signed by a commissioned officer. The official warnings can only be issued to adults.

I hope members do not fear this is going to involve children because it will not. The official warnings can only be issued for a convicted offender consorting with another convicted offender, not a convicted offender to another person. An independent review of the legislation will be conducted by the Ombudsman four years after this legislation commences.

This bill represents a good balance between the civil libertarians and the safety of the community. I remind members of the email I just read out from the Tasmanian Bar which shared its views with us to say that it supports this bill. At the end of the day, it is only a warning given to someone; it is not a conviction. It is a warning to disrupt them from doing what they are doing.

Ms Armitage - That is not quite right. After the warning, though, if they continue -

Mrs HISCUTT - Yes. But this bill only deals with the consorting notice and what will happen after that. Once the notice goes out, the notice does not do anything. It says, 'Do not consort with person A, B or C', and then things might happen after that.

Members, I urge you to continue this to ascend through the Committee stage. Members have put an awful lot of work towards this bill, and we have cleared up most misunderstandings from the beginning. The Tasmanian Bar is in favour, it can see the balances are there.

I urge members to please continue with this to the Committee stage.

Mr FINCH - Madam Chair, some members might remember a bit of a rant I had a few years ago - the member for Windermere remembers it - with the TFA when there was a request for a committee to consider when, after four years of work of this House, somebody put forward a last-minute proposition that we develop a committee. This was in early December, if memory serves me correctly, when there was a request for us to adjourn and put the process to a committee.

I had a bit of a rant about the fact we had spent four years - we were about to go into a Committee stage, and we were all here. That was the TFA and the advisers were all there. Things were at the front of our mind - 'Why are we adjourning and not keeping going? Everybody is here. Let us get it done.' Then, of course, I was a lone voice crying in the wilderness. Anyway, what happened was that it was put to the committee. I had said during my rant - which turned out to be something I had a little bit of regret about - that, 'If this goes ahead, I will not be a part of it. I will not be on the committee.'

It was a funny old scenario because in January, when everybody went to do the committee work, I spent my time at home very frustrated about the fact I had absented myself from the debate because of what I said. I do not regret it, but I feel I want to be a part of all debates that concern the Chamber. I am not going to support an adjournment at this stage. That is what I am saying. We are all here. We are all raring to go. I realise we are going to take a dinner break, but I am prepared to listen through, as I suggested before, because I want to listen to the debate.

I want to hear the amendments and be assured we are going to end up with the best possible bill we can have. Then I have the chance to either vote for or against it. I am going to have my opportunity to put on record how I feel about the process of the bill. But we should continue because we are all here raring to go. We can do what we can today, and then we can come back tomorrow and continue the process. But we are here. Let us continue with the debate while we have it all at the front of our minds. If we are not happy at the end of that, we can then look at it again to say, 'Let's put it to a committee.' I do not support the motion.

Mr DEAN - Madam Chair, I misread the member for Derwent, thinking that the application would be made after we proceeded through the amendments we currently have that have been identified. I thought this was going to be the case, and I support the position of the member for Rosevears here. Before I would even consider the adjournment, I want to go through the amendments we have to see where this takes us. We can see whether, at the end of the process, members who have concerns may be appeased with the position and feel they can proceed right through the whole process, without any adjournment. I thought that was the case, but it is not and it has been moved at this stage. While it has not been mentioned at this stage, there is no such thing as a short committee.

Ms Rattray - I might have mentioned that, honourable member.

Mr DEAN - It has not been mentioned on this occasion with this adjournment being sought at the present time. If this matter is adjourned to go to a committee, I am not quite sure what committee it should go to. I would never support it going to a sessional committee because I think it is bigger than that. I would be surprised if this matter came back to this place this year. We are now at the end of September. Our next sitting is at the end of October and then we have two weeks in November - that is all we have. I would be very surprised, by the time the committee gets onto it,

advertises it, asks for submissions and goes through all the processes, if it came back this year. That means it would be pushed out until next year.

What is an adjournment going to accomplish? We have heard from a number of lawyer groups and we have had very good briefings from those groups of people. They have gone into it in some detail and provided us with written documentation as well. A lot of matters have come out as a result of the briefings from those groups of lawyers that have come to us. I liked the position put to us by Chris Gunson this morning. I did not agree 100 per cent with the member for Rosevears when he said that Chris Gunson was not really clear on the position he wanted to take. I thought he was very clear.

Mr Finch - I did not say that.

Mr DEAN - No, I am sorry if you did not; I will withdraw that if that is the case. The letter read in during the closing address by the Leader is a very strong letter of support, provided the amendment he discussed with the member for Murchison is supported. I think he is saying if that amendment is supported, he is comfortable with this. Chris Gunson is a senior lawyer, he would be an SC. I think the term 'barrister' is no longer the terminology, as I understand it. I thought senior counsel - SC - took over from that but I might be wrong.

Ms Rattray - His letterhead says 'Barrister'.

Mr DEAN - Senior counsel is the term often used now to explain their position as well. He is a very senior person in that area and I have a lot of faith in Chris Gunson. He strongly comes out with this position. We have a number of amendments and it depends on where they go - none might get up of course. If that is the case, there may be more support for the adjournment. As mentioned earlier, those involved in large-scale crime, and that is what we are talking about here; we are not talking about petty stuff -

Madam CHAIR - Let us try to stick to whether we are going to adjourn or not.

Mr DEAN - That is exactly what I am doing, Madam Chair, if you would let me continue, please. I am saying the adjournment would suit people like this. This is not what an adjournment ought to be about, in my view. It ought to be about the community and the protection of innocent people. I am not sure that the adjournment would meet the needs at this time.

Unintended consequences were mentioned in the previous adjournment when it was raised. We do not know what we do not know, and that phrase is off the news here and off the news in other places. With any legislation - I do not care what the legislation is - there can be unintended consequences.

We would be a Chamber of a parliament on its own if we were able to identify all the unintended consequences of the legislation that goes through this place. We would probably be the only Chamber in any parliament in the world that could do that. There can be unintended consequences, but when those unintended consequences create unfairness and problems, then amendments and changes come quickly back to this place. No police service, government or parliament would allow such a situation to continue without taking strong action to fix it. I have some issues with that.

Overzealous approach of other jurisdictions was mentioned. I suspect that means the approaches taken by other states and territories. This state has learned from those experiences and has had a long time to learn from those experiences. The New South Wales legislation commenced in 2012. The police and the Government have picked out of that legislation all the good points and have added stronger points. It has been tested in the courts in New South Wales. It has been tested and found to be constitutional, so it has gone through appeal courts.

At this stage I am not sure what an adjournment will bring out. The lawyer groups and the police we have heard from will not change their positions unless they find something between now and the committee process. I would be surprised of that is the case. What other information or evidence would an adjournment bring forward? There would be witnesses coming forward. There would be further submissions. I cannot support the adjournment at this stage. I would like to see us proceed to the amendments that we have. I understand where the member for Derwent is coming from and I do not see anything political in it. I cannot support the adjournment.

Mrs HISCUTT - Madam Chair, I want to touch on the unintended consequences the member spoke about.

The unintended consequences have been noted on the mainland. The bill took effect in New South Wales in 2012. As you can tell from the Ombudsman's report, which came out in April 2016, there is a comprehensive report of the unintended consequences. There are 132 pages on the unintended consequences of that legislation in New South Wales. Tasmania Police has pored over that report, and many of the Ombudsman's recommendations have been picked in this bill.

Members, when it comes to unintended consequences you can never count everything out but this bill has the most safeguards. We learned from the unintended consequences on the mainland and we have made it as rigid, as good and as tight as it can be bearing in mind all the things that went wrong on the mainland. The unintended consequences have been addressed in the best way that anyone can by our Tasmania division.

Mr VALENTINE - Madam Chair, I think there would be a benefit, because of things like how far back the convictions need to go. With somebody who has a conviction 15 years old, is it fair and reasonable to consider they are going to be considered consorting?

Mr Dean - That could be answered now.

Mr VALENTINE - It might be able to be but then you have the opportunity to be able to check out the Lawyers Alliance. In my second reading speech, it was the Lawyers Alliance. Fabiano Cangelosi said there are other ways of doing this. The point is that it would give us an opportunity to look at some of that and see whether there is a better way when it comes to the appeal process. The appeal process concerns me, and I would be prepared to go into a committee and to report progress.

Mrs HISCUTT - Madam Chair, I do not think there is any need to report progress, we should continue. The point the member raised has been addressed on numerous occasions. The young person who has one drug conviction or similar - one bullet - we have decided is not reaching the objectives of this bill.

Mr Valentine - It is not the age of the person, it is the age of the conviction I am talking about.

Mrs HISCUTT - It does not matter. The objectives of the bill say they must be establishing, maintaining and expanding a criminal network. That has to be proven. Just because, as a young person, you have been caught with a bullet on the floor of your ute and you have to be over 18 to do that, or a joint -

Mr Valentine - Twenty years ago?

Mrs HISCUTT - Yes. You now have to meet the objective. One conviction is not enough to prove you are establishing, maintaining and expanding a criminal network. It does not. If you have a criminal record as long as your arm - say you smoked on numerous occasions, you have sold, you have grown, you have been talking to other people who are growing and selling for you - that is different. One conviction 20 years ago does not meet the objectives of the legislation.

Mr Valentine - You might have had 15, 20 years ago. Sorry, I should not be debating.

Mrs HISCUTT - The police have to be able to prove you are establishing, maintaining and expanding a criminal network. If that is not proven, it will not get there. If you were a young radical, as you may have been -

Mr Valentine - I was not. I was a pure soul.

Mrs HISCUTT - It has to meet the objectives and your concerns would not meet the objectives.

Members, I think there is no need to adjourn to send this to a committee. I feel the bill covers most things. Member for Hobart, I think your concerns are alleviated. It would not happen. The objective of the legislation has to be met.

Ms RATTRAY - Madam Chair, I am interested in working through the amendments we have before us - there are significant amounts of them - and the amendment of yours, Madam Chair, to fully understand how it is going to put some clarification and checks and balances into the clause. I appreciate every member has the opportunity to do this and we have such a reasonable approach in this Chamber that people can do so. At this stage, I would like to explore the merits of the amendments and then, if that is not satisfying, I will make a decision at the end. I will be voting against the motion to report progress.

Mr GAFFNEY - Madam Chair, I made it clear in the second reading debate that I will not support this bill because of my beliefs about civil liberties and the fundamental rights of people to be able to associate with whomever they like.

What we are discussing now is whether we should be reporting progress or go into a committee. I will not support that because of a number of questions raised by different groups about some of the concerns they have with the bill being addressed by the amendments, and there were not that many of them. We did not get a flood of information. We had a few emails and there are some people saying, 'Hang on, you're not going to vote'.

I will help strengthen the bill with the amendments. Once that happens, I will vote against the bill because I do not think the bill is right. I do not believe that taking it to a committee is the right process either. It is not like the Tasmanian Forest Agreement or some of those other ones where there were a thousand people lined up at the door every day to have our ears. For that reason, I will

not support taking it to a committee because it should be debated in this place, the amendments worked through and brought to a conclusion.

Motion negatived.

Clause 1 agreed to.

Clauses 2 to 4 agreed to.

Clause 5 -
Part II, Division III inserted
Division III - Consorting
20A. Interpretation of Division III

Mrs HISCUTT - Madam Chair, I move -

First amendment

Proposed new section 20A, proposed definition of **family member**, after proposed paragraph (e), insert the following paragraph:

(ea) if the defendant is an Aboriginal person within the meaning of the Aboriginal Lands Act 1995, a person who, under Aboriginal tradition, is regarded as a person who is, in relation to the defendant, a person referred to in any of paragraphs (a) to (e);

The amendment moved by the Government maintains the current definition of immediate family while at the same time allowing a member of the Tasmanian Aboriginal community to further define immediate family using Aboriginal tradition.

This means that if an Aboriginal person considers any member of their community to be immediate family in accordance with recognised Aboriginal tradition, they would be able to claim a defence in court.

To the best of the Government's knowledge, this is the first time any act in Australia has been broadened to include the concept of Aboriginal tradition in defining immediate family. The term 'Aboriginal tradition' is already a defined term under the Aboriginal Heritage Act 1975.

This amendment honours the commitment made by the Minister for Police, Fire and Emergency Management during debate in the other place on an amendment moved by the Opposition. The Government did not support an amendment from the Opposition in the other place for the simple reason that it was a significant policy change from the bill that deals with immediate family to a much broader concept of extended family members.

The Government committed to further consider how Aboriginal tradition could be treated so as to find equality with the immediate family definition for non-Aboriginal people. The Government has consulted with Rodney Dillon, Chair of the Aboriginal Heritage Council, and he has indicated that he supports the Government's amendment.

Extending the defence past immediate family to, for example, second to third cousins to the nth degree would effectively make the defence so broad as to be unworkable. In effect, family would be so wide that no consort would ever apply.

Members, I ask your support for this amendment. It seems to tick off on everything desired.

Ms LOVELL - Madam Chair, I will not support this amendment because it does not address concerns raised in the other place by my colleagues. This amendment does very little to change anything about this bill, because family members of Aboriginal people currently defined by those paragraphs already in this clause are already exempt, so this does not change a great deal.

I seek clarification from the Leader in regard to the comments this would be the first time in Australia there is a definition in a bill.

Mrs Hiscutt - I have clarification.

Ms LOVELL - Thank you. My understanding is there is exactly this definition in the Queensland organised crime legislation. We will not support this because it does not capture our concerns - it is not the immediate family of Aboriginal people where our concern lies, our concern lies with the importance of extended family networks within Aboriginal communities.

I am speaking about this with some reservation because I am not Aboriginal and I can only rely on the information relayed to me and the representations been made to me by Aboriginal people. I refer to, in particular, an example given by my colleague, Ms Houston, who explains the relationship between Elders and other members of family as crucial in Aboriginal communities. Where there are issues or crimes committed, they have ways of dealing with those through discipline and consequences - one of those consequences being isolation.

The bill could effectively punish people who have been part of criminal gangs or who have been in prison, committed a crime and have been isolated and the community are seeking to reintegrate. By imposing this definition of family on Aboriginal people, it could restrict them from reintegrating those people back into their community, which is essentially making the community safer.

We will not be supporting this amendment. We do have an alternative amendment that captures our concerns. I urge members not to support this amendment so you can hear the arguments for our alternative amendment. I make the point there has been inadequate consultation with the Aboriginal community. We hoped that between the debate in the other place and the debate here today, further consultation would be undertaken.

I understand one person has been consulted. I would like the Leader to elaborate on when the consultation took place because I believe it happened this afternoon. The support of one person in a short period of time before this debate, who I imagine was probably only presented with this one option, does not in my mind equate to broad support from the Aboriginal community.

Madam CHAIR - Before you sit down, member for Rumney, because it is a competing amendment to the same section, you need to prosecute your case because otherwise if this is supported and yours becomes redundant, you need to prosecute yours as an option.

Ms LOVELL - I appreciate that because I thought I was not able to.

Madam CHAIR - You do not move it, you make the merits of it.

Ms LOVELL - No, I will read it out. The amendment I propose, should this amendment not be supported is to the same clause, to the same section, proposed definition of 'family member' -

After proposed paragraph (e), insert the following paragraph:

(ea) A person who is regarded, in accordance with Aboriginal tradition, as a member of the family of the defendant;

I understand the Government is opposing this amendment because it extends the provision to a much broader concept of family than the bill is intended to at the moment, with a very limited and narrow definition of immediate family. I have explained the reasons we believe it is important that those extended family members are included in the definition of family for Aboriginal people, because of the importance of those relationships in Aboriginal culture.

Mrs HISCUTT - The member is right. Queensland has similar legislation to this and Queensland has a strong Aboriginal population who are happy with this. It says it includes, for an Aboriginal person, 'a person who, under Aboriginal tradition, is regarded as a person mentioned in paragraph'. The Aboriginal community in Queensland is quite happy with the amendment that the Government is proposing. I am not sure who the Labor Party has talked to about its amendment, but the Government has consulted with Rodney Dillon. He is the chair of the Aboriginal Heritage Council. I would think he would speak with some authority when asked what he thought of our amendment. He indicated that he supports it. I would say that the Aboriginal Heritage Council is happy with it and that the Queensland Aboriginal population is happy with it, too.

I ask you to support the Government's amendment because it achieves everything that is desirable for this. There are a lot of Aboriginals already within the state and the country who are happy with it.

Mr ARMSTRONG - I am not sure how to put this across because I have to be careful. Being Aboriginal and a member of Aboriginal organisations in Tasmania I will support this amendment of the Government. I could not possibly support Ms Lovell's amendment. We talk about extended Aboriginal families. Without going into too much detail, people need to be careful because it is a very sensitive issue. You could put the whole Aboriginal community offside with some of the comments that could be made. If you are going to have an amendment, the Leader of the Government's is better than the amendment from Ms Lovell, the member for Rumney.

I do not want to go into it any further but you need to be very careful where you go with this. This amendment will do what needs to be done.

Mrs HISCUTT - During the briefings the Tasmanian Bar was also concerned about creating inequities. The alternative amendment that may be put forward broadens the definition of family to include extended family such as uncles, aunts and cousins for Tasmanian Aboriginal people only, creating an inequity between Aboriginal people and non-Aboriginal people. This was mentioned this morning during one of the briefings with the Tasmanian Bar. They were concerned about creating inequity. It would not be appropriate to allow the definition of extended family for one race of people but only immediate family relations for others. The Government will not be supporting the amendment.

Madam CHAIR - But you are supporting your own?

Mrs HISCUTT - Yes. In addition, this other proposed amendment is also likely to lead to confusing inconsistencies within the Aboriginal community as was highlighted by the member for Huon. The amendment being put forward by the Government ticks off on everything without offending one group of people or another. We have to be very careful of that. The Tasmanian Bar mentioned that and they were concerned about creating these inequities. I urge members to support the Government's amendment. It is good, it is sound, it is solid and, as I said, the Queensland Aboriginal community support that. They like that and we have consulted with Rodney Dillon.

Mr WILLIE - Madam Chair, I am sitting here listening to the debate and we are very quick to dismiss a Tasmanian Aboriginal member of parliament's input into this. I do not think that is a good reflection on this place. It is fantastic that we have a Tasmanian Aboriginal member in the lower House who is contributing to these debates and this is our amendment.

Mrs Hiscutt - It is lovely to have one up here too.

Mr WILLIE - It is lovely to have one up here too. I just do not want those opinions dismissed whichever way they lie. That was the good argument for the committee inquiry, that we could explore some of these issues in more depth. I am listening to the debate and I feel that that view has been dismissed too easily. I wonder whether the Government picked up the phone to the member for Bass, Ms Houston, and had a conversation with her about where her amendment came from. I am interested in that question, Leader. Has the Government spoken to Ms Houston about her amendment and the reason that she put it before the parliament?

Mrs HISCUTT - I do not like to think that we have dismissed anybody's opinions. I believe it has been taken on board with this amendment that we are moving here today, which we hope addresses all of the concerns. We have shown good faith by putting this amendment forward and I hope members see this as it was meant. We have consulted, it is tried and true and I believe it is a good way forward. I ask members to support it.

Mr WILLIE - My question was very direct to the Leader and it was whether the Government had spoken to Ms Houston directly about where her amendment had come from, what it meant to her community, and why she put it before the parliament. If you acted in good faith you would have done that as a Government. That is my question. Could you please answer it directly?

Mrs HISCUTT - Not that I am aware of but we have consulted. Maybe if you are aware of who your member in the other place has consulted with you might be able to tell us.

Mr GAFFNEY - I will be supporting the Government's amendment for two reasons. First, I think it is quite specific and defines an area of concern. My other comfort is that the police force has been trying for a long time now to have better relationships with our Aboriginal and Indigenous community. So has this Government and so has this state. When any issue came to the fore about a family member of Indigenous background, I believe this police force would be very careful in how they would set their parameters. I do not believe they would go into any situation without the betterment of the person or the individual. Dare I say, because I am not aware of the Aboriginal heritage, and I am not sure of the traditional as in Ms Lovell's Aboriginal traditions, that Aboriginal traditions change from communities and groups in states and territories. I do not think you can confine it. What will happen here, if we do not give some guidance to our police force in trying to protect some of the young Aboriginal people who may be being influenced by others? How do you go about it? I do not think it is fair. I am comforted that the Government spoke to an Aboriginal

Elder who has given their approval to this. I do not think the one offered by Ms Lovell would actually work, so I am supportive of the Government's view on this, and I will support their amendment.

Ms RATTRAY - Madam Chair, just a point of clarification seeing that we have been asked to look at both amendments. I appreciate the member for Mersey's comment. It is obviously the Aboriginal Lands Act 1995 that is the difference. Is that correct? That is the difference in the two amendments - one has the reference to the Aboriginal Lands Act 1995, which has the definition of an Aboriginal person within its meaning; and the other one is just in regard to Aboriginal tradition. I want to get it really - but is it the Aboriginal Lands Act definition?

Mr Gaffney - So, in Sarah's, she would not have (a) to (e).

CHAIR - The member for Rumney can speak to her amendment and how it would apply.

Ms RATTRAY - I am just trying to get an understanding of what the difference is between these two and certainly doing it without offending absolutely anybody.

Ms Lovell - The main difference is that the Government amendment will still be restricted to immediate family under the definition as in the bill.

Ms RATTRAY - And the amendment for -

Ms Lovell - I do have another question -

Ms RATTRAY - The other one is - and I liken it to my family. I have hundreds of aunties but they are not blood relations. In the 'good old days', instead of calling my auntie 'Mrs Groves', I called her Auntie Gwen.

Mr Valentine - It was a courtesy auntie.

Ms RATTRAY - Yes, that is what it is. Those people have become my family, but in this bill they do not count as family. I was just trying to work out the difference between the two amendments so I could make a decision about where I put my vote, Madam Chair, on this particular amendment.

Mrs HISCUTT - Just for clarification, our amendment talks about any person referred to in any paragraph (a) to (e), so under the Aboriginal tradition, it could be anyone of those there, a parent, a child, a spouse. If you say that the Aboriginals -

Ms Rattray - It is also under the Aboriginal Lands Act -

Mrs HISCUTT - The person might not be your blood brother born to the same parents, but if your tradition says that he is your brother or he is your brother, and he is your brother within the tribe, then that is acceptable under our amendment.

As an Aboriginal, in your tradition, if you happen to think that your whole tribe is your 'brother', that will be seen as being your brother under (a) to (e) under the Government's amendment.

Ms LOVELL - Thank you for that clarification, Leader. I have one further question. It is in relation to Elders and Aunts and Uncles in particular, as that is how Elders are referred to often.

Does this amendment proposed by the Government capture Elders of the community and the relationship with other members of the community?

Mrs HISCUTT - It would depend on the tradition of that tribe or group and if that is considered to be the case, that is considered to be the case.

Ms Lovell - They would be captured?

Mrs HISCUTT - It depends on the tradition. If it is the tradition of that tribe then it would be captured. If a parent is not viewed as a parent, no, it would not happen. If it is their tradition it will be respected.

Mr VALENTINE - I have had a lot to do with the Aboriginal community over time and especially when I was the lord mayor of Hobart. We had an Aboriginal reference group and it all fell apart over something like this. As the member for Huon said, 'It is a very sensitive thing.' In a sense it puts us between a rock and a hard place because we could offend whichever way we go.

I am going to support the Government's amendment because it is the Government that has the relationship with the Aboriginal community. It will be the Government that has to deal with how they have chosen to go forward on this. I commend them for wanting to make sure people in the Aboriginal community are catered for. I can agree to a degree with the member for Rumney in the way she interprets it may not be wide enough. The important thing is that we do not try to drill down that far with this issue to the detriment of the whole thing and their relationship with the Aboriginal community. It is the Government that has the relationship, if I might say that. We all have a relationship of sorts with people who are of Aboriginal descent. In this House, when it comes to legislation, it is the Government that has that relationship and it is the Government that has to negotiate how that relationship is set up between itself and the Aboriginal community. Whether this is perfect or not or whether this one is perfect of not, the way I look at it, it is the Government that has to deal with this and it is the Government that will be held to account if they get it wrong.

Ms LOVELL - Madam Chair, I am sensing from around the Chamber this amendment is broadly supported and whilst we have been debating we have also been doing our best to consult as best we can. With the assurances the Leader has given us just now, we are relatively comfortable this amendment improves the bill. It does not go as far as we would have liked it to have gone. The only reason we are debating this is because it was raised by Labor in the other place.

Mrs Hiscutt - Acknowledged.

Ms LOVELL - This is exactly why my colleague, the member for Derwent, had proposed the idea of putting this into a committee so this consultation could take place in a way that is much more thorough, much more robust, and ensures we are not in a position like we are now where we are all trying to come up with the best possible solution for a community of which only one of us is a member. I am happy to leave it at that. Our concerns are on record and the Council will decide.

Mr FINCH - Madam Chair, it is interesting, the member for Huon has revealed - and I did not realise - he was of Aboriginal descent. We understand that now and it is good that we have a member here who is of Aboriginal descent and we have a member in the lower House, Ms Houston who is of Aboriginal descent.

It is very important for us to embrace those issues that are of concern to the Aboriginal community when it does come up in legislation. I will be looking forward, when we do have legislation that is sensitive to the Aboriginal community, that you will advise us and guide us in respect of where the sensitivities might be and where we can get the best result in legislation.

I trust that through the work that has been done on this amendment that we have landed at a good spot as we have been assured by the Leader. Rodney Dillon is known to most of us here and is somebody I respect. If you have sought his opinion and he has given you the advice that this would be greeted with calmness, I am happy to accept that and I will support the amendment.

Mr DEAN - Madam Chair, I agree with the member for Rosevears. Rodney Dillon is an honourable man and I know him well and have known him for a long time. He is a great person.

I support the Government's amendment in relation to this matter. The honourable Paul Harriss was also of Aboriginal descent.

A member - He is a cousin.

Mr DEAN - Oh, he is a cousin of yours, as well.

I have a question. With us being the multicultural state and country that we are, do we look at all those other people who are now living with us and who, in some instances, have similar cultures if you start to look at them. If you look at the Sudanese people, there is a different culture in relation to who they see as members of family. I am not sure about the culture and position of the Bhutanese people. Have we considered those other members of our state in putting an amendment forward such as this?

Mrs HISCUTT - No, not every cultural group was consulted on this. This amendment originally came through in the other place via another member. It was taken on board in good faith. It is not feasible or practical to consult every ethnic group in Tasmania, let alone Australia. The Tasmanian Bar expressed some concern about creating inequities with this. We have landed on a good place here. It is in good faith with the Labor Party from downstairs. Hopefully, this is trying to appease concerns of everybody. When it comes to other ethnic groups, it is not feasible. It was not done and no department can talk about that with every bill.

Amendment agreed to.

Progress reported; Committee to sit again.

SUSPENSION OF SITTING

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

That the sitting be suspended until the ringing of the bells.

Sitting suspended from 7.01 p.m. to 8.45 p.m.

Resumed from above.

Clause 5 -
Part II, Division III inserted
Division III - Consorting
20A. Interpretation of Division III

Mr VALENTINE - Madam Chair, I move -

Second amendment

Proposed new section 20A, proposed definition of ***serious offence***, paragraph (f).

Leave out 'this definition.'.

Insert instead 'this definition -'.

Third amendment

Same proposed new section, same proposed definition, after paragraph (f).

Insert the following:

'that is an offence punishable by imprisonment for a period of 10 years or more.'.

Members will remember during my second reading speech I raised this as something brought forward by the New South Wales Ombudsman. The Ombudsman believed it should go into police policy. My thinking is it can go into police policy, but that does not necessarily mean it is bound to be acted on.

For transparency, it needs to be in legislation and that is the reason for moving it here - so we could be in a situation where the consorting law is applied to those who have committed offences punishable by imprisonment for a period of 10 years or more, and this way the smaller convictions are not taken into consideration.

I hear the arguments that there could be a number of smaller convictions -

Mrs Hiscutt - It has to be.

Mr VALENTINE - Okay, but it is still up to the discretion of the police as to how it is applied. It would give surety or make it clearer if those offences were indeed serious offences punishable by imprisonment for a period of 10 years or more and would be clear to all. It gives a definite structure.

The first amendment is to introduce the matter that follows on; that is, the first and second amendments standing in my name.

Mrs HISCUTT - If you were to adopt these amendments, the definition would be way too narrow. It will, for example, cut out all things to do with offences such as possessing child pornography, selling a controlled drug like methamphetamine, or possessing a firearm with criminal intent because they all attract less than 10 years already. You would be narrowing it to the point where it would not be workable because those offences do not attract a 10-year sentence anyway. While some offences may be lower level in isolation, they need to be broad because organised criminals commit these types of offences often in bulk over several years. So while one breach of a firearms or drug law is minor, 20 of them are not and need to be captured by this. Organised shoplifting crews or white-collar fraud are the same.

This law is also about crime prevention. If a young person is being exposed to a major drug dealer, it is important we can tell them to stay away from that person before it is too late and they become addicts. The safeguards of insurance by an inspector and review by a court will prevent misuse, as will a notice only being able to be issued if it meets the objectives listed in the bill. This was noted in the Ombudsman's report, which stated on page 116 -

> … to attempt to constrain the use of the consorting law to the prevention of specific offences may be counterproductive … this type of definition may be overly restrictive.

Your amendment also ignores the rehabilitation aspects, which New South Wales and South Australia fought for. For example, 500 notices were issued in South Australia but not one person was charged. If you were to adopt this amendment, it would mean offences like possession of child pornography and the sale of controlled drugs like methamphetamines would not be captured. We need that in here. I ask all members to reject these amendments.

Ms RATTRAY - I had some concerns around serious crime and lesser. I cannot support 10 years. Could we have some indication of what is the average length of sentence for a serious crime? That may not be available at this hour of the night -

Mrs Hiscutt - It is at the magistrate's discretion.

Ms RATTRAY - You do not hear of many people being sentenced to 10 years in jail -

Mr Dean - This does not relate to the sentence a person is given; this relates to the sentence provided that the magistrate could impose.

Ms RATTRAY - Okay, it is an offence punishable by imprisonment for a period of 10 years. They may get three years, but it could have been 10 years. Thank you very much, honourable member.

It would be interesting to know how many crimes would be under that it. It might not be something that can be provided right now. I acknowledge the intent of the member's amendment. An offence punishable by imprisonment for a period of 10 years or more is certainly a serious crime. I am not sure how many of them that is. I take on board what was said by the Leader but also acknowledge the work done by the member who put forward the amendment.

Mrs HISCUTT - I wanted to back up that this amendment would exclude offences like possessing child pornography, selling drugs and possession of firearms with criminal intent. You do not get 10 years for those things and yet those offences need to be taken into account. We do not want to eliminate those sorts of serious offences.

Mr VALENTINE - It is interesting that the Acting NSW Ombudsman's report - and this is modelled on the NSW legislation - recommends the police put this in their policy. Why would the Ombudsman, who has been through all this process about this consorting law, recommend this?

It is linked to the definition of 'convicted offender' in clause 5, proposed section 20A. By defining a convicted offender as 'a person who has been convicted of a serious offence and who has attained the age of 18 years', it is saying what level of serious a serious offence is.

I hear what the Leader is saying, but the member for McIntyre asked: What other year level of offence would be considered to be reasonable? Is it three or five years to be a serious offence? There must be a standard. It was actually put in the Ombudsman's report that it should be put into police policy, not into legislation. My argument is that if it is in police policy, it should be in legislation. If 10 years is too much, what is a term that is considered to be reasonable by the police?

Mrs HISCUTT - To reiterate, we talk about the Ombudsman's report but he says that attempts to constrain the use of the consorting laws to prevent specific offences may be counterproductive. Your amendment would exclude specific offences. The Ombudsman went on to say that a more selective definition might be overly restrictive.

That was in the Ombudsman's report. It was taken that it could be adopted as a policy but by putting into the law, it is going to narrow it so much that I think it will have a nil effect for some of the crimes. I will seek some more advice on that.

Also, with the NSW law the notice orders last for life and there is no review mechanism at all. We have built a lot of those reviews and safeguards into this bill as a learning factor from the unintended consequences that have occurred on the mainland. By adopting your proposed amendments, it will make the legislation quite unworkable. Members, I ask you not to support these amendments.

Mr DEAN - I cannot support the member for Hobart's amendments. I originally had concerns with the serious offence part. It was not until I had a number of meetings with police and the briefings that I became convinced the offences as identified in the bill are the way we should go. I have the example in my second reading speech of the shop stealing situation in New South Wales I was involved in as a police officer, raiding a home and recovering close to half a million dollars' worth of property and several hundred thousand dollars in money. I cannot remember exactly where the gangs were operating. This is what this legislation is about. In the case of stealing from a shop, the Criminal Code would still be three years jail, or has that been increased? It might be more now. Maybe the Leader might be able to correct me if it has been amended. It would not pick up any of that and it would not pick up the other situation involving drugs if this amendment were to get through. I looked at that and referred to the smoking of a joint; now it needs a number of those offences before police charge those people. Those traffickers are the big drug mover's target. They target people who are users and other more minor offenders to get them involved in their business. That is what this legislation is all about.

I would find it difficult; I could not support it. In fact, it would gut the bill. I could not under any circumstances support it and ask other members not to either.

Mr VALENTINE - Madam Chair, I will use my last call to re-read what this says because it needs to be clear. Section 11.3.1 of the Ombudsman's report reads -

> In response to our issues paper a number of organisations suggested that the use of the consorting law should be restricted to targeting 'strictly indictable' offences. Strictly indictable offences are those that may not be dealt with summarily and are required to be dealt with on indictment in the District Court or Supreme Court. However, while strictly indictable offences amount to a class of offences considered to be the most serious, knowledge of criminal procedure is required to determine whether or not an offence falls within this category. It is also true that some serious offences, including some serious violence offences, may be dealt with summarily on election. This office is concerned that this type of definition may be overly restrictive. Taking into account the New South Wales Police Force's desire to maintain operational flexibility, we recommend that 'serious criminal offending' be defined in police policy be reference to the maximum sentence available and that an appropriate level would be offences punishable by 10 years or more imprisonment. This definition captures serious violence offences, robberies, break and enters and major drug supply. It excludes common assault, minor property damage, theft and drug possession. New criminal offences enacted that carry a maximum sentence of 10 years or more imprisonment would automatically fall within the definition without need for additional adjustment. In our consultation with the New South Wales Police Force Consorting Standing Committee in January 2016, it was indicated that some frontline officers may not have an accurate understanding of the offences that carry a maximum sentence of 10 years or more imprisonment. We suggest this concern may be addressed through training and police publications.

As I said, this legislation is modelled on the New South Wales law. There is a definite opinion here and rather than it being police policy, it needs to be transparent and everybody concerned needs to understand what is and what is not considered to be a serious offence in this circumstance.

Mrs HISCUTT - The reason it was recommended to be policy and not law was because police flexibility is needed. Taking in this amendment would gut the bill. I have rough sentencing for offences such as possessing child pornography, selling a controlled drug like methamphetamine or possessing firearms with criminal intent. It may be about two or three years, but it depends on the judge. I urge members not to adopt this amendment because it would narrow it down too much and would gut the bill.

Amendment negatived.

Ms LOVELL - Madam Chair, I am not trying to be difficult and I do not want to spend more time on this than we need to, but we have questions we would like answered and seek clarification on the Government amendment moved and supported before the dinner break.

Madam CHAIR - The member is asking a question about the subclause as amended. She is entitled to ask questions about the clause as it is now with the amendment in it.

Ms LOVELL - Thank you, Madam Chair. It has come to our attention after spending a bit more time during the dinner break reviewing what was said in the debate prior to the dinner break and the amended clause that there is still confusion over what the clause means and how it will operate in practice.

I have a couple of questions to ask the Leader. It has come to our attention that there are some differing opinions over the support or otherwise the amended clause may have had from Rodney Dillon as the person the Government relied on to support its clause. We are seeking further clarification from Mr Dillon. He is in an area where he is difficult to contact at the moment. We are doing what we can.

Will the clause as amended include, in the definition of family member, those members of an Aboriginal family that are considered aunts, uncles or Elders? Is there any restriction on how far that extends within those family groupings?

In the interests of transparency, given that we are all trying to do the right thing here and reach agreement on a clause, would the Government consider tabling the advice it received from Rodney that indicates he supports this clause?

Mrs HISCUTT - It will cover anybody a particular Aboriginal group recognises as their tradition.

Ms Lovell - As their tradition of what?

Mrs HISCUTT - As traditionally one of those groups in (a) to (e).

Ms Lovell - Not aunts and uncles?

Mrs HISCUTT - One of these, from (a) to (e).

Ms Lovell - Can the Leader put on the record that it will not cover aunts and uncles?

Mrs HISCUTT - It will not cover aunts who are not recognised as being in (a) to (e).

Mr Willie - Could you be very specific?

Mrs HISCUTT - If that person is not recognised anywhere between (a), (b), (c), (d) and (e), then no.

Ms LOVELL - There was one more question about the advice you received from Rodney for the support he gave to that clause, if you would be willing to share that.

Mrs HISCUTT - As an extra to the original question, it will cover any relative who is living with them. There was a good faith conversation held earlier in the day on the telephone.

Ms ARMITAGE - Honourable Leader, I am sure I heard something before that was totally different to what you are saying now, and I need some clarification. With regard to the amendment, when you were asked by the member for Rumney, I thought you said - I will check *Hansard* later - that if it is the tradition of that tribe for people to be classed as family, they would be classed as under those groups. I was sure that is what you said: if it was the tradition of that tribe, they would be considered family, regardless of whether they were in (a) to (e).

Mrs HISCUTT - The amendment moved by the Government maintains the current definition of immediate family while at the same time allowing a member of the Tasmanian Aboriginal community to further define immediate family using Aboriginal tradition, so not necessarily a blood

relative. This means if an Aboriginal person considers any member of their community to be immediate family in accordance with recognised Aboriginal tradition, they would be able to claim a defence in court.

Further, this was chosen so as not to lead to confusion and inconsistencies in Aboriginal communities, because the concept of family is not applied consistently across Aboriginal communities in Tasmania. Would you like me to read it again?

Ms Armitage - While you are on your feet, I do not need you to read it again. My main concern was a statement you made. We need to be clear on *Hansard*. If I remember correctly, your comment was that the tradition of the tribe relates to whether they are family or not. If it is their tradition for those people to be considered family, they are.

Mrs HISCUTT - Across Aboriginal communities in Tasmania, immediate family.

Ms Armitage - I do not think you said that. That is what needs to be clarified in *Hansard* so it is clear.

Madam CHAIR - You might need to take another call, if you want to seek further clarification.

Mrs HISCUTT - Would you like me to read it again?

Ms Armitage - There is no need for you to read that. It was a comment you made; it is not what you read.

Mr DEAN - Madam Chair, I have two amendments to proposed new section 20C and two amendments that were to go together. If I could move both amendments at the same time, it would be the better course if acceptable. I move -

Fourth amendment

Proposed new section 20C, proposed new subsection (1), leave out 'habitually'.

Fifth amendment

Proposed new section 20C, proposed new subsection (2), leave out 'habitually'.

The reasons I have moved these amendments, as discussed in the briefing at some length, is that to consort twice in five years can hardly be said to be habitually consorting. The dictionary definition of 'habitually' comes up with words like 'regular', 'constant' or 'as a habit'. If we are talking about habitually, it is certainly more than twice in five years.

Mr Valentine - They habitually eat Christmas dinner.

Mr DEAN - Yes, in that sense it is. That is okay, but that is once a year. That would be five times in five years. This does not in any way weaken the legislation. I think the police said during the briefing that it strengthens it. I cannot see where it strengthens it either. If we left 'habitually' out of 20C, it would read -

(1) A convicted offender must not consort with another convicted offender within 5 years after having been given under section 20D(2) an official warning in relation to the other convicted offender.

(2) For the purposes of this section, a convicted offender does not consort with another convicted offender unless the convicted offender consorts with the other convicted offender on at least 2 occasions within the 5-year period after having been given under section 20D(2) an official warning in relation to the other convicted offender.

I cannot see where it makes any difference other than to make it clear that we are not talking about habitually - we are talking about more than two occasions in a five-year period. I ask members to support this amendment because I think it is sensible in the circumstances.

Mrs HISCUTT - The Government has no objection to anything that gives the bill more clarity, as this is described. We will vote for the amendment.

Ms FORREST - Madam Deputy Chair, I am surprised the Government is happy with this amendment. It creates more problems than it solves. Taking out the word 'habitually', which has been determined by the High Court to have validity in terms of what it actually means, means that if you read this clause as it is, and I will read it will the amendment in place -

A convicted offender must not consort with another convicted offender within 5 years of having been given, under section 20D(2), an official warning in relation to the other convicted offender.

So how the hell are these people going to go to the shop and run into their mates, or play a footy match? We have talked about this at length in our briefings - how will they pick up their kids from school when they potentially will run into other parents? These are real-life, valid situations. If you take out 'habitually', which has been defined by the High Court, it means it cannot just be that you run into them at the shop and then at the footy ground later on the weekend and then the next morning when you are dropping the kids off at school. To take out 'habitually' means that the convicted offender must not consort with another convicted criminal. This makes it clear they have to do it more than once. Is this not what we debated and argued for almost hours?

Mr Dean - You have to read proposed subsection (2) with it. It goes with subsection (1).

Ms FORREST - It is the same thing. 'For the purposes of this subsection, the convicted offender does not consort with another convicted offender unless the convicted offender consorts with another convicted offender on at least 2 occasions during that 5-year period.' That lays down the provisions. It has to be at least twice, but if it is only twice, if they go to the shop in the morning and drop their kids off at school later, they have done it twice.

Mr Dean - It does not constitute consorting. You have to look at the rest of the legislation. It does not constitute it.

Ms FORREST - If these people are under suspicion already, I cannot believe we are not concerned about getting rid of the word 'habitually' when it has been confirmed by the High Court to have meaning and to be necessary.

I will vote against this amendment because it makes it much harder for people to get on about their lives when they have been issued a notice. If they have been issued a notice, this is what we are talking about. They are already in the gun sights, have already done the wrong thing and been told, do not consort. At this point, one would assume it has not been appealed and overturned in the court, so it is in play and suddenly we are telling them here they can just consort and if they do it twice, well, that is it, done - you have been done for consorting. How can that be acceptable? I cannot believe it.

Mr DEAN - I will not shout and jump around but will comment on this rationally. You have to read (2); they go together. Subsection (2) and subsection (1) go together. You have to read (2) because it makes it perfectly clear for consorting to be satisfied, all the other situations and positions under this bill are met. Look at proposed new subsection 20B, where the object of the bill is to deter convicted offenders from establishing, maintaining and expanding criminal networks. To use the shop situation as simply being the criterion necessary is not right.

Members, I ask you to look at the two proposed subsections, read the two together and then determine whether the amendment weakens or strengthens the bill. I do not think it does either - neither weakens nor strengthens - but it removes a word not suitable for those two sections in the way in which each section is written. It is not suitable. Some other word might have fitted, and I did say that to the Government and the police, but they could not come up with another word. It was seen fit I should move to remove 'habitually' in both cases. It is fairly clear. If you look at what habitually means, and I understand the courts and their interpretation of certain words, the court has not given an interpretation of the word 'habitually' used in these two sections in this bill. They have given no findings at all. No case law on that at all.

I ask members to support the amendment because it makes it better and the Government has indicated its support and looked closely at this. This matter was discussed for quite a while yesterday and today. It has not come up out of the blue. I ask members to support the amendment as it is.

Mr GAFFNEY - Madam Deputy Chair, I hear what both members are saying. The bill we are looking at has elements of the 1935 act. We are looking at the word 'habitually' consorting and 'habitually consorting' has been used in the other acts around the country, including in the Habitual Criminals Act 1869. We may laugh, but we think we are now changing the act from 1935 to contemporise it, but in 1935 they looked at the Habitual Criminals Act 1869 and thought, 'There is some reason behind this.' Now, on the spur of the moment we are looking at accepting this because it is late at night and, 'We have had a couple of days on it, so let us get rid of it.' I do not think we should, unless there is further investigation. Why would the other jurisdictions use this terminology? Why would they not just have used 'consorting' because it sounds better?

I raised this before about the habitual side of it, but it is there for a reason. I hear what the Government is saying, but I am not convinced we should change this because I do not interpret it as what we think it is. As we know with OPC-speak and lawyer-speak, what they say sometimes is far off what we think it is all about. I would be careful about jumping in and saying 'Let's do this' because it has been put there for a reason. Just because we do not like the semantic structure of that word with 'consorting' does not mean we should get rid of it, so I heed some caution.

Mrs HISCUTT - For clarity, I have had a discussion and we have come up with this: if members feel that leaving it in there makes it clearer, we are at the will of the Chamber.

As far as the advisers and the department are concerned, it will not make a lot of difference to the intent of the bill. As has been said, the word is defined. We are happy to go with the will of the Chamber.

Ms Forrest - It is not defined in the bill. It has been determined by the High Court.

Mrs HISCUTT - While I am on my feet, the member for Launceston has pointed out something I said earlier in *Hansard*, which is highlighted in green. We have had another look at that. We are still happy with what is there.

A family member definition under (e) includes a sibling - for example, a brother - so what I said there is correct in how this amendment would apply. As long as that person is recognised -

Ms Armitage - Can you read the rest of what I have highlighted in green? It was the other part I was talking about.

Mrs HISCUTT - You have highlighted, 'The person might not be your blood brother, born to the same parents, but if your tradition says he is your brother or he is your brother within the tribe, then that is acceptable under the amendment'.

Ms Armitage - That is the part that I was referring to when you said it is only (a) to (e). You said there, 'if it is part of the tradition'.

Mr Willie - Then there is page 69, addressing Ms Lovell's question.

Mrs HISCUTT - It is that (e) is a sibling.

Ms Armitage - Yes, but you are saying he is not really your brother when the tribe says he is your brother and treats him as your brother.

Mrs HISCUTT - This is the point of this amendment. To clarify: (e) is a sibling who is your brother or your sister.

Ms Armitage - But with respect, you are saying there if the tribe says he is your brother, he is not your brother.

Madam DEPUTY CHAIR - Order. We have moved off that subclause. We can always go back to that. We should deal with the amendment to proposed section 20C by Mr Dean.

Ms LOVELL - Madam Deputy Chair, we will not be supporting this amendment. Before I explain our reasons, I welcome a bit of jumping up and down and passion in the Chamber. That can only be a good thing.

We will not be supporting this amendment for reasons that have already been outlined in concerns raised by the members for Murchison and Mersey. We are dealing with this on the fly, as we do, based on what we have in front of us, at face value, reading these two clauses together.

Deleting the word makes very little difference to how you read this bill. It says a convicted offender must not habitually consort with another convicted offender. Proposed section 20C(2)

goes on to explain what 'habitually consort' means. It is unnecessary. It does not particularly change the intent of the bill. The fact that the Government is not opposing it supports that.

It is unnecessary and we are tinkering with areas that perhaps we should not. It is safer to stay with what was drafted by OPC and supported in the other place.

Mr GAFFNEY - Andrew McLeod, in the introduction of *On the Origins of Consorting Laws* from 2013, said -

> Consorting laws have piqued the attention of Australian legislatures. In the last year alone two states have re-enacted these offences. … Australian parliaments have recently showed renewed interest in offences that punish individuals for habitually consorting with criminals since 2004.

This well known legal historian, looking at legislation, uses the term 'habitually consorting'. If he is saying that it is accepted in two or three different states, he is referring to it and he is an eminent person in this field, I do not think we should change it. I will not be supporting the amendment -

Mr Dean - I thought you raised it this morning in the briefing.

Mr GAFFNEY - I said I did not like it. I did not say I wanted to get rid of it.

Mr DEAN - I have said all along I do not want to weaken the bill. I do not have a problem with that either.

This is not on the spur of the moment. For the Labor members' information, this was discussed yesterday. I am not sure if it was raised last week when we talked about it. It has not just come up. I have discussed it with the police and I have discussed with the Government.

All I am saying is the word 'habitually' does not fit in the proposed sections in the way in which it is used. I am not going to die in a ditch if it stays there. It makes it correct, in my view, to delete the word 'habitually' in both places - that is proposed subsections (1) and (2), and you need to read them together.

Madam DEPUTY CHAIR - Is the member withdrawing his amendment?

Mr DEAN - I know when I am defeated. I would prefer to lose it rather than withdraw it. Let us go down that path.

Ms FORREST - Madam Deputy Chair, I stand by my previous comments. The member for Windermere was one of those singing the praises of Mr Chris Gunson, the barrister from the Tasmanian Bar. I discussed this at length in the meeting and he described it in the letter he wrote to Inspector Keane. It is a recognised term. It is used, as the member for Mersey suggested, to clarify what we are talking about so people cannot inadvertently be caught up in it. The whole point is to do our best to avoid unintended consequences. It has been determined to be valid in the High Court. It has been defined through those processes. It means you cannot be seen together in the same place two or three times in a day. By coincidence or by design, you still end up being there. Some of these people will have children the same age, in the same school and in the same sporting teams. They should be able to take their kids to sporting games and school and to the shop afterwards.

This does make it clear. I read proposed subsections (1) and (2) together and proposed subsection (2) requires that there are at least two occasions. That is adding further clarity. But if you take out 'habitually', you make it less clear about the impact it could have, unintentionally, on people who have warning notices issued on them but are still trying to go about their normal business and not commit crimes, hopefully. Is that not what we want? It is important to have it there because in other places it has stood the test of time and stood the test of the High Court.

Ms ARMITAGE - Madam Deputy Chair, I agree with the member for Murchison. I am sure NSW and Queensland are both incorrect according to the member for Windermere because they call theirs, as I said, 'habitual consorting laws'. We have it right. I do not always agree with what OPC puts, but obviously, as the member for Mersey said, they often have a reason for the wording they use, even though sometimes we find it a little bit strange.

I will not be supporting the member for Windermere's amendment, and I do support it as it is.

Mr DEAN - I seek to withdraw the amendment I put forward.

Amendment withdrawn.

Mr VALENTINE - Madam Deputy Chair, I was about to read the High Court decision. You are going to have to look it up. I move -

> **Sixth amendment**
>
> Proposed new section 20D, proposed new subsection (1).
>
> Leave out 'it is desirable to do so in furtherance of the objects of this Division, may authorise a convicted offender'.
>
> Insert instead 'the commission of an offence is likely to be prevented if 2 or more convicted offenders are prevented from consorting with each other, may authorise each convicted offender'.

It needs to be read as a whole so you get the understanding. As it is in the bill at the moment it is -

> A commissioned police officer, if satisfied that it is desirable to do so in furtherance of the objects of this Division, may authorise a convicted offender to be given a notice in writing (an official warning) specifying that -

and all those things that follow.

I am suggesting here in this amendment that -

> a commissioned police officer, if satisfied the commission of an offence is likely to be prevented if two or more convicted offenders are prevented from consorting with each other, may authorise each convicted offender ...

Quite clearly, it narrows it to the circumstance where an offence is about to be committed or it is considered it is about to be committed. It really does narrow the police action to something more

reasonable in the sense of the police taking action if they believe an offence is about to be committed. It is as simple as that.

That is the reason for moving this particular amendment rather than it being slightly amorphous with the furtherance of the objects of this division, it has to be they believe an offence is about to be committed. I leave it to you to argue.

Mrs HISCUTT - This amendment is different from the objectives upon which the whole bill is constructed. A totally different consultation occurred on this bill, not on what you are talking about - I have not talked about this at all.

Mr Valentine - We are asking you to now.

Mrs HISCUTT - We are here doing it now. The reason for the inspector to issue a warning should match the objective. That is preventing criminal networks used by organised gangs. This amendment makes it about stopping a certain offence, and to tinker with that would be very dangerous and may have the unintended consequences you talked about before.

As I said, this is very different from the objectives of the whole bill and this is what we have consulted on, this is what we bring to the Council today. Members, even entertaining this amendment would be very dangerous and I ask you not to accept this amendment.

Mr VALENTINE - You are saying it is going to take away the intent of the bill. Can I ask the question, if the statement 'insert instead "the commission of an offence is likely to be prevented"' followed 'Division' so it reads -

> A commissioned police officer, if satisfied that it is desirable to do so in furtherance of the objects of this Division and the commission of an offence is likely to be prevented if 2 or more convicted offenders are prevented from consorting with each other, may authorise each convicted offender to be given a notice in writing ...

I ask whether it makes a difference to you. I will reserve my third call to amend my amendment.

Mrs HISCUTT - Madam Chair, all it means is it is in writing, it does not change anything. It is only in writing. The changes are totally different from the objectives of the whole bill we have before us.

Mr VALENTINE - Is it possible for me to move this clause be postponed?

Madam CHAIR - You would have to withdraw it because it is part of a clause. It is a subclause of a clause, so you would have to withdraw this one and maybe ask for a recomittal if you felt it needed to be progressed or move the reporting of progress to another amendment prepared after you have withdrawn this one.

Mr VALENTINE - I cannot take my seat because I will lose my call. If I withdraw the amendment and ask for the clause to be postponed -

Mrs Hiscutt - While the member is on his feet, maybe I could help. Is that okay, Madam Chair?

Madam CHAIR - Maybe you can clarify the matter and we will see how that goes in the first instance.

Mrs Hiscutt - We seem to have tracked down that you may have had the idea from the Victoria Police and, if that is so, in this if this amendment were to get through section here, they have decided it does not work.

Mr VALENTINE - Who has decided it does not work?

Mrs Hiscutt - The Victoria Police.

Mr VALENTINE - How many other clauses have we taken from the Victoria Police?

Mrs Hiscutt - None, and we do not have that one. You are suggesting it, not us.

Mr VALENTINE - I appreciate that. Quite clearly it seems to me the Government is not going to accept it either way. I seek leave to withdraw the amendment.

Amendment withdrawn.

Mr DEAN - Madam Chair, I move my remaining amendments -

Seventh amendment

Proposed new section 20D, proposed new subsection (1), paragraph (b).

Leave out 'the offender.'

Insert instead 'the offender; and'.

Eighth amendment

Same proposed new section, same proposed new subsection, after paragraph (b).

Insert instead the following paragraph:

(c) The person may, within 28 days of receiving the notice, request under section 20D(3) of this Act, a review of the decision to authorise the official warning to be given to the person.

There has been some lengthy discussion between me and the police and the Government in relation to this matter. No doubt the Leader will correct me if I am wrong but I think it is conceded that this was an oversight on the part of the police and the Government in putting this legislation together. If you read the position in relation to the next appeal that can be taken, that is to the commissioner, it is provided for in that area that the commissioner's delegate, in reviewing the warning order, must also advise them - if it goes against them; if it went for them they would not - in writing of the right of the person to take it to a magistrate on a further appeal. They have to provide that in writing to them.

I would say that, in the same way, that same requirement should rest with the commissioned officer who is providing that warning in the first place, that is, they be required to identify to that

person that they have the right of taking it on further to an appeal to another authority or to the Commissioner of Police. If that was not so, a person could be given a warning not knowing that they have a right to appeal it. That, to me, would be grossly unfair in the circumstances. They ought to know what their rights are. These people probably never pick up the legislation and read it to find out for themselves what is going on. They would be reliant on the police to inform them of any other courses of action that they might have available to defend their position. It is only right that that happens. I ask members to support this amendment. Maybe the Government should get up and not support it because that way others might support it.

Mrs HISCUTT - These amendments put into legislation what Tasmania Police intended to do anyway. Of course they had no concerns because it was something that was going to happen anyway, so we have no objections to it going into the legislation.

Ms RATTRAY - Just a question then, Leader. Was this an oversight that it was left out? Or would the Government have brought the amendment on if the honourable member had not picked it up? Just out of curiosity.

Mrs HISCUTT - It was simply a policy decision that there was no need for it to be in the law. This was the procedure that Tasmania Police was going to use. If you want it in the legislation, we have no objections because it was going to happen anyway.

Ms LOVELL - I want to put on record - and you might brace yourself because I do not want the shock to be too much for you, member for Windermere - that it was always our intention to support this amendment. It is a sensible amendment. The provisions for people to be able to seek a review under this act are part of what makes this a strong, robust act. It is sensible the person affected be notified and we are happy to support it.

Mr DEAN - I did not want to mislead anybody by saying I believed it was an oversight, because when I raised this with the police and the Government, it was indicated it was in the bill already. I said, 'If it is, I missed it', and on further examination of the bill, it was indicated it was not in there.

Ms Rattray - It is in clause (3) as you indicated.

Mr DEAN - Yes, that is right but it is not in this one. It has to relate to this one because it might not get that far. If the second appeal is not taken, it will not get to the third one. That is the point and the reason I mention this, but only for clarity.

Amendments agreed to.

Ms FORREST - Madam Deputy Chair, I move -

Ninth amendment

Proposed new section 20E, proposed new subsection (2), proposed new paragraph (c).

Leave out 'Subdivisions 2 and 3'.

Insert instead 'Subdivision 3'.

This provision is inserted into the bill to enable the processes of the court to proceed with dealing with these matters. We were told by Government advisers during the process that this is basically a cut-and-paste from other legislation in reviewable decisions that carve out certain aspects of the Magistrates Court (Administrative Appeals Division) Act 2001.

While it is true there are carve-out provisions in some of the other acts, the other acts only relate to if you are looking at the bill before us - proposed subsection 20E(2)(a) and (b). My concern with relation to this is that Subdivision 3 of Division 2 of Part 4 relates to the opportunity to apply for a stay. This is the process where someone is being issued with a warning notice. They have been issued with a notice, it has been done by an inspector or above in terms of rank; it may then have been appealed or reviewed under the provisions of the previous section and now the appeal is being taken to the court. At this point, one has to treat the individual as innocent until proven worthy of a notice being given, which would mean if they did consort in the future, they could be liable for the charge of consorting. A stay can be applied to enable the person to continue to consort or meet with friends or other associates who are not subject to the other provisions of the bill we previously dealt with until their case is determined.

The onus is on the person lodging the appeal to prove the stay is worthy. It is also incumbent on the police to say that a stay is not warranted or that it is important that the stay is not granted because they need to get on with this. This person should not be able to continue to meet with people that they deem may be building a criminal network.

It is a matter of opinion on whether you should give the police the power as soon as that notice is issued and the appeal is in process to stop the person from meeting with these people until the appeal is heard. If a stay order is put in place, they can continue to meet with those people until it is dealt with.

I can understand the police not wanting stays to be used to try to delay the case so the criminal network can be built up. These are people who have not been proved yet by the court to be the problem.

If we take the section out - and you can use the same argument if you keep it in - and the stays are being used willy-nilly, which the court would not do because there has to be a case made for or against, the court will decide whether a stay is issued or not but a review would show the stays are being used to delay things. In this case it could be amended, as the New South Wales legislation was amended.

In terms of natural justice, it is important the person is given the chance to prove their innocence and the police have to prove the case that they are not, or that they do need to be prevented from consorting while the court makes that decision.

The stay may not be ordered because the court determines the person is too great a risk or police evidence is such that a stay should not be granted. If there is any doubt, the court should have that provision. This provision takes that away.

I am seeking to reinsert the option of a stay being granted in those circumstances.

Mrs HISCUTT - It is correct that the option to allow magistrates to issue a stay is up to the discretion of the court and is not automatic. Nevertheless, the Government believes the damage that organised crime groups can cause while fighting this if a stay is enforced is too significant when measured against the fact that this is only a warning notice.

Ms Forrest - You could use the argument to support my argument.

Mrs HISCUTT - I urge members to vote against this amendment.

The Committee divided -

AYES 8	NOES 6
Mr Farrell	Ms Armitage
Ms Forrest (Teller)	Mr Armstrong
Mr Gaffney	Mr Dean
Ms Lovell	Mr Finch
Ms Rattray	Mrs Hiscutt
Ms Siejka	Ms Howlett (Teller)
Mr Valentine	
Mr Willie	

Amendment agreed to.

Ms FORREST - Madam Deputy Chair, I move -

Tenth amendment

Proposed subsection 20E(5) be amended by:

Leave out the proposed new subsection

Insert instead the following subsections:

(5) In dealing with an application for a review under subsection (1), the Magistrates Court (Administrative Appeals Division) -

(a) is to ensure it does not, in the reasons for its decision or otherwise disclose the existence or content of any information that -

(i) is information, the disclosure of which may prejudice the operations of the police service or the safety of any person; or

(ii) has been withdrawn under subsection (8)(b); and

(b) in order to prevent the disclosure of information to which paragraph (a) applies, is to receive evidence, and hear argument, in relation to whether the information is such information, in the absence of the public, the applicant for the review and the applicant's representative; and

(c) if the information may prejudice the operations of the police service or the safety of any person, is to receive such evidence, and hear

argument, in relation to the information in the absence of the public, the applicant for the review and the applicant's representative; and

(d) if information has been withdrawn under subsection (8)(b) -

(i) is not to take the information into account in determining the application for the review; and

(ii) is not to disclose information to the public, the applicant for the review or the applicant's representative.

(6) The Commissioner or a commissioned police officer, may provide to the Magistrate's Court (Administrative Appeals Division) a statement identifying, in relation to an application for review under subsection (1), the information, the disclosure of which, in his or her opinion, may prejudice the operations of the police service or the safety of any person.

(7) The Magistrate's Court (Administrative Appeals Division) is, in determining for the purpose of subsection (5) whether information is not to be disclosed, to have regard to whether the information has been identified in a statement to the Court in subsection (6).

(8) If information has been identified in a statement provided to the Magistrate's Court (Administrative Appeals Division) under subsection (6) -

(a) the Court must, before disclosing the information, give the Commissioner, or a commissioned police officer, the opportunity to have the information withdrawn; and

(b) The Commissioner, or a commissioned police officer, may notify the Court that the information is withdrawn.

Mrs Hiscutt - Before we move on, can I point out to the member for Murchison when it comes to talking about this change of the police 'force' to 'service', also on that line is 'or the safety of', but here it is typed, 'or'. While the member is on her feet, can I seek some clarification, should we send an email through to OPC now to have this corrected? It does not change the intent of the motion. I am seeking some advice on how we should proceed. I think we can continue but have this other drafted up now.

Madam DEPUTY CHAIR - We need a moment because the member in the last paragraph also said 'must'. We have 'may' here in the amendment as written. Do you have 'must'?

Ms FORREST - 'Must' in the first one, 'may' in the second. Clause (5)(a)(i) is -

is information, the disclosure of which may prejudice the operations of the police service or the safety of any person; or.

In clause 5(c), the word 'force' has been placed in there when it should say 'service' -

> if the information may prejudice the operations of the police service or the safety of any person is to receive such evidence, and hear argument, in relation to the information in the absence of the public, the applicant for the review and the applicant's representative.

Proposed subsection (6) of my proposed amendment is -

> The Commissioner, or a commissioned police officer, may provide to the Magistrates Court (Administrative Appeals Division) a statement identifying, in relation to an application for review under subsection (1), the information, the disclosure of which, in his or her opinion, may prejudice the operations of the police service or the safety of any person.

I just misread the last part. These couple of changes were raised with OPC. They must have been overlooked in that final drafting. I apologise for that because we have been busy in briefings and debating it. It has been a bit difficult.

The way the appeals process is handled and the use or otherwise of protected information that could jeopardise a police investigation or police work or put a person's life or safety at risk, particularly if they were a police informant, has been raised by almost everyone who has had concerns with the bill. I do not want to put anyone's life at risk so it was determined that it would need to be well managed to ensure this information was not released when it is protected or needs to be protected. It should be the court that made the decision. This amendment ensures that if the court made that decision then it is protected information and it will not be released. It has taken a while to get this amendment right to make sure it gives effect to what we were asking for. If the police were concerned or disagreed, they could withdraw that information and then present the case without it. If that information were vital to the successful issuing of a warning notice, they would possibly lose. You would expect that if it really is that sensitive, the court would appreciate that and treat the information with the respect and treatment it deserves.

This is creating that separation so the police are not making the determination about whether the information should be protected. The court decides and then notifies the police of that. The police then have the opportunity to withdraw that information should they wish to to ensure it is protected.

It definitely is an appropriate amendment. It certainly addressed the concerns raised by the Tasmanian Bar and the Lawyers Alliance. I think the Community Legal Centres raised this too. It is important that we get these appeal provisions right. I believe the Government is likely to support this, or not oppose it, because it clarifies a proper process for the use of the court to make these decisions. I ask members to support the amendment.

Mrs HISCUTT - Tasmania Police has had input with the member on this amendment to refine what was acceptable and to get the thoughts down on paper. The Tasmanian Bar is agreeable. Regarding their email that I read out earlier they said protection is constitutional and a fair balance between an individual's liberties and the rights of everybody to live free from organised crime. We agree with this amendment.

Mr VALENTINE - Madam Deputy Chair, this is frustrating because the member moved it and I want to ask questions. The member, not the Government, needs to answer the questions. Maybe we can address that in some way.

I assume the applicant does not get see the information, but the applicant's representative, as Mr Chris Gunson pointed out, should have access to the information to be able to mount their case properly. That concerns me. It needs to be procedurally fair. While I know this amendment goes some way to protecting the information from being made public in the event that it is used, the magistrate is not going to divulge anything in their judgment that would cause a concern to anyone or put someone's life in danger. It still does not make sure that the person applying to defend the circumstance does not get the information the prosecution has, if I can put it that way, and that is my concern.

Does it give proper access to the defence to all the information that the prosecution has? I think I know the answer.

Mrs HISCUTT - I would like to clarify that Chris Gunson said he deals with confidential information in his job in the Army, not as someone's barrister. He said he deals with it all the time in his job. He is an Army Reservist.

Mr Valentine - I thought he talked about it in his role as a barrister.

Mrs HISCUTT - He said occasionally he prosecutes people in the Army.

Mr Valentine - It's not the way it read to me. Thank you.

Ms FORREST - To speak more broadly, and I am sure I will be incorrect as I am not the expert in the court procedures -

Mr Valentine - Neither am I.

Ms FORREST - That is why I spent quite a bit of time with Mr Gunson last week discussing this. In his letter, which you all have, he referred to the case of the *Gypsy Jokers Motorcycle Club v Commissioner of Police* (2008) 'where the High Court explained that while it was impossible to make an exhaustive statement of the minimum characteristics of an independent and impartial tribunal' -

> … the conditions which must exist for courts in this country to administer justice according to law are inconsistent with some forms of external control of those courts appropriate to the exercise of authority by public officials and administrators.

This is from that High Court case. He goes on to say -

> The Tasmanian Bar is concerned that the proposed s20E imposes unacceptable external controls on the Magistrates Court, and fundamentally undermines the independence of the Magistrates Court, by mandating that the MC(AAD) take into account and make its decision on information provided to it by the executive government in secret from the person seeking review.

My understanding is that if the decision is made that it is not confidential, it is not protected information, and it will be released and will be part of the case then. Anything that is protected will be protected. If the decision is made by the court that it is not protected, the police have two options: it is not used at all - they cannot use it to support their case, it is as though that information has

never existed and they go ahead without it - or it is withdrawn or it is not provided to the other parties because of the sensitivity of it.

That is because the courts agreed, not just because the police have said so. That is what this amendment does.

Mr Valentine - I appreciate that.

Amendment agreed to.

Ms RATTRAY - Madam Chair, in regard to proposed subsection 20F, the review of division, the Ombudsman is to review the operation of this division and complete the review within four years after the commencement of the division. This was an amendment agreed to in the other place after a compromise position, which is good to see in our parliament. How long is it expected to undertake the review? Within four years - does this mean it will need to commence at the end of three years? It will probably take a year to undertake the review. What time frame is expected, because this is a really important aspect of this piece of legislation?

What does the Leader, on behalf of the Government, see as a time frame for when the review will finish. Is there a firm commitment for adequate or appropriate resourcing to the Ombudsman's office for this?

Mrs HISCUTT - First, with regards to funding, it may well be appropriate. However, the review deadline is four years away and resourcing for the review will be a matter to be favourably considered by the Government in consultation with the Ombudsman's office at the time. The crux there is 'in consultation with the Ombudsman's office'. As with regards to the amendment, section 20F says the review must be completed within four years after the commencement of the division. So I cannot tell you when the Ombudsman will staff this because it is up to whoever it may be at the time. The Ombudsman has to complete the review within four years. Sensible people think he might give it two years and then have a look, as long as it is completed within the four years. Now this may depend upon workload. We cannot dictate to the Ombudsman when the review should be started as long as it is completed within four years.

Ms RATTRAY - I appreciate you will not dictate the terms to an independent statutory body, but they will obviously have some idea or be provided with information around it. Can I take it, from the Leader's response to my question, that in approximately two years time the Ombudsman will be given a call or have a letter written to them which will say, 'There is a requirement under this piece of legislation, that should it pass this House, you will need to consider resourcing and how the office would go about undertaking a review in a couple of years time and then a lead-up time and then the review starts and can be completed in the four years.' Have I a good grasp of what you are intending to put forward?

Mrs HISCUTT - The two-year time frame I used is for an example - it might be two years. As I said, neither I nor the Government can dictate to the Ombudsman when to start. However, I imagine when the Ombudsman has the idea he may start it, he will contact the department or the government of the day to discuss what he needs to discuss.

Ms Rattray - While the Leader is on her feet, who notifies whom?

Mrs HISCUTT - Who notifies whom?

Ms Rattray - I do have to take it on the chin because I did call the member to order last week. Who notifies whom? Does the Ombudsman know under the Police Offences Amendment (Consorting) Act 2018, if it passes this House, that there will be an obligation to undertake this review and so t)hey will need to organise their work schedule? I wonder what the process is. The Ombudsman is snowed under. I have already told you about that - 408 days for a review.

Ms Armitage - Better start now.

Ms RATTRAY - That is what I am interested in. Who notifies whom of the obligation? I do not think the Ombudsman will have this sitting on the top of his pile for the next two years, waiting for the time to start.

Mrs HISCUTT - I am sure the Ombudsman will be informed and he will be aware it is his responsibility to do that. Having said that, Tasmania Police will work out a review plan within the time frame and initiate that process.

Ms Rattray - That is all I needed to know, Leader.

Clause 5, as amended, agreed to.

Remaining clauses agreed to and bill taken through the remainder of the Committee stage.

LEGAL PROFESSION AMENDMENT BILL 2018 (No. 36)

First Reading

Bill received from the House of Assembly and read the first time.

ADJOURNMENT

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

> That at its rising the Council adjourn until 11 a.m. on Thursday 27 September 2018.

The Council adjourned at 10.34 p.m.