

Agreement in Principle

Mr NATHAN REES (Toongabbie—Premier, and Minister for the Arts) [11.09 a.m.]: I move:

That this bill be now agreed to in principle.

Today the Government introduces the Crimes (Criminal Organisations Control) Bill 2009—tough new laws to ensure that police have the powers they need to deal with violent outlaw motorcycle gangs. The Government is introducing legislation that gets the balance right. The legislation is a proportionate response to an escalation in violent crime involving outlaw motorcycle gangs that has spilled into public places, and is threatening the lives and safety of innocent bystanders. The legislation is specific to outlaw motorcycle gangs and their members and to target outlaw motorcycle gangs, seeking to declare them as criminal organisations, we will put in place strong safeguards to ensure that the gangs alone are the subject of the bill. Sensibly and prudently, we have sought expert legal advice from the Solicitor General on this bill. I am advised that these laws are backed by that advice, which says that they are well protected against any future High Court appeals.

Ten days ago bikie gangs crossed the line and risked public safety at Sydney Airport. Since then there have been frequent shootings in public streets. Last week the Commissioner of Police briefed the Attorney General and the Minister for Police on what police needed to fight outlaw motorcycle gangs. Since the terrible incident at Sydney Airport, 12 members of various outlaw motorcycle gangs have been arrested. I am advised that yesterday afternoon, officers attached to Strike Force Raptor arrested another man linked to outlaw motorcycle gang crime. A 36-year-old Rockdale man has been charged with a range of firearms offences. Strike Force Raptor is just one element of the Government's strategy to fight outlaw motorcycle gangs. But the Government knew that police needed to be backed up with new powers. Today, my Government makes good that pledge.

Once these laws take full effect, the Commissioner of Police will be able to seek a declaration from a Supreme Court judge that a bikie gang is a declared criminal organisation. An eligible judge may make a declaration if they are satisfied that an organisation's members associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and that the organisation represents a risk to public safety and order in New South Wales. Once the organisation is declared, the commissioner may then seek control orders from the Supreme Court in respect of one or more persons on the basis that those persons are members of a declared criminal organisation and there are sufficient grounds for making the order. The controlled member will not be able to associate with another controlled member of that gang. If they do, they will risk two years jail for the first offence. Do it again and they will risk five years in jail. To help take these gang members off the streets there will be no presumption in favour of bail for this offence.

Members of declared criminal gangs will also be stripped of their licence, if they hold one, for working in a number of high-risk industries that are vulnerable to bikie and organised crime infiltration. Some of these industries are the security, tow truck, car repair and motor trading industries. They will be stripped of any firearms licence. This Government will also take away the means for bikies to earn a dishonest living through car rebirthing or drug dealing in pubs and clubs. This bill will also take away their dishonest earnings through amending section 6 of the Criminal Assets Recovery Act 1990 to include the offences in section 93T of the Crimes Act 1900 of participating in a criminal group.

Criminal organisations are engaged in a range of criminal activities aimed at making a profit. These criminal activities include drug trafficking, money laundering, extortion, bribery, tax evasion and illegal gambling—in short, the "core business" of outlaw motorcycle gangs. The effect of this amendment is that the New South Wales Crime Commission will be able to pursue people who participate in criminal groups, either knowingly or recklessly, regardless of whether they are a controlled member of a declared criminal organisation. Taking away the profit motive for criminal organisations will serve as a strong deterrent to the commission of further offences by such organisations. These are tough and well-constructed laws. They aim to give no second chances to those declared members of an illegal gang.

I now turn to the detail of the bill. Part 1 of the bill deals with preliminary matters such as the commencement of the proposed Act on the date of assent, the definition of certain words and expressions used, as well as provision for the extraterritorial operation of the Act. Part 2 of the bill includes the provisions dealing with declared organisations. Clause 5 provides for judges of the Supreme Court who consent to being eligible judges for the purposes of the proposed part to be declared to be eligible judges by the Attorney General. Clause 6 enables the Commissioner of Police to apply for a declaration in relation to a particular organisation and sets out the requirements for such an application.

Clause 7 requires notice of the making of the application to be published in the *Government Gazette* and in at least one newspaper circulating throughout the State. The notice is to invite members of the organisation concerned and other people who may be directly affected, whether or not adversely, by the outcome of the

application to make submissions to the eligible judge at a hearing to be held on a date specified in the notice. Clause 8 gives the people referred to in the notice the right to be present and to make submissions at the hearing unless information to be disclosed at the hearing involves criminal intelligence. Other people who may be directly affected may also be present and make submissions with leave. Provision is also made to enable submissions to be made in private in certain circumstances. Clause 9 enables the eligible judge to make the declaration sought by the commissioner if the eligible judge is satisfied that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and the organisation represents a risk to public safety and order in New South Wales.

The proposed section sets out the matters the eligible judge may take into account in deciding whether to make the declaration. This includes (a) any information suggesting that a link exists between the organisation and serious criminal activity; (b) any criminal convictions recorded in relation to current or former members of the organisation; (c) any information suggesting that current or former members of the organisation have been, or are, involved in serious criminal activity, whether directly or indirectly and whether such involvement has resulted in any criminal convictions; (d) any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity; (e) any submissions made in relation to the application by the Attorney General or as referred to in section 8; and (f) any other matter the eligible judge considers relevant.

Clause 10 requires notice to be given of the making of the declaration in the *Government Gazette* and in at least one newspaper circulating throughout the State. Clause 11 provides for the duration of declarations. Clause 12 provides for the revocation of declarations. Clause 13 provides that the eligible judge is not required to provide reasons for making a declaration and the rules of evidence do not apply to the hearing of an application for a declaration. Part 3 of the bill deals with the control of members of declared organisations. Division 1 of part 3 deals with the making of interim control orders.

Clause 14 enables the Supreme Court, on the application of the Commissioner of Police, to make an interim control order in relation to one or more members of a declared organisation pending the hearing and final determination of a confirmatory control order in relation to the member or members concerned. The order may be made in the absence of, and without notice to, the member concerned but only takes effect when the member is notified of its making in accordance with proposed sections 15 and 16. Clause 15 states that an interim control order takes effect when notice of it is served on the member concerned.

Clause 16 sets out the information that must be included in the notice served on the member. This includes the grounds on which the order was made, an explanation of the ramifications of the making of the order and an explanation of the right to object to the making of the order at the hearing for the making of the confirmatory control order. Clause 17 provides for the duration of interim control orders. Clause 18 requires the Supreme Court to hear applications for confirmatory control orders as expeditiously as possible in hardship cases. Division 2 of part 3 deals with the making of final control orders.

Clause 19 provides for the making by the Supreme Court of confirmatory control orders. Clause 20 enables the member the subject of an order to appear at the hearing for the making of the order and to make submissions in relation to the application for the control order. Clause 21 provides for the form of a control order, including a requirement that it specify the right to appeal against its making. Clause 22 provides that a control order takes effect when the order is made if the person is present in court, or when the person is served with a copy of the control order in cases where they are not present when the order is made.

Clause 23 provides for the duration of control orders—namely, that it remains in force until revoked. Clause 24 provides for appeals against the making of control orders. Clause 25 provides for the variation and revocation of control orders. Division 3 of part 3 deals with the consequences of making interim control orders and control orders. Clause 26 makes it an offence for a controlled member of a particular declared organisation to associate with another controlled member of the same organisation.

Clause 27 provides for the suspension and cancellation of authorisations to carry on prescribed activities held by a controlled person on the taking of effect of interim control orders and control orders, respectively. The prescribed activities cover a range of industries that are well known to be associated with outlaw gangs and related intimidatory practices. Industries at risk of infiltration by outlaw motorcycle gang members include the security industry, pawnbrokers, commercial agents and private investigators, liquor, racing and casinos, motor traders, repairers and tow trucks. It also includes possessing or using a firearm under the Firearms Act 1996 or being a firearms dealer.

Part 4 of the bill contains a number of miscellaneous provisions, including protections for criminal intelligence, clause 28, and protections for certain submissions, clause 29. Clause 30 requires the commissioner to keep a register of information relating to declared organisations and controlled members. Clause 31 requires the Attorney General to be given notice of applications under the proposed Act and the right to be present and to make submissions at the hearings of the applications. Clause 32 states that questions of fact in proceedings under the proposed Act are to be decided on the balance of probabilities. Clause 33 enables the Commissioner of Police to delegate functions with respect to the categorisation of information as criminal intelligence. Clause

34 provides immunity from civil and criminal liability for people exercising functions under the proposed Act and for the Crown.

Clause 35 prevents challenge or review by a court other than by way of appeal under proposed section 24, or administrative body. Clause 36 provides for proceedings for offences under the proposed Act or regulations made under the proposed Act. Clause 37 enables the making of rules of court, while clause 38 enables the Governor to make regulations for the purposes of the proposed Act. Clause 39 provides for the Ombudsman to keep under scrutiny and report on the exercise of powers by police under the proposed Act for a period of two years after the commencement of the proposed Act. Clause 40 provides for the Attorney General to review the proposed Act after five years.

Schedule 1 to the bill contains amendments to other Acts, including the Criminal Assets Recovery Act 1990 extending the operation of that Act to section 93T of the Crimes Act, the Criminal Procedure Act 1986, and the Bail Act 1978 to provide that there is a neutral presumption on bail in relation to the offence of association. The Government has decided to proceed quickly to protect the community against the threat posed by violent gangs, and there is more legislation on the way. As I have said, the Government has also decided to give police new search warrant powers to combat organised crime. The laws to give police new search warrant powers are being drafted now and will be introduced to the House later this session.

While we are moving ahead with our reforms this problem needs a national approach. The problem of international crime transcends State borders. The New South Wales Attorney General will discuss this further with his State and Territory colleagues and with the Commonwealth. It is important to emphasise that law-abiding motorbike riders and owners have nothing to fear from this legislation. But my Government is determined to get tough on outlaw motorcycle gangs who masquerade as motorcycle enthusiasts. The New South Wales Government has listened to front-line police. These laws will give our police the power they need to disrupt and ultimately dismantle these criminal gangs. Our plan to fight these criminal gangs is based on new powers and a solid operational response, and the bill is a proportionate response to the threat posed. I commend the bill to the House.