



Speech by

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MEMBER FOR GLASS HOUSE

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CRIMINAL ORGANISATION BILL

Mr POWELL (Glass House—LNP) (8.43 pm): I rise today to contribute to the debate on the Criminal Organisation Bill. In short, the bill aims to tackle organised crime by giving the court power to declare an organisation as criminal. Much has been written about this bill—some for and much against. Similar versions of the bill were introduced in South Australia and New South Wales, yet months later the legislation continues to be debated in those states. In South Australia, declaration of a particular bikie gang as a criminal organisation was challenged and ultimately overturned in the South Australian Supreme Court. Suffice to say that when it comes to criminal organisations the Queensland government would be making a terrible mistake to assume there is a clear-cut, black-and-white legislative solution.

Though the term 'bikie' is never used in the bill, the bill clearly targets bikies. Thus, a fair understanding of bikie gangs is required. There is no doubt that elements of some bikie gangs can be dangerous. I remember very vividly, as a young student living in Sydney at the time, the media's coverage of the Milperra massacre. To date, our state has avoided the worst of these activities, but we should not for one minute assume that we are immune. We want our state to be safe.

There is no doubt that some bikie gang elements are a threat to that safety. According to the Australian Crime Commission, the ACC, bikie gangs have a 'strong presence in many illicit markets throughout Australia and maintain strong and complex criminal networks'. Certain activities include extortion, drug manufacturing and distribution.

Former federal Attorney-General Robert McClelland estimated that outlaw motorcycle gangs cost the Australian community some \$15 billion each year. But we must show some restraint, some caution, because there is equal, if not more, evidence to suggest that motorcycle clubs are beneficial. According to Dr Arthur Veno, a professor at Monash University, most members are not criminals. Rather, members can be victims of dysfunctional families and are drawn to motorcycle clubs because of their 'clear sets of rules and rapid punishment for breaking them'. Fink's spokesman Ferret says, 'Bikies have got jobs, families, mortgages, just like everyone else. Maybe we're not like everyone else but,' he asks, 'if we're not criminals, why are we being treated like them?' The following is a testimony of Robbie Fowler, President of the Outcasts Motorcycle Club—

I never respected or liked myself I hated Authority and I resent woman, I was released in 1990 went to the Bike club, got married and had five children.

...

One must understand the club saved my life and my liberty, as my actions positive or negatives, reflects as you know on my Brothers in the club.

As I said before, there is no clear-cut solution for addressing the criminal element of such gangs. This issue does need addressing, and I agree that tackling organised crime is a good thing. However, the proposed legislation seems to manipulate the situation and goes too far. It is like treating a bruise on the skin with a plaster cast. For example, if a child steals money from a parent, the parent may not leave their wallet lying around and is also more likely to watch the wallet since that is the object of abuse. The parent may discipline the child and will most certainly explain the ethics of stealing, but the parent does not banish

the child from the house. More importantly, the parent does not banish all other children from the house because one child disobeyed the rules.

The legislation's intent is clearly to disband bikie gangs. Perhaps the hope is that members will accept this outcome, sell their bikes and go home to their families. I do not make it a habit to be a sceptic, but I do suggest that if these gangs are outlawed altogether they will find new ways to meet in secret and continue their criminal activities. This will only make it harder to catch the real criminals. I am not the only one who thinks so. Mark Findlay, a professor of criminal justice at the University of Sydney, says, 'Criminal members of declared organisations will be driven further underground.'

The ACC chief executive officer, John Lawler, says that gangs are 'becoming increasingly sophisticated'. So it raises the question: is this the best way to address this criminal activity? It sounds unlikely. They will just reappear in another form. This leads me to believe that the real issue is not being addressed. As it stands, rights are being abused. The government states that the bill is 'not about targeting people who ride motorcycles' but rather is about 'cracking down on dangerous criminals and ensuring community safety.' We would all agree that safety is a worthwhile pursuit, but it must not come at the expense of rights and freedom being jeopardised.

Rights infringed on in this bill are numerous. The Scrutiny of Legislation Committee's *Legislation Alert* lists them all. They include clauses which would require satisfaction of a lower standard of proof than the criminal standard; clauses requiring the court to have regard to 'any conviction for current or former members of the organisation'; clauses allowing the court to consider evidence of past associations; clauses which may affect freedom of movement; clauses which would reverse the presumption in favour of bail; clauses providing for a criminal organisation declaration to last for five years unless revoked or renewed; clauses which may affect rights to access the courts; clauses which have the potential to affect employment rights and liberties of individuals; clauses relating to criminal organisation orders regarding children and young people; clauses which have the potential to affect property rights; clauses excluding decisions made under the Criminal Organisation Act from the operation of the Judicial Review Act 1991; clauses which may be inconsistent with principles of natural justice; clauses which would override common law protections of the right to silence; and clauses which would confer officials with immunity from civil liability.

There are so many question marks, so many challenges to an individual's rights and liberties, but let me look at one in more detail—that of lowering the burden of proof. In *Woolmington v Director of Public Prosecutions* in 1935, Viscount Sankey, for the House of Lords, said—

Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt ... If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner ... the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.

In *Thompson v The Queen* in 1989, Mason CJ and Dawson J of the High Court of Australia said—

The fundamental principle of our criminal law is that the accused's guilt must be established beyond reasonable doubt. The law requires that standard of proof of the commission of a criminal offence in order to eliminate or minimise the chance that an innocent person might be found guilty with all the grave consequences that such an erroneous condemnation would have for the accused, for our system of justice and for the community generally.

Is the LNP tough on crime? You bet. But I also belong to a party that, as stated by the federal shadow Attorney-General, George Brandis, privileges the rights of the individual over the power of the state. John Dowd QC, President of the International Commission of Jurists, said—

Once the public is desensitised to issues on civil liberties and rule of law and basic civil liberties safeguards, people become insensitive to other legislation.

Under these laws, certain gang members will be restricted from owning weapons, working in certain industries such as the security industry or holding a liquor licence. I must ask: how is this freedom? Furthermore, how does it relate to bikie crime? This bill will affect innocent bikies. The bill assumes the hundreds of Queenslanders who are members of motorcycle clubs simply because they love riding their motorcycles have nothing to fear. However, Tim Meehan, a Brisbane criminal defence lawyer, said—

Unless the legislation is thoroughly examined, there is a risk of loopholes which could penalise innocent members of the community.

The bill states anyone under anti-association orders could face criminal sanctions for associating with other gang members more than three times in a 12-month period. This is despite assurances that law-abiding members of the public have nothing to fear. These laws take us closer to a state in which you could be regarded as a criminal merely for having contact with so-called outlaw bikers, rather than actually committing any criminal act. Meehan raised this point: what about bike owners who have bikes serviced at legitimate businesses run by gang members? Will they be accused of associating?

There are Christian bikies too. God's Squad members minister to the outlaw biker fraternity. They devote their efforts to those on the fringes of society. How will they minister if they are not allowed to contact such members more than three times in a 12-month period? Who is next? According to the legislation, groups of three or more can be declared a criminal organisation. If this is true, what about churches, sporting clubs or the ALP itself?

We cannot go down a path where we punish a whole group for an individual's crime, implementing what is known as guilt by association. Isn't such a move criminal itself? It is certainly against every right and liberty we hold dear in this country? To quote Ferret again—

Behaviour of the few doesn't give our state government the right to punish the majority.

So many stakeholders are against the bill, like the Queensland Law Society, the Bar Association, the Queensland Police Union and the Queensland Council for Civil Liberties. As other members have stated, former Attorneys-General and lawyers, Kerry Shine and Dean Wells, are both on the record as saying that the bill is equal to the 'outlawing of the African National Congress in South Africa and the subsequent jailing of Nelson Mandela'. Others, such as Nicholas Cowdery, the Director of Public Prosecutions, are concerned that there has been insufficient community consultation. Paul Wilson, a Bond University professor of criminology, stated—

There is no proof it will work, no evidence to support that this legislation will work.

There are many alternatives to this legislation for tackling the organised crime issue. For starters, we can better resource the current police services and organisations such as the CMC. The federal shadow minister for justice and public security has called for a quarantining of the ACC and Federal Police from budget cuts so they have the resources needed to fight bikie gangs and organised crime. To quote Dowd QC again—

If you want to crack down on law and order, use existing laws, which are by and large perfectly ample for that task. And give police better resources to enforce them.

To further add faith in the police force, Senator Steve Hutchins asked—

Do you really see the Sydney Airport beating as a covert criminal operation? I think police around the country have got enough authority to deal with this.

In concluding, I would like to share some further comments from eminent stakeholders regarding this legislation. Mr Terry O'Gorman, from the Council for Civil Liberties, said—

I do not accept that the organised crime problem is serious, let alone that it is out of control. Nor do I accept that any evidence has been put before you that the existing suite of police powers is inadequate to deal with it.

Dr Schloenhardt, a senior lecturer at the TC Beirne School of Law, said—

A better response would be one that aims at the key directors and financiers of criminal organisations and targets the wealth accumulated from drug trafficking, migrant smuggling, trafficking in persons, loan sharking, and other types of organised crime.

Dr Schloenhardt again said—

Confiscate clubhouse, bike, or badge. It's a better deterrent to crime than this legislation.

Paul Wilson, a criminologist at Bond University, said—

The fact that there have been many arrests (332 in 3 years) indicates that the existing laws are sufficient without the need to enact laws aimed directly at bikie gangs.

Clearly there is a very strong case to use what is already in place, what is already working. The ACC, since its creation in 2002, has broken 200 syndicates, made 1,357 arrests and seized property worth \$120 million and drugs with a street value of \$1 billion plus. If there is any doubt that it is not achieving enough, the first port of call should be additional resourcing, not additional legislation.