



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON THE AUSTRALIAN CRIME
COMMISSION

Reference: Legislative arrangements to outlaw serious and organised crime groups

THURSDAY, 3 JULY 2008

ADELAIDE

BY AUTHORITY OF THE PARLIAMENT

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

The internet address is:

<http://www.aph.gov.au/hansard>

To search the parliamentary database, go to:

<http://parlinfoweb.aph.gov.au>

JOINT STATUTORY
COMMITTEE ON AUSTRALIAN CRIME COMMISSION
Thursday, 3 July 2008

Members: Senator Hutchins (*Chair*), Mr Wood (*Deputy Chair*), Senators Barnett, Parry and Polley and Mr Champion, Mr Gibbons, Mr Hayes and Mr Pyne

Members in attendance: Senators Barnett, Hutchins and Parry and Mr Champion, Mr Gibbons, Mr Hayes, Mr Pyne and Mr Wood

Terms of reference for the inquiry:

To inquire into and report on:

The effectiveness of legislative efforts to disrupt and dismantle serious and organised crime groups and associations with these groups, with particular reference to:

- a. international legislative arrangements developed to outlaw serious and organised crime groups and association to those groups, and the effectiveness of these arrangements;
- b. the need in Australia to have legislation to outlaw specific groups known to undertake criminal activities, and membership of and association with those groups;
- c. Australian legislative arrangements developed to target consorting for criminal activity and to outlaw serious and organised crime groups, and membership of and association with those groups, and the effectiveness of these arrangements;
- d. the impact and consequences of legislative attempts to outlaw serious and organised crime groups, and membership of and association with these groups on:
 - i. society
 - ii. criminal groups and their networks
 - iii. law enforcement agencies; and
 - iv. the judicial/legal system
- e. an assessment of how legislation which outlaws criminal groups and membership of and association with these groups might affect the functions and performance of the ACC.

WITNESSES

BRAY, Mr Desmond Roderick, Superintendent, South Australia Police.....	2
BRITTON, Mr Geoffrey Albert, Member, Human Rights Committee, Law Society of South Australia.....	25
FEARY, Mr Grant, President, Law Society of South Australia	25
HARRISON, Mr Anthony, Assistant Commissioner, South Australia Police.....	2
HAYES, Mr Edward Mcgilchrist ('Mac'), Founding Member and Public Relations Officer, Longriders Christian Motor Cycle Club.....	49
MANCINI, Mr George Joseph Stephen, Chair, Criminal Law Committee, Law Society of South Australia.....	25
POWELL, Mr Damian Kenneth, Chief Inspector, South Australia Police	2
SHAND, Mr Adam Wentworth, Private Capacity.....	41
SUMNER, Mr Basil Wayne, Chief Executive Officer, Aboriginal Sobriety Group Inc.; and Associate Member, Longriders Christian Motor Cycle Club	49
WELLS, Mr Jonathan, QC, Executive Member, South Australian Bar Association Inc.....	25

Committee met at 9.02 am

CHAIR (Senator Hutchins)—Ladies and gentlemen, I declare open this public hearing of the parliamentary Joint Committee on the Australian Crime Commission. This is the first hearing for the committee's inquiry into the legislative arrangements to outlaw serious and organised crime groups. The terms of reference are on the committee's website. The committee will be holding its second hearing in Perth tomorrow and in other state capitals later in the year.

The committee's proceedings today will follow the program which has been circulated. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage witnesses on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The committee prefers all evidence to be given in public but under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice of that intent or ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time.

Before I welcome the first witnesses, I remind members of the committee that the Senate has resolved that government officials should not be asked to give opinions on matters of policy and should be given a reasonable opportunity to refer questions asked of an officer to a superior officer or to a minister, if that is appropriate. This resolution does not include questions asking for explanations of policy or factual questions about when or how policies were adopted.

[9.04 am]

BRAY, Mr Desmond Roderick, Superintendent, South Australia Police

HARRISON, Mr Anthony, Assistant Commissioner, South Australia Police

POWELL, Mr Damian Kenneth, Chief Inspector, South Australia Police

CHAIR—I welcome representatives from South Australia Police. I invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Assistant Commissioner Harrison—Thank you, Senator Hutchins. We find the timing of the inquiry process that is occurring at the moment very fortuitous, in particular because of the construct of the terms of reference and because of the journey we have found ourselves on within South Australia. Commencing in about March or April last year we initiated a review of what was occurring internationally in relation to legislative reform relating to serious and organised crime activities. We probably went back as far as about 1970. We looked at legislation right around the world including countries such as New Zealand, Canada, the US and European countries as well as through Asia—Hong Kong and those sorts of areas. As a result of that environmental scan, if you like, from an international perspective, we looked at a number of options in relation to legislative reform particularly with a focus on outlaw motorcycle gangs within South Australia and, more broadly, serious and organised crime and established criminal networks as well.

Shortly after that review process we had the unfortunate incident on 2 June in South Australia that has commonly been referred to as the ‘Tonic nightclub shooting’. I guess it really became something of an impetus for trying to increase the speed of legislation and the reform process within South Australia. As the committee would be aware, on 18 June there was the unfortunate incident on the streets of Melbourne where Christopher Hudson was involved in the fatal shooting of one person and the serious injury of two others.

Shortly after that there were announcements by the South Australian government, by the Premier of this state, in relation to the reform processes. As I said earlier, it very much reflects your terms of reference as a committee when you look at international legislative arrangements and anti-association consorting legislation and whether there is some benefit in outlawing criminal organisations or individuals within those organisations. Most importantly, throughout the reform process in this state in the last 12 months we have very closely looked at the impact on the community, and society more generally, and individuals who may be concerned that they could be captured by the sort of reform that has occurred within this state.

The reform process had two phases. The first phase was very much focused on anti-association type of legislation. But, at the same time, that paralleled reforms in relation to gun reform, drug reform and a number of other bills which are either currently before the parliament or legislation which has now passed through both houses of parliament within this state.

The second phase of the reform process which is occurring currently is looking at new initiatives which can assist law enforcement in particular with the policing of serious and organised crime—and I am sure we will touch on some of those as the morning progresses. In particular, some of those relate to targeting assets through unexplained wealth legislation, examining the benefits of coercive hearing processes as well and, importantly, learning from some of the lessons of countries around the world and other jurisdictions that have enacted substantive criminal offences whereby two or more persons operate within a criminal network to engage in the commission of serious crimes. So we will be looking at the benefit of those sorts of substantive pieces of criminal law.

Before I close my opening comments, traditionally law enforcement has adopted very much an investigative approach to the commission of serious and organised crime and serious offences more generally. Throughout the reform process within this state we have really tried to be more innovative and to look at prevention opportunities. As you would probably be aware, police agencies around the world in the last 15 years in particular have tried to move away from a reactive approach to servicing their local communities to a more proactive crime prevention focus, and you would have all heard about community policing, problem solving initiatives and so forth. So through the review process we very much kept in the back of our minds the opportunities we could exploit in respect of preventing aspects of serious and organised crime rather than finding ourselves in the same position of continually responding to people being shot in the streets, drug manufacture and distribution, violence, extortion and blackmail. I make no apologies in the sense that the reform process has been very much underpinned by trying to adopt a preventative aspect, and that is why you now find the Serious and Organised Crime (Control) Act, which has now passed through both houses of parliament and is waiting to be proclaimed, has a preventative philosophy and flavour in respect of its construct to try to prevent crimes occurring before we find ourselves in that reactive investigation process.

I am sure the committee would be aware that, when it comes to investigating crimes committed by gangs and serious and organised crime groups, it is often very, very hard because of their construction in relation to maintaining a code of silence and having a brand of intimidation and fear in respect to witnesses. That is just a very short outline where we currently find ourselves in this state. It is a joint approach between the police and the government, through the Attorney-General's Department, to having a very good and comprehensive look at what has been occurring around the world and trying to be innovative by bringing into place new laws to assist in the law enforcement of criminal activities of serious and organised crime.

CHAIR—Thank you. Superintendent or Chief Inspector, do you want to add anything?

Supt Bray—I would just like to echo the Assistant Commissioner's comments and also to mention that what we have seen is certainly an increase in firearms related violence within the state. Just for our branch alone there were over 22 incidents of firearms related crime involving members of outlaw motorcycle groups and their associates in the last 12 months. Extortions and blackmail type offences reported to our branch between 2003 and 2006 totalled 47 and within the last year there have been 34—and that is as opposed to the preceding three years. Those engaged in crime are diversifying their activities into the full range of different crimes and they are infiltrating legitimate businesses. When they go into apparently legitimate businesses, they are undermining and breaking the laws relating to the governance arrangements of those businesses. It is the insidious nature of organised crime—the threats and the violence—which

make it very difficult for victim related crime investigations to receive a positive outcome in courts.

CHAIR—Do you want to add something, Chief Inspector?

Chief Insp. Powell—In support of Assistant Commissioner Harrison, from the research that was originally conducted, leading into the reform, historically, we have come from a single dimension in our approach to serious and organised crime—that is to investigate the crime. Over the last 10 or 15 years we have seen the evolution of asset confiscation supporting that as a second dimension. The legislation put forward in South Australia is the first step in what we say is going towards that third dimension, which is somewhat difficult to construct, of prevention in serious and organised crime.

CHAIR—Thank you. I will start off, and I know my colleagues will have a lot of questions. Superintendent Bray, you said that there was an infiltration of legitimate businesses. Can you give us an example of what has occurred, without exposing too much?

Supt Bray—A very obvious one within this state in recent years is the infiltration of outlaw motorcycle group members and associates, and those engaged in serious and organised crime, into the liquor and hospitality industry and into the security industry. SAPOL, in partnership with other government agencies, was very active in legislative reform and cooperative policing arrangements, and we saw a number of venues, which had been infiltrated by outlaw motorcycle groups and associates, shut down for that reason. Their involvement in some of those premises was concealed, as were some of the benefits in terms of moneys and rewards that they were receiving for their participation. The other aspect of that, which is of significant concern, is that some of those venues are very large entertainment type venues which then provide outlets for drugs and other criminal activities. The total package with those groups becoming involved in that industry is that they build their own wealth, which then creates a legitimate market for them, because they are involved in running the business and in providing security to the business which then enables them to control the drug market within those premises. So some very positive outcomes have come from the ability to remove people from those industries.

CHAIR—Assistant Commissioner, you mentioned in your statement that you had looked at overseas experiences. Would the South Australian legislation be a first for, say, Western democracies or have you used a template from somewhere else and improved on it?

Assistant Commissioner Harrison—If a template does exist, we are not aware of it. I think it is very innovative in nature in its construct. Damian may be able to speak better than I can in relation to this. What we tried to do was take aspects of what we thought appeared to have some impact in relation to serious and organised crime from around the world and, as a result of that, we also looked at legislative arrangements within this country, certainly in respect of the counterterrorism approach. We were very mindful of the fact that we were not dealing with terrorism and that we were dealing with serious and organised crime, gang behaviour and gang cultures. We had to ensure that we looked at constructing the legislation so that it was relevant for its purpose and was not going to be broader in nature and target people that it was never intended for. We were always very mindful of that in the development process. I would like to think it is a first. I am certainly not aware of a template but, if somebody else tells us that it does exist, I would be very surprised if that were the case.

Mr HAYES—Assistant Commissioner, I notice that the objects of the act are clearly laid out and in paragraph 4 it says:

- (a) to disrupt and restrict the activities of—
 - (i) organisations involved in serious crime; and
 - (ii) the members and associates of such organisations ...

Having regard to that being the object, I know there is some criticism that the existing laws of South Australia within the criminal jurisdiction generally should be sufficient to deliver on the objects of that act. Is your experience from the South Australia Police different from what is being suggested in those criticisms in that the existing laws are insufficient to disrupt and restrict those behaviours?

Assistant Commissioner Harrison—I would like to pick up on the point made by Chief Inspector Powell in respect to bringing a third dimension to the law enforcement approach. As I said earlier we traditionally have the investigative focus which is very reactive. We wait for the crime or the criminal activity to occur and then the police put a response strategy in place. Invariably that has not been overly successful when you look at serious and organised crime, established criminal networks and outlaw motorcycle gangs, because of their composition, structure and culture, as we have spoken about before. So it was really about bringing in a third dimension of prevention which had not existed prior to this current piece of legislation. The antiassociation aspect of really getting to the root of the problem—which is people coming together to plan, organise and allocate tasks in respect to who is going to conduct the crimes and participate in the crimes—is all about trying to prevent those associations occurring. We try to disrupt the planning processes and we would like to hope that we then have some impact on preventing crimes occurring within our communities. It is a new piece of legislation, which gives us another tool in a toolbox, if you like, to adopt a preventative approach but we are not suggesting that is sufficient. As I said, the second phase of the reform process within this state is all about looking at what new strategies have worked or are working around the world. We have looked at the New South Wales experience and, together with the government, we will be putting proposals forward to look at further legislative reforms in this particular area.

Mr HAYES—Do you have any data on the amount of unresolved crime from serious and organised crime gangs in terms of prosecutions emanating in South Australia?

Assistant Commissioner Harrison—I will just make a few comments before I ask Superintendent Bray to paint a picture of the criminality that we have become aware of in recent times within this state alone that is particular to outlaw motorcycle gangs. We have seen a change in the demographics within South Australia, and I think this would be evident around Australia, in the sense that traditionally ethnic based serious and organised crime groups did not necessarily involve themselves with outlaw motorcycle groups 15 years ago as much as they tend to do today. We are finding that there is diversification and interrelationships between outlaw motorcycle gangs and the more traditionally based ethnic serious and organised groups of the past. We are seeing a changing dynamic occurring within our community. We often become aware of a lot of offences in relation to extortion, violence and blackmail. People make an approach to police to test the waters, if you like, to see what the police can do for them. On

many occasions, unfortunately, witnesses and victims of violence type offences involving gang behaviour are very reluctant to confide with the police about what is occurring and to stay within the criminal justice system, and that has been a significant problem for a long time.

We have also seen an increase in the incidence of shootings in the streets—we only have to look at the Tonic nightclub shooting and the Gouger Street shooting earlier on this year. As Superintendent Bray said, we have become aware of some 22 incidents in the last 12 months where firearms have been produced and/or discharged within private premises and/or in the streets and public places of Adelaide and South Australia.

We have seen the diversification of technology-enabled crime in relation to identity crime and fraud—moving into industries such as transport and maritime—and short-term money lending, which was spoken about previously. We have also seen an increase in the number of outlaw motorcycle gangs, the membership of those gangs and the number of chapters associated with those gangs. Within South Australia and also around Australia there has been an increase in the last couple of years, despite some of the best efforts of law enforcement. So I think we can somewhat confidently say that there has been an increase in criminal activity relating to gang behaviour, serious and organised crime. I will ask Des to give you some indicative figures of what we have seen within this state in recent times.

Supt Bray—Certainly with extortions and blackmail we believe that what is reported specifically to the Crime Gang Task Force is very much the tip of the iceberg because the majority of people are fearful to report and resolve those issues themselves in other ways. From 2003 to 2006 about 47 extortions or blackmails were reported to the Avatar Motorcycle Gang Section, and within the last 12 months alone we have had 34 reported to us. The majority of those people did not want the matter overtly investigated and did not want to make official reports; they had simply told us because they wanted the circumstances on record. The majority did not want to go to court. For several of those cases we have prosecuted people, but during some investigations we have had witnesses approached during the investigations and further intimidated. I would suggest that in all or certainly the majority of victim related crime investigations, victims feel as though they are at significant threat from gang members if they report the matter.

Mr HAYES—So are you making the case that in the existing criminal justice jurisdiction of South Australia the laws are insufficient to not only prosecute but also deter participation in serious and organised crime?

Supt Bray—Certainly we have had many victims that, because of the very real threats they perceive, do not want to proceed or give evidence because they feel that they may not be protected. Some victims feel that the criminal justice system may not support them, and the likelihood of getting a successful prosecution for witness intimidation is extremely low because those witnesses for the most part will not give evidence.

Mr HAYES—So despite the amount of crime that the behaviour of these gangs generates, are you saying that we are not able to secure prosecutions because of the lack of witnesses and evidentiary material?

Supt Bray—That is often the case. Often those witnesses will cooperate in other ways if they have knowledge of other activities so we might launch investigations for non-related offences, but many victims and witnesses do not want their cooperation, if they do cooperate, made public.

Mr HAYES—One criticism I have read of the legislation that has just been enacted in South Australia is that it may have the effect of driving serious and organised crime, and particularly criminal gangs, underground. Is that a concern to the South Australia Police?

Supt Bray—Certainly as the person in charge of the Crime Gang Task Force it is not a concern for me. Most people want known their participation and involvement in gangs because that is one of their tools of trade—the public knowledge and threat that the gang is behind them. Their membership is quite well known in the community. It is the serious and organised crime that they undertake that they attempt to conceal from police and law enforcement, and they have done that forever. They are quite happy for people to know they are criminals but they do not want law enforcement to know what they do. So I do not believe personally that it will have any effect on the way I do business. What I do believe is that the new laws will make it a very difficult environment in South Australia for people engaged in serious and organised crime to operate within, and I believe that the disruption and the inability to freely go about their business is a significant advancement for us in policing.

Assistant Commissioner Harrison—I want to add to that. I think there really needs to be some clarification about this idea of them driving underground, because I would not like this phenomenon to get out of the can, if you like, and for people to actually think it will happen. As Superintendent Bray said, the reality is that criminals in serious and organised crime go to extensive lengths to ensure that they do not leave evidentiary trails behind that can lead to them being caught by law enforcement. The suggestion of driving them underground I really think is a fallacy. Their criminal activities are largely underground currently. It may be subtly different when you talk about extortion, blackmail and violence within, say, a nightclub environment within a CBD district, but the reality is that they go to extreme lengths to conceal their criminal enterprises and activities currently. The construct of the new legislation was all about trying to break up associations. I genuinely believe that breaking up associations will cause a state of chaos within some of these organisations whereby the inner sanctums or the code of silence which is maintained will be somewhat disrupted and law enforcement will be more able to identify criminal activities they are involved in. It will also provide us an enhanced opportunity to gather evidence to put before courts. This legislation could do the reverse of sending criminals underground; I think it will actually bring them out into the open because they will not be able to exploit the culture which has existed for a long time where they can give the tasks out to nominees, prospects and hangers-on—the throwaways, if you like—to undertake the criminal activities for them. So-called full members of these organisations will have to involve themselves in their criminal activity. I think it will have the reverse effect to sending them underground.

Senator PARRY—If these new laws are successful and you achieve your purpose, do you feel as though there might be a risk of fixing South Australia's problems and then exporting the problems to other states in Australia with no harmonised legislation at this stage? Secondly, have you had any discussions with other jurisdictions, your counterparts, about mirroring what is happening here in South Australia?

Assistant Commissioner Harrison—Firstly, I do believe that there will be a displacement effect as a result of the new legislation coming in. Needless to say, if you introduce legislation which impacts on the movements of individuals and who they can associate with, and if they can go to another part of the country where those sorts of restrictions are not imposed upon them, it will be easier to do business. So I would like to think that some people will go for the easier option. I guess it is a ‘weak link in the chain’ type philosophy, where people will look for the easiest opportunity to exploit the laws of the state or the land to go about their criminal enterprises and activities. We have seen some evidence in recent times, even before the proclamation of the new legislation, that some members of outlaw motorcycle gangs have already moved from South Australia to other states. We are aware of discussions that are being had between members of outlaw motorcycle gangs and people within the prison system about what the impact of this legislation is going to be and whether it is going to be too hard to live in the state of South Australia. So the reality is that there will be a displacement impact. It is hard to quantify what that will be.

As for the second part of your question, over the last 12 months we have gone to significant lengths to ensure that people are apprised of the developments of the legislative reform process within this state. That has included members of law enforcement agencies, politicians and attorneys-general around the country as well. So we have tried to ensure at all times through this reform process that my colleagues and also representatives from government around the country have been apprised of the developments, the intention and what we believe the consequences will hopefully be, of this legislation.

Senator PARRY—Are you in a position to indicate whether there has been any favourable response, any strong interest, from other states, other jurisdictions?

Assistant Commissioner Harrison—I think it is fair to say there is very strong interest around the country. Putting some context around that statement: I think there is a view by some jurisdictions that it is a ‘wait and see’ situation, and they are saying, ‘Let’s actually see what happens as a result of this piece of legislation.’ Other jurisdictions may be more keen to try and engage in legislative reform processes learning from our experience over the last 12 months as well. I think there is probably a combination of attitudes and views in relation to what other jurisdictions are intending to do around the country.

Senator PARRY—Just moving on to a slightly different subject, telecommunications interceptions: do you feel as though, with your new legislation, there needs to be any addressing of the current Commonwealth legislation in relation to telephone interception?

Assistant Commissioner Harrison—Looking directly at the legislation and how it is constructed in respect of the declaration process and control orders, it is my understanding at the moment that the Commonwealth and the state legislation which provides definitions in respect of when a telephone interception can be activated will not allow that mechanism to be used to assist in an application for a control order, for example, and/or a breach of a control order. That is my understanding. I think it is an area which will need to be considered in the passage of time. As the legislation is proclaimed and is settled, I am sure that will be one of the areas that we will be looking at through the LEAC process, which looks at what is required in relation to legislative reform in respect of the telecommunications side of the business. So it is an area that I

think we will have to be very mindful and conscious of. It may need some reforms, if you like, if it is to support this piece of legislation.

Senator PARRY—Finally, are you aware of any parliamentary oversight or proposed parliamentary oversight that would need to be or could be implemented to assist in ensuring that the vitality of this legislation is not compromised?

Assistant Commissioner Harrison—I can only say within this state. It is actually documented within the legislation itself—and I am sure you are aware of that—in respect of the safeguards, if you like, to ensure that the legislation is appropriately administered and utilised by law enforcement. That certainly includes an annual review by an independent judicial officer and a report to parliament. It looks at a review at the four-year mark of the legislation and it also includes a sunset clause at the five-year mark, which is rather unusual for pieces of legislation as well. I believe that when the bill was debated in parliament there were significant discussions with respect to safeguards to ensure that there were regular review processes put in place to ensure that the authorities and powers within the legislation were being properly used in real time—annual reviews—and that there were comprehensive reviews conducted, as I said, at the four-year mark and at the point of the sunset clause taking effect, to ensure that the legislation had the intended consequences. I do not believe the legislation has an independent body that has been given responsibility to overview the legislation in its entirety.

Mr WOOD—Superintendent Bray, you mentioned the OMGs infiltrating to some degree the liquor and hospitality industry. I assume that in some ways that would involve crowd control. What are they actually doing when they are getting involved in these industries? What types of crimes are they allowing to be committed on the premises? Are there interstate links, meaning OMGs from one state may be sending crowd controllers over to another? Is it being looked at as solely in South Australia or is it a national issue?

Supt Bray—I am not aware of what is occurring in each jurisdiction. However, I think it is more likely than not that what we see here—given the nature of OMCGs and their interstate and international links—would be replicated in other states. Here we saw examples of OMCG members being the silent owners of security businesses and employing a variety of people who were largely involved in either debt collection or crowd control at venues. They may have a silent ownership in a venue or be providing crowd control and security, in which role I am sure the general community would expect people to be protecting our kids when they go out and eliminating drugs from that particular environment. I would suggest that those people are in a prime position to ensure that there is a very good drug marketplace free of law enforcement attention.

Mr WOOD—But is that what you are actually hearing? Are you getting information that the OMGs are, say, taking over a hotel and allowing drugs to be sold freely? Is that what is occurring or has occurred?

Supt Bray—It was uncovered more from 2003 to 2005, and we had some considerable success in removing a large number of undesirable characters from the security industry. I think the security industry today is somewhat different to what it was in 2003.

Assistant Commissioner Harrison—There were a number of interventions. Within South Australia Police we have a Licensing Enforcement Branch, LEB, and there have been a number of successful interventions to preclude individuals actually holding licences or being licensees of premises, particularly in the nightclub area within the CBD. Some of those persons were either full members or direct associates of outlaw motorcycle gangs. It was obvious to us that it was not a good mixture to have such persons in control of licensed premises where they could then largely control who comes in and out the front door—and/or the back door, for that matter—and have a greater opportunity for the distribution of illicit drugs into the nightclub industry. So we are exceptionally vigilant, and I think we need to be, to ensure that fit and proper persons hold licences of licensed premises, to try and do as best we can to ensure that appropriate protocols and conduct are adopted within licensed premises to minimise drug distribution occurring.

Mr WOOD—Would you support the need for a national register of crowd controllers, perhaps under the CrimTrac database, if there is cross-jurisdictional infiltration by OMGs or other gang related organised crime?

Assistant Commissioner Harrison—All of those sorts of initiatives provide some benefit. On a priority basis, when we always have to deal with finite resources and budgets, I am not so sure that that would be my highest priority, but that is not to suggest for one moment that I do not support better information sharing around the country, which is tending to occur these days through mechanisms such as CrimTrac and so forth. All of those things enable law enforcement to have a better understanding of the true picture of crime and criminality and who is engaged in it. I would attest very strongly that, in a country where we have 21 million people and approximately 50,000 law enforcement officers, at all times we need to ensure that we have got exceptionally good information-sharing protocols and practices. Mechanisms such as CrimTrac and so forth go a long way to support that. So I would be very much a strong contender in relation to further enhancing good relationships which exist between law enforcement and agencies such as the Australian Crime Commission within this country.

Mr WOOD—We keep hearing how the OMGs in South Australia and other states have really moved up in the organised crime scale. What percentage of organised crime do they have control over in the state of South Australia compared to other crime gangs? What are the types of crimes they are involved in? If they are involved in drugs, how much are they involved? The legislation that the government is putting forward, with the opposition's support, is very strong legislation. Has it got to a stage where, if nothing happens, the situation is going to get dramatically worse? Is that your opinion?

Assistant Commissioner Harrison—I would like to begin, and my two colleagues may want to contribute as well. Within South Australia Police, as within all law enforcement agencies, we have reasonably sophisticated assessment processes and priority processes as to how we allocate resources in respect of the intelligence, the information, that comes into police agencies. We have a dynamic 24-hour assessment process. We have a dynamic seven-day and 14-day assessment process, where we look at what information we have coming into the police agency, what criminal networks are involved and what individuals are committing the crimes.

I can go as far as to say that in the last couple of years through that assessment process—and I chair some of those committee processes within the South Australia Police—on most occasions either the individuals or the criminal networks that we targeted had a direct involvement with

outlaw motorcycle gangs or, at the very least, a loose connection with individuals in outlaw motorcycle gangs. That is invariably the case. It would not have been the case 10 or 15 years ago, as we are seeing it today. So I would strongly suggest to you that we are seeing a significant increase in the connections and the relationships between members of outlaw motorcycle gangs and the more traditionally based ethnic serious and organised crime groups. That is certainly the case.

If you look across the different crime groups, we are certainly seeing extensive involvement in drug manufacture and distribution. That has always been the case and I think it always will be the case. That said, we still see individuals taking opportunities to transport cannabis from South Australia to the eastern seaboard as one-offs and not having any linkage with serious and organised crime groups and/or outlaw motorcycle gangs. But, proportionately, I would have to suggest to you that there is a significant involvement in drug manufacture and distribution, certainly of amphetamine and amphetamine based drugs.

Second to that, if you look at the violence type activities of extortion, blackmail and intimidation you could not conclude anything other than the fact that members of outlaw motorcycle gangs significantly hold that piece of the territory in relation to criminality.

If you move on to firearms, serious and organised crime groups, networks and individuals have a thirst to possess dangerous articles and firearms. We have seized literally hundreds and hundreds within this state in the last seven years which have been in the possession of outlaw motorcycle gangs, serious and organised crime groups—found within clubhouses, within private premises, on individuals riding motorbikes and so forth. There has been a proliferation in possession and seizure of firearms and dangerous articles.

The fourth dimension is the aspect of assets and wealth. As I may have mentioned earlier, we in this state are certainly moving towards introducing unexplained wealth legislation and declared drug trafficker legislation to try and target the asset and wealth accumulation which tends to go hand-in-hand with serious and organised crime groups, including some members of outlaw motorcycle gangs.

Chief Insp. Powell—I might just add in relation to the new legislation that it is designed to deal with not only outlaw motorcycle gangs but serious and organised crime groups generally. Whilst in South Australia a lot of that has been built on the back of the activities of outlaw motorcycle gangs and their involvement in serious and organised crime, it is fair to say from a South Australian perspective that outlaw motorcycle gangs are involved at all levels of crime, from the street-level public violence that causes community concern through to sophisticated drug manufacture and distribution which extends not just within the South Australia but across jurisdictions within Australia.

In terms of the percentage of organised crime attributed specifically to OMCGs, I think it is a difficult task for anybody to put that into a percentage quantification, just as it is very difficult to some degree to cost the impact of organised crime on the community. You can get a best guess, but I think probably the best way to describe it is to say that outlaw motorcycle gangs are very prevalent in all levels of crime in South Australia.

Mr WOOD—I am trying to get some idea of the increase in outlaw motorcycle gang activity. In the last couple of years how many clubhouses have opened or how much has the membership increased? Secondly, we are hearing they are using street gangs to assist them. Would you be able to give the committee some information on those issues?

Assistant Commissioner Harrison—The figures are reasonably constant but, that said, they do change and we have seen changes over the last six or seven years within South Australia with respect to outlaw motorcycle gang clubs' chapters and membership. I could give you some indicative figures which I think are good figures as a base to try to paint the context of what has occurred or is occurring. Within South Australia in 2001 there were six outlaw motorcycle gang clubs and nine chapters associated with those clubs. In 2007 and today there are eight clubs in existence and 13 chapters. So we have seen an expansion within this state over that six-year period. Nationally, figures which are put forward suggest that, in the corresponding periods of time, in 2001 there were 173 chapters within Australia and in 2007 there were approximately 227 chapters. So we have evidence of an expansion in those areas.

Also, certainly within this state, some of the clubs appear to have been on a significant recruitment drive in the last couple of years. The more traditional culture of only having a small number of nominees and prospects seems to have been somewhat disregarded. Some of these groups seem to have a significant number more nominees and prospects than traditionally they would have, and some of them seem to get patched up, as it is called, or made full members in short periods of time.

We have certainly seen the linkage with street gangs and youth gangs in this state, and I think that has also been seen in other jurisdictions around Australia. We are now seeing individual members of street and youth gangs graduating to nominees or prospects of outlaw motorcycle gangs, and we are also seeing some of them made full members of outlaw motorcycle gangs. We know that there is a direct correlation between some outlaw motorcycle gangs and some street gangs. We regularly see them associating within the CBD, in the nightclub industry, driving in cars together and associating in houses together. So there is a direct correlation between the activities of street youth gangs and outlaw motorcycle gangs. It does appear to be more prevalent with some of the outlaw motorcycle gangs than others; it does not seem to be consistent across the board. But some of the groups and gangs seem to adopt an approach of recruitment via street and youth gangs as well.

Mr GIBBONS—How does the new legislation differentiate outlaw motorcycle gangs and non-outlaw motorcycle gangs, and what protections are there for non-outlaw motorcycle gangs? I would imagine South Australia would have literally hundreds of associations, if you like, around motorcycling, specific-make clubs right through to organisations that appear to be outlaw motorcycle groups. How do you protect those that are not involved in so-called organised crime?

CHAIR—Greenpeace could have a motorcycle gang!

Mr GIBBONS—They may not teach Sunday school, but they have a right to participate in any activity they see fit, provided they are not breaking the law.

Assistant Commissioner Harrison—In the development of the legislation this was obviously an issue where there was a lot of time spent on the wording to ensure that people who were

never intended to be were not captured by the legislation. You will see that if you look at the declaration process and then, on from that, the control order process. I will quote a piece of the legislation to highlight that. Firstly, you need to demonstrate on application between the Commissioner of Police and the Attorney-General in making a declaration process or an order that:

(a) members of the organisation—

an organisation; it does not have to be an outlaw motorcycle gang—

[associate](#) for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity;

I think you really need to labour that point ‘serious criminal activity’. That is the first threshold. The second threshold is that:

(b) the organisation represents a risk to public safety and order in this State—

South Australia. You need to meet both of those criteria to be captured. I cannot see any way whatsoever that people that like riding motorbikes, like Harley-Davidsons, and like getting together with their friends, going for rides through the countryside, stopping at a number of pubs for a beer and stopping for lunch—unless they are planning, facilitating, supporting or engaging in serious criminal activity and they pose a risk to public safety and order in the South Australian community—could possibly be captured by the declaration process.

Similarly, if you go on to look at the control orders, it has a relationship to engagement in serious criminal activity. So for people who are going about their lawful business riding a motorbike on the streets of South Australia, there is no way whatsoever that they could be captured by this piece of legislation. I think those thresholds are deliberately set to ensure that there is a significant delineation between those who engage in serious criminal activity—plan, organise, facilitate and so forth and pose a safety risk to the community of South Australia—and those who go about their lawful business.

Mr GIBBONS—You mentioned the collaboration of outlaw motorcycle groups with other crime organisations. Those other organisations are both European and Asian—are they quite prevalent here in South Australia?

Assistant Commissioner Harrison—Over the passage of time we have seen—and I suggest you need to go back maybe to the last 40 or 50 years—different ethnic based crime groups or established criminal networks. Some of them seem to have come and gone in some respect but there is no doubt that there appear in some cases to be linkages with ethnicity in respect of the establishment of crime groups. When you look at outlaw motorcycle gangs, you really see a mixture or a cocktail, if you like, of different ethnic backgrounds that formulate the composition of an outlaw motorcycle gang. I really do not think that there are any strict rules in relation to that. From a South Australian law enforcement perspective, we keep a very open mind about who the members are, or what the membership is, of serious organised crime groups. Certainly within this state we would not so much focus on the ethnicity of a person; it is all about their engagement in serious criminal activity and the composition of the network they are a member of.

Mr PYNE—Assistant Commissioner, this is very far-reaching legislation in terms of the control orders, the capacity to declare organisations and the limiting of personal freedoms of individuals in society, and of course it is legitimate to limit people's personal freedoms on the basis that to do so protects the community in general, and maybe specific people as well who would otherwise be at risk. Governments have to weigh up the freedom of the individual and freedoms of communities against the need for people to behave and not to break the law. This legislation is very far-reaching in the things that it does, but I think that it is legitimate legislation. What I would like to ask you is: was there a catalyst for activity of organised motorcycle gangs that caused this legislation to be seen to be necessary? And, if so, why did that catalyst occur?

Assistant Commissioner Harrison—I would suggest that there was not so much an individual catalyst or a trigger. I think that we probably need to go back some years to when there was a concerted effort made about 2001 in this state to have a greater focus on the policing of outlaw motorcycle gangs and organised crime groups more generally. Shortly after 2001 the Avatar Motorcycle Gang Section was created, which was a multidisciplinary law enforcement task force. It was very much focused on the different tiers of criminality of outlaw motorcycle gangs, as Inspector Powell touched on, in relation to the high-level organised crime and the public disorder aspects at the same time, because we were seeing a prevalence of assaults and violence not within the nightclub industry in particular but in the streets of Adelaide. For a number of years we persisted with that focused effort with the Avatar Motorcycle Gang Section and over the last 12 months to two years we have seen, as we have described, a change in the demographics and the structure of these groups and certainly their association with street gangs and youth gangs at the same time. Unfortunately, we have seen people being shot in public places and on streets and the continued prevalence of violence, blackmail and extortion and so forth.

So it was not a particular trigger or catalyst. I would suggest it has been an evolving process whereby between about 2001 and 2005 there was legislative reform in relation to fortification laws, changes to security agents and that industry, changes to the liquor licensing laws—barring orders and so forth. I would suggest that it has been more of an evolving process which has certainly had some significant activity in the last 12 months as a result of the Tonic nightclub shooting, the shooting on the streets of Melbourne and so forth. We also had a shooting, which was well-publicised earlier this year, in the Yorke Peninsula in South Australia, where a person was shot 11 times and survived the occasion. We believe this shooting also involved outlaw motorcycle gangs.

In summary, I suggest it has been an evolving process over a number of years of legislative reform, but there certainly has been a speeding up of that process in the last 12 months in respect of a number of incidents. Without speaking on behalf of the government, I believe that the government decided, together with the support of police in this state, that it was time to be more creative and innovative in relation to legislative reform, and we find ourselves shortly to see the proclamation of the Serious and Organised Crime (Control) Act as well.

Mr PYNE—In your discussions with your interstate colleagues about these matters, is it your assessment that the South Australian situation regarding bikie gangs or organised motorcycle gangs is worse than in the other states?

Assistant Commissioner Harrison—I do not believe that it is worse, no. If you look at the problem and the degree of criminality which is occurring, I would believe that that would be very similar right across the country. From time to time we tend to see a different volume of certain types of crimes occurring within different states—and I am not sure what the reason for that is—but in general the quantity of criminality, I suggest, involving serious and organised crime and crime groups would be very similar proportionately around the country at the moment.

Mr PYNE—If that is the case, are your comrades in the other states moving in the same direction as we are moving in South Australia in terms of the law?

Assistant Commissioner Harrison—It is certainly not my position to speak on behalf of the other states of Australia and particularly the police commissioners and/or ministers for police or attorneys-general, but I think if you look around the country at the moment you will see there are different forms of legislative reform occurring. We have seen changes in Queensland, in New South Wales and in Western Australia. If you look at unexplained wealth and declared drug trafficking, and if you look at specific serious and organised crime legislation, a variety of reform processes have been occurring, and are still occurring, around the country. I think we are all in agreement that harmonisation of legislation across a number of these different disciplines and dimensions would be of great assistance to law enforcement around the country. There has been a lot of work and there is a lot of goodwill in respect of harmonisation of legislation currently in existence and I think that we all have to work strenuously in ensuring harmonisation of legislation to ensure that the mobility of criminals around the country is appropriately addressed, and that will only be done by greater cooperation and harmonisation in addition to the good work that is already occurring around the country.

Mr PYNE—To summarise why I think this legislation has come about—and you can either agree or disagree with me—in 2001 the then state government started to put extra effort into addressing organised motorcycle gang activity and serious organised crime. The Avatar group was set up and that has been operating over the last five or six years. You would say it has been allocated the necessary resources to do the job but it has not been successful because the activities of these gangs has increased, the demographics, as you say, have changed, and there does not seem to be any lessening of their influence or capacity to grow. So this legislation in some respects is the last shot in the locker in terms of breaking the hold these gangs have, and if it works here you would hope that other states are watching what happens here to see if they would then roll it out themselves in the other states. Do you think that is a fair assessment?

Assistant Commissioner Harrison—I would agree with some aspects of your summary. I would suggest that we have seen significant success in the last five or six years within the state in relation to the policing of criminal activities by outlaw motorcycle gangs and gangs more generally. You only have to look at the arrests, the seizures, the firearms that have been taken off the streets, the drugs, the interventions that have been made and the disruption which has occurred. I really do believe that these successes have been significant. If it were not for that focus in the last five or six years, I think we would have found ourselves in a worse position.

That is not to say you can rest on your laurels and just keep doing the same old, same old. I think in this state we have been very responsive to the changing demographics. We moved to the establishment of the Crime Gang Task Force in November last year which looked at doubling the

resource allocation towards serious and organised crime and gang activity. We are very welcoming of the new piece of legislation. I think it will be an effective tool in the toolbox to assist law enforcement.

Can I also say that in this state in particular there has been a holistic approach to legislative reform. If you are aware of the bills currently before the parliament and the bills which have passed through the parliamentary process, there has been significant reform in the last 12 months right across a number of different aspects of legislation. There has been the formation of the Serious and Organised Crime (Control) Act, significant reform to the Firearms Act with the introduction of firearms prohibition orders, significant reforms in relation to the Controlled Substances Act and the introduction of 'possession of equipment' in relation to drugs. Currently going through the parliamentary process is the prohibition of being in possession of precursor chemicals, and we are now looking at unexplained wealth, declared drug trafficker and so forth. I think legislative reform to successfully target serious and organised crime has to be holistic. It has to be multifaceted. You cannot expect that bringing in one piece of legislation will be the panacea to solve all of our problems. Within this state we really have looked at this comprehensively, in a holistic approach—looking at reforms across a number of different dimensions of legislative reform as a whole package. I would hope that in the passage of time, over the next couple of years, we will see that police will have better pieces of legislation to assist us in disrupting and dismantling the activities of serious and organised crime groups.

Mr PYNE—This legislation, as I understand it, essentially allows you to proscribe an organisation, the members of the organisation are not able to communicate with each other at all and if they do communicate with each other six times, I think, over a 12-month period can be arrested and jailed for doing so. I think that is very substantial, and I do not disagree with it, but it is not exactly a tool in the toolbox. It is much more an Exocet missile, isn't it? This is obviously a response to something. You do not fire a nuclear explosion or an Exocet missile because you have been doing a really good job but this is the little bit extra you would like to do. This is obviously a response to a growing and serious problem which what we have been doing in the last six years has not been addressing, otherwise the police would not be asking for these kinds of powers. That is what I am trying to establish. This is the most significant limiting of freedoms in South Australia that I have ever seen, and I think most other states would agree. If your cousin happens to be a member of the group that is declared and you contact your cousin more than six times in 12 months you will be arrested—that is a pretty serious stuff. It is not exactly a spanner, it is much more of an Exocet missile, isn't it? Obviously it has to be a response to something, otherwise the government would not consider going this far.

Assistant Commissioner Harrison—There are lots of aspects to your statement and I will try and pick up on a few of them if I can. We certainly acknowledge that we have traditionally and until recent times adopted the approach of investigation and targeting of assets. As has been stated earlier, we are now trying to bring in the third dimension of prevention to try and prevent these crimes occurring or the associations existing before we find ourselves in that reactive investigative mode. So, yes, we are evolving. I think you could certainly see that police services and agencies around the world in the last 15 years have had a far greater focus on prevention of crime rather than reacting and responding to crime. I think that is a very appropriate approach to take.

Certainly the control order will preclude and prevent individuals associating with other members of organisations. It will certainly preclude them attending particular premises. And it will certainly preclude them if they are subject to a control order from being in possession of articles of a prescribed kind and also firearms. I think they are appropriate measures to put in place if we demonstrate that a person is engaging in serious criminal activity and also that they pose a significant risk to public safety and order in South Australia.

I do not support your approach that it is an Exocet missile. What I would suggest is that it generally is an evolving process which has been going on for a number of years and is a comprehensive piece of legislative reform. But it is an evolving piece of reform as we have tried to more successfully deal with serious and organised crime activities, as we find the structure of those activities in 2008 and what we believe they will be in the future as well.

Mr PYNE—I also do not want people to get the impression that I am against these laws. What I am trying to get you to do is to tell the committee, on the record, what it is that has caused the SA Police to get to the point where they need this kind of law. But I think I have probably had a fair run.

Mr WOOD—If I can just jump in for one sec, I think one of the aspects is the witness protection. Maybe you can just elaborate on that for the committee members, because that is one issue I know is relevant, with the intimidation of witnesses. Taking up what my colleague Christopher Pyne is talking about, maybe you can give us some example of how an outlaw motorcycle gang, compared to other groups, can actually intimidate witnesses and prevent them from going to court to give evidence.

Assistant Commissioner Harrison—Inspector Powell can maybe provide a bit of background in respect of the changes in sections 248 and 250 of the Criminal Law Consolidation Act, and we can talk about that.

Chief Insp. Powell—Generally speaking, without going into specific cases, we have experience where people have been, for example, the subject of blackmail and extortion. As a result of that, they have been approached and threatened or violence has been threatened against them not to report matters to the police. From the investigation point of view, we do not necessarily get victims coming forward telling us that. We would find out through other means. Sometimes victims do come forward, if they are brave enough and have the courage to do so. That in itself is a bit of an indicator of the impact of the threat and intimidation that is applied to some victims.

Sections 248 and 250 of the Criminal Law Consolidation Act have been enhanced as a result of the legislation reform. These sections relate to threats and reprisals against public officers and in judicial proceedings. One of the enhancements is that that now includes a criminal investigation. So, where a person comes forward to assist police right at the outset with an investigation, the law will offer some protection within the bounds of the criminal law—and I would like to make some comments about the criminal law generally after this—to offer protection from that intimidation. There are increased penalties associated with that. So a victim or a witness who comes forward to assist police in relation to these matters has an increased level of protection offered to them through the criminal law legislation, and police can take action in response to that.

It is a difficult situation where victims and witnesses are subject to intimidation, because we become aware of the actual offence or crime being committed but the difficulty is, if you do not have the evidence to present before the court in line with the rules of evidence for the criminal justice system, you will never get the conviction at the other end. If you do not get the conviction at the other end, the crime, if you look at the data from courts, does not exist at law. We know it exists in practice, but if you do not get the conviction at the other end it is not recognised in law as being a crime that is committed as such, from the end result.

I would like to add some comments to that, and probably also answer Mr Hayes's question about some criticisms of the new legislation. During the research that we did into it, we took a practical look at the criminal law and serious and organised crime and how it works and how effective it has been. It does go a way towards explaining some of the new approach as an evolving process. Firstly, it is well documented and accepted, certainly in law enforcement circles, that organised crime is a complex problem that requires a sophisticated response. The evolution of organised crime, whether it be OMCs or other groups, has seen the dynamics of these groups and their networks become more fluid and operate in different ways to how they traditionally operated in the seventies et cetera. In that era the groups may have been family based or very singular in their construct.

When we look at the criminal law, we see that previous reforms, not only within South Australia but in other states and even overseas, have relied heavily on the criminal law and the criminal justice systems as primary mechanisms for dealing with the issue of serious and organised crime and reducing the threat to and impact on the community. If you look at the criminal law, particularly in South Australia—and I am talking from a South Australian perspective here—it has a limited capacity for prevention. By that, what I mean, from a practical perspective, is: in order to invoke a number of the legislative tools for police or to have the courts consider the guilt or innocence of a person, you need a minimum of a reasonable cause to suspect that a crime has been committed by a person or a group of people. That generally relates to a specific crime or a number of specific crimes.

In practice, when law enforcement become aware of a crime being committed or have reasonable cause to suspect that is of a standard that we want to exercise those tools within the legislation, the reality is that the organised crime groups and networks have established their relationships. The associations are there. The methods of operation are established. In many cases, steps towards the commission of a crime have occurred, or the commission of the crime itself has occurred, before the reasonable cause to suspect has ever been established. What does that mean? That means that victims exist before an investigation commences. Is there a way, on the prevention side of that, to get in front of creating victims in our community, and the impact and threat that that brings with it?

Without diminishing the role of criminal law—it is an important aspect and Assistant Commissioner Harrison has actually mentioned that—it is also about prevention. It is about prevention, investigation and confiscation of the criminal assets. A holistic approach is required. Criminal law, the justice system, has a very important part to play in dealing with serious and organised crime, but prevention is the aspect that has been missing in the past.

Serious and organised crime groups require the communication and the association with each other to become sophisticated, to generate their levels of sophistication and methodologies.

When you are talking about gangs, a reputation for violence, a criminal reputation, becomes essentially an asset. It is no different to goodwill for a legitimate business. What allows a good business to thrive is the goodwill it generates in its lawful and legitimate business. With serious and organised crime groups, it is their criminal reputation, their reputation for violence, that allows them to be very effective in their criminal enterprises, to intimidate witnesses, to circumvent the effect of the criminal justice system. Without victims and witnesses coming forward, the criminal justice system is somewhat ineffective in dealing with serious and organised crime.

What has been successful in dealing with serious and organised crime in South Australia at a lower level—and the principles have been adopted and enhanced and they appear in this legislation—is better use of civil law initiatives in a prevention or exclusion capacity, coupled with criminal sanctions for those who then breach those. You need to have the rigorous assessment thresholds in place to make sure that you are targeting the right people within your society. This is necessary and has been effective.

We have seen that in the licensing industry in South Australia. We have seen it in the security industry, in removing people who have placed the community at risk. We can adopt that within aspects of the serious and organised crime legislation, where civil prevention initiatives are introduced in the early stages to break up the strength and the solidarity of these crime groups, to reduce their influence and impact on the community so that we can still deal with crimes as they occur and investigate them but have a chance of actually preventing victims from being created within the community.

Mr CHAMPION—Earlier in your evidence you talked about legitimate businesses. In particular you talked about payday lending. Is there any relationship between payday lending run by these groups and their illegal extortion activities? Is there any movement of people between the two that you know about?

Assistant Commissioner Harrison—I will ask Superintendent Bray to answer. He will probably be able to provide a more practical example of some of the things that have actually been occurring in those areas.

Mr CHAMPION—I am just asking: is it possible?

Supt Bray—I can speak more confidently perhaps about some of the finance companies, as opposed to the payday lenders. We certainly did see people associated with outlaw motorcycle groups operating high-risk finance companies, but where those loans were secured perhaps against an asset, traditionally at very high interest rates and requiring very strict compliance with the terms of their agreement. I am aware that, on occasions, when a person defaulted on those loans, members of outlaw motorcycle groups or their associates were used in an extorting or threatening manner to have people sign over those assets or to pay or collect moneys.

Mr CHAMPION—In effect, people could think they were dealing with a legitimate company one moment and end up dealing with an outlaw motorcycle gang or an organised crime group. That is what they end up dealing with.

Supt Bray—I emphasise that my evidence relates more to the finance companies that exist outside banks that provide perhaps \$50,000 to \$500,000 short term—perhaps six months or 12 months—at very high interest rates, as opposed to the traditional payday lenders.

Assistant Commissioner Harrison—Certainly, it is being looked at within this state currently by the government, in the sense that it is imperative to have an appropriate, fit and proper person test for those persons responsible for payday lending, short-term lending or financial arrangements. We have to have those fit and proper person tests—and I suggest that should go wider than just aspects of honesty and dishonesty; we need to make sure we have the right people running those businesses just as we need to have the right people running licensed premises and security industries.

Mr CHAMPION—How do you think the new legislation will affect relationships between gangs? Obviously, a lot of the violence we see is generated by turf warfare or gangs having disputes over particular issues. What effect do you think the new legislation will have on the relationships between groups?

Assistant Commissioner Harrison—I think it is very difficult to try to predict what the outcome might be. At times when pressure is applied we sometimes see every man for himself, if you like—a bit of self-survival. It is very hard to try to provide a view as to what we think the impact will be on intragroup rivalry, which we have seen from time to time in this state and which occurs around Australia as well.

Mr CHAMPION—Will it give you mechanisms for dealing with that?

Assistant Commissioner Harrison—Certainly the control orders will be applicable across organisations, across members who have control orders imposed upon them. It has that interoperability, if you like, across groups and organisations. If you look at non-association arrangements, I think it is going to send some of the groups and organisations into a potential state of chaos where they will go through a response process as to how they are going to operate. We would not sit here and tell you that we believe this is going to be the panacea for serious and organised crime. As we have said—and I will belabour the point—you really need to have a multifaceted approach to addressing serious and organised crime. This piece of legislation, the Serious and Organised Crime (Control) Bill 2007, is only one piece of reform that we believe is necessary to give law enforcement the tools that they need to address serious and organised crime.

Supt Bray—From a practical perspective I can draw it back to some recent examples of extortion related matters. From an operational perspective we become aware that an extortion or serious act of violence was being planned and was intended to be carried out. When we first heard the discussions relating to that, the discussions had not progressed far enough for a conspiracy in law to be made out. We are in a position where we have to wait almost until the offenders are in the vehicle travelling to assault or extort their victims and in possession of weapons and until we have sufficient evidence to show that a conspiracy exists and that they have agreed to do that. Under the new legislation, if we become aware that members with control orders are discussing a future assault or act of violence, we could take action in respect of a breach of the control order, thereby preventing the actual offence occurring.

The other danger in the current system is that, if we have to wait until the offenders are in a vehicle en route to cause harm to make out an offence, we then have a position where officers are stopping armed offenders in a vehicle. That increases the risk to officers and the public. It would be my experience that if those people are in a vehicle with firearms when we go to intercept them, they will attempt to evade police and we will have a high-speed pursuit, again causing serious risk to the public and officers. If you wind back the clock, we would be able to take action for a breach of the control order well before there was any risk to the public or the intended victims.

Senator BARNETT—Assistant Commissioner, thank you for your evidence today. The legislation is clearly far-reaching, as has been indicated by Mr Pyne and others. It is different from the legislation in Queensland, Western Australia, New South Wales and, indeed, Canada and New Zealand. Whether it has the effect of an Exocet missile or whether it has the effect of an almighty stun-gun which is designed to immobilise the outlaw motorcycle gangs, it is based on evidence and on your view and your proposition that there has been an increase in concern about the criminality, violence and intimidation by the outlaw motorcycle gangs. Can you advise the committee now, or take on notice, or even provide in confidence, if required, evidence, firstly, of the increase in membership—you have advised of the increase in gangs, the chapters—over the last few years and, secondly, the increase in the level of criminality conducted by these outlaw motorcycle gangs? We are not requiring just anecdotal evidence; we as a committee would like, I think, empirical evidence to assist us to form a view with respect to the level of concern—and you said in answering a question from Mr Pyne that it had evolved over time; there was not one particular incident. I am happy for you to take that on notice or, if necessary, in camera and in confidence.

Assistant Commissioner Harrison—Thank you for the question. It would be appropriate to take it on notice in the sense that I will undertake to provide to the committee a comprehensive summary of arrests, seizures and so forth in recent times to try to provide some context and, I guess, paint a picture of what sort of criminality proportionate to the population base we are actually dealing with. We do that on a regular basis, so it would not take a lot of time to put something together to provide and paint a picture for you in the context of criminality. So I would like to take it on notice, thank you.

Senator BARNETT—And the membership issue as well?

Assistant Commissioner Harrison—Yes, certainly.

Senator BARNETT—My second and final question relates to the allegations and concerns expressed by people—the Law Society and other people—about the nature of its potential impact on individual rights and its unconstitutionality. Do you have a view as to the likely level of litigation that may be taken against the state government with respect to the legislation before us and its likelihood of ending up in the High Court? Do you have a view as to the likelihood of litigation to test this law?

Assistant Commissioner Harrison—Certainly, from the South Australia Police perspective, we endorse the legislation and take it on its merits as it stands and we will be progressing the administration of that piece of legislation appropriately and in a timely fashion. I guess it is up to others to determine whether injunctions, actions, appeals and so forth occur. From my

perspective, it is all about taking responsibility for the administration of the legislation, as the South Australia Police, and we will be doing that in a very timely fashion. I think that it is probably appropriate for others to make comment in respect of what they think might happen within the criminal justice system with appeals or whether there is unconstitutionality in the piece of legislation. From my perspective, it is about moving forward with the legislation and other pieces of legislation to address the serious and organised crime problem and to ensure that we provide a safer community for South Australia.

Senator BARNETT—Sure, but do you have a view as to whether the legislation is constitutional?

Assistant Commissioner Harrison—I am not in a position and do not have the qualifications to make that sort of comment.

CHAIR—The committee is often told that serious and organised crime groups are well-funded and readily mount legal challenges. Are you experiencing or have you experienced this in South Australia? To what extent does it impact on South Australian police investigations or operations?

Assistant Commissioner Harrison—We have seen over generations or decades that serious and organised crime groups do have access to significant wealth and assets. We have criminal assets confiscation legislation currently within this state. It certainly has a linkage to proceeds from crimes or used in the commission of crimes. The government has made public statements with respect to reforming that, to look at introducing unexplained wealth legislation, which I believe will be more effective in targeting these organised crime groups and the assets they accumulate over a period of time, as well as the declared drug trafficker legislation.

We have seen cases where members of outlaw motorcycle gangs have wealth in the millions of dollars. Members of serious and organised crime groups do not tend to plea bargain and plead guilty when there are criminal sanctions or proceedings against them. They invariably tend to run a case out and exhaust all avenues with respect to criminal justice proceedings. We are aware that it takes substantial amounts of money to be able to do that.

To the best of my knowledge, I am not aware that serious and organised crime members regularly engage in the use of legal commission services. They tend to be somewhat cashed up, if you like, with respect to employing good criminal barristers to represent them. We do see in this state—and I am sure it occurs around Australia—representation by the same individuals for the same members or the same groups. It may be appropriately so—these people deserve appropriate representations, as does any member of the public, if they are on criminal charges. But there is no doubt that they are in the business of serious and organised crime activity to make money. I would suggest to you that there is no reason why you would engage in serious and organised crime activity unless it is for the purpose of improving your position of wealth. We have certainly evidenced that with serious and organised crime groups.

CHAIR—Mr Gibbons asked about the recreational Harley-Davidson riders and I threw in the example of the Greenpeace motorcycle gang. Have you had enough opportunity to discuss this with people who are just motorcycle enthusiasts and to get through to them that this is not aimed

at them? Have you—not you personally but your officers—had independent discussions with those groups?

Assistant Commissioner Harrison—I would suggest to you that there have been limited discussions in the development of the legislation. I think there is a lot more work that could be done in relation to general education with respect to the intended consequences of this piece of legislation, the Serious and Organised Crime (Control) Act. As a policing agency we will certainly undertake to do that. Unfortunately, there has been a representation through the media and some sensationalising of aspects of the legislation which do not put it in its fullest context and provide a good explanation to the greater community of South Australia as to who will, hopefully, be captured by this piece of legislation. So I can understand if there are concerns in the community. We certainly, together with others, have a responsibility to make sure that the community of South Australia are appropriately educated and informed about this piece of legislation and its intended consequences.

Supt Bray—I can say that as a focal point for gang related activity the Crime Gang Task Force have had direct contact from some motorcycle groups that are not outlaw motorcycle groups and they have expressed some concerns. We have had our senior people go out and meet them, in a social or non-threatening environment, to talk through some of the issues for those people and explain the legislation to them, as best we could at the stage of development that the legislation was in at the time. If we get those requests we will make ourselves available to go out and meet with people and discuss those issues.

Assistant Commissioner Harrison—If I can add one further comment, you may be aware that the regulations with respect to the legislation are still being determined, literally as we speak. It is somewhat difficult, until they are settled, to give people the right information without creating greater uncertainty in the community as to what the impacts are going to be. We would hope that the regulations are settled soon. That will enable us to have the whole picture of the legislation and the regulations and then we can commence an education process to ensure people have the full picture and the intended consequences as well.

CHAIR—To be sure people know who it is aimed at.

Mr PYNE—In answer to a question from Senator Barnett, you said that you endorsed the legislation; ‘We endorse the legislation,’ was your quote. I am rather hoping and assuming that the legislation has not just been drafted by the Office of Parliamentary Counsel with a few writing instructions from the state Attorney-General. I would be hoping that legislation has been drafted in close consultation with your group within the police force in order to, if we are going to go this far with such legislation, make sure that the police get exactly what they need to be able to do the job.

Assistant Commissioner Harrison—In response, I can say emphatically that, throughout the last 12 months, there has been a close working relationship between police practitioners, legislation and policy representatives within the Attorney-General’s Department as well as parliamentary counsel drafters with respect to putting this piece of legislation and other pieces together throughout the whole of the last 12 months.

Mr PYNE—So you have been closely involved in the putting together of this package of measures?

Assistant Commissioner Harrison—We have been closely involved and consulted and have made contributions in relation to the structure, yes.

Mr PYNE—That is a relief.

CHAIR—Thank you very much, gentlemen, for coming along this morning and being very frank with us. We very much appreciate it, particularly for our first public hearing into serious and organised crime. Thank you.

Proceedings suspended from 10.32 am to 10.52 am

BRITTON, Mr Geoffrey Albert, Member, Human Rights Committee, Law Society of South Australia

FEARY, Mr Grant, President, Law Society of South Australia

MANCINI, Mr George Joseph Stephen, Chair, Criminal Law Committee, Law Society of South Australia

WELLS, Mr Jonathan, QC, Executive Member, South Australian Bar Association Inc.

CHAIR—Welcome. I invite both the Law Society and the Bar Association to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Mr Feary—Thank you for agreeing to hear from us this morning. What I thought we would do, if it is okay with the committee, is that I will make a few short introductory remarks by way of background to the Law Society's and the Bar Association's involvement in the matter and then ask Mr Wells on behalf of the Bar Association to give a slightly more detailed but hopefully still reasonably brief description of the South Australian act, exposing some of the problems that we see with the act. Finally, we propose that George Mancini will speak on his views—George has a large practice specialising particularly in the criminal law—and Geoff may or may not have anything to add from the human rights perspective.

By way of brief introduction, the South Australian act—if we are talking about the South Australian experience here—was planned to commence on 1 July, but a quick check on AustLII late last night showed that it had not so commenced. We are also not aware whether any regulations under the act have been drafted. We have certainly not seen any drafts. The Law Society and the Bar Association are on record as opposing the legislation. And the opposition has caused, or at least been part of, substantial public debate about this issue in South Australia over the last few months.

When the bill was introduced into parliament, the society and the association released a short joint statement, which I believe that the committee has. It is certainly referred to at length in the Law Council submission and particular parts of it are quoted on page 32. I will not repeat all of what is in that document. Suffice it to say that, at this stage, our concerns in summary are that the legislation abrogates many fundamental principles of the rule of law. In our view, it undermines the presumption of innocence; restricts or removes the right to silence; lacks proper procedural fairness; and removes access to the courts to challenge decisions of the Attorney-General or, indeed, of the police which might be unfounded or unreasonable.

The joint statement that the Bar Association and the Law Society made prompted the Premier to write a letter to me, which I believe was released to the media and which, in effect, touted the government's tough-on-crime credentials. I took the opportunity to, in effect, respond to that letter to the Premier in an article published in the *Advertiser* on 7 April this year. The media have, since that time and during the time that the bill was debated in parliament, taken an interest in the act. Notwithstanding the fact that the bill has now been passed, this interest has not

subsided. There has been a steady stream of letters to the editor in the papers and of TV stories and articles by media commentators querying the act and, in many respects, echoing the concerns that the Law Society and the Bar Association have raised.

In closing, I would just say that, as a lawyer, I have often mused about why what we call the rule of law is so important. I do not think I can express that in any better words than the way Justice DeBelle expressed it in his retirement speech from the Supreme Court of South Australia not two weeks ago. Justice DeBelle actually quoted from the play *A Man For All Seasons* by Robert Bolt. Justice DeBelle said:

The task of this court and the judges is to deny justice to no man – even those who might be perceived to be a severe threat to the community. In his splendid play “A Man For All Seasons”, Robert Bolt has a magnificent scene in which Sir Thomas More rebukes his future son in law, Roper, who has complained to More that he has not arrested Rich who is clearly spying on More. More tells Roper that he refused to arrest Rich because he has offended no law. More continues in this way:

More: And go he should if he was the Devil himself until he broke the law!

Roper: So now you’d give the Devil benefit of law!

More: Yes. What would you do? Cut a great road through the law to get after the Devil?

Roper: I’d cut down every law in England to do that!

More: Oh? And when the last law was down, and the Devil turned around on you where would you hide Roper, the laws all being flat? This country’s planted thick with laws from coast to coast – Man’s laws, not God’s – and if you cut them down – and you’re just the man to do it – do you really think you could stand upright in the winds that would blow then? Yes I’d give the Devil benefit of law, for my own safety’s sake.

What a remarkable speech! How clearly More reminds us that all are entitled to justice no matter how they might stand in the eyes of the community. If we deny the rule of law to anyone we are headed on a very slippery and dangerous course. Justice and freedom will be dispensed arbitrarily - not according to law. If we deny the devil benefit of law, we jeopardise the continued observance of the rule of law.

Mr Wells—Members of the committee, my submissions are directed to the Serious and Organised Crime (Control) Act 2008, which is an act of the South Australian parliament, recently enacted and, if not proclaimed, soon to be proclaimed. In 1912, the German novelist Franz Kafka published the second of his three great novels. It was entitled *The Trial*. It recounts the nightmare of an innocent person accused of an unnamed and unidentified crime about which no evidence is produced and which he is denied all means of defending. This nightmare—for such it is—is, I regret to say, becoming a reality in this state under the guise of a law and order auction. If the Serious and Organised Crime (Control) Act 2008 were not so serious in its implications and did not make so manifest the nightmare, it would be laughable.

I invite the committee to consider the submissions that I now make from the point of view of an innocent person seeking to defend himself. I shall try, in the short time that I have, to give a sketch of what is contained in this act and, in particular, its incongruence. The act is based upon the notion of declaring an organisation. This appears in part 2. It entitles the commissioner to

apply to the Attorney-General—that is, executive to executive—to make a declaration as to an organisation. An organisation is defined in the act in a way which makes it impossible, more often than not, to identify what an organisation is; it means:

... any incorporated body or unincorporated group (however structured), whether or not the body or group is based outside South Australia—

and so on—in other words, two or more people. In his application, the commissioner has to provide information and grounds for the application, but it is an application which is not served on anybody. Notice of its existence is to be gazetted and published in a newspaper, but without information, and the targeted organisation is never served. Submissions are invited from the public, but in relation to what information is unknown.

Indeed the Commissioner of Police has complete control over the information that can be made available other than to the Attorney-General. Under section 13 of the act, ‘criminal intelligence’ is defined as meaning:

... information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations ...

That classification is committed to the commissioner alone, and under section 41 the act prohibits any challenge to the classification of information as ‘criminal intelligence’ by the commissioner for the purposes of withholding it from anybody except the Attorney-General or anybody that the commissioner would like to see it. He cannot, in other words, otherwise be questioned. The Attorney-General has to be satisfied about a certain number of elements, or at least take into account a certain number of elements, which appear in section 10 under the act. A number of these elements involve information which the targeted people might well want to be able to contribute to, but they are not notified of this application, they are not notified of the information that the Attorney-General is considering and they are not, therefore, in a position to provide any such information. For example, the kind of information that the Attorney-General can take account of is, apart from any matter that the Attorney-General considers relevant, any information suggesting that current or former members of the proposed targeted organisation or their associates have been involved directly or indirectly in serious criminal activity, even if it has not resulted in criminal convictions. This is all on the basis of information ‘suggesting’ that this is the case, as in section 10 subsection 3.

Once the Attorney-General makes his declaration, it is not challengeable; it is not reviewable in any way at all. Under section 13, the Attorney-General does not have to give any reasons for his conclusion, and under section 41 the legality of the declaration that he makes is not capable of being challenged. On the basis of that declaration, the commissioner can then seek control orders under part 3. For this purpose, the commissioner enlists the support of the court for this executive-controlled scheme. Under section 14:

The Court must ... make a control order ... if the Court is satisfied that the defendant is a member of a declared organisation.

These orders can be made without service upon the intended controlled person. In order to be a member of a declared organisation, it is, according to the definition, sufficient if you are an

associate or prospective member or if you think you belong to it or somebody else thinks you might belong to it. The definition of 'member' is wide enough to make the function of the court simply a rubber stamp, as indeed it would be if it is intended to impose a control order on people, other than members, who have some unspecified association with them.

Again, there are very limited grounds of review, but under the grounds of review it is not open to somebody who is made the subject of a control order to challenge or review the making of the order itself. There is what is called a 'right of objection', but the objector of course is not privy to the information which has been classified by the commissioner. On the contrary, the objector must step into the witness box and give evidence on oath in support of their objection or in support of any proposed variation of it. The right of appeal to a refusal of an objection to the Supreme Court is a hollow right, because the objector is not provided, and cannot be provided, with the information which enables them to identify either a point of law or a fact which they would want to challenge.

In the time that I have, the last part worth mentioning to the committee is part 5, which deals with criminal offences by reason of criminal association, which we consider to be one of the more dangerous aspects of this act, and in particular section 35(3). This provides that you commit an offence, which attracts imprisonment for five years as a maximum penalty, if you are a person who has a criminal conviction of a kind prescribed by regulation—that of course is within the control of executive—and you associate, which means under the act making a phone call or sending an email, on not less than six occasions during a 12-month period with another person who has such a criminal conviction. What you have here is a means supplied to the police of exercising administrative control, subculturally under this regime, over people whose only fault is that at some point they suffered, as many do in our community, a criminal conviction for which they served the appropriate penalty and, in most cases, are thereafter attempting to reform themselves in the community. But they are subject to the kind of police surveillance and harassment that will often be a part of a regime which proscribes consorting of any kind for any reason. The exceptions that are provided for under the act for associations that are to be disregarded are expressed in such uncertain terms that it frankly provides the executive and the police force with ample ability to select and discriminate against the people that they wish to target for particular reasons.

If I had the time—and I hope at some point the committee will give me this time—I would like on the basis of that very brief description to identify the extent to which this kind of legislation is incongruent with every element of what we regard as proper law-making in a liberal democracy under the rule of law. It would be necessary for me to spend another five minutes to do that, so although I recognise that you have only asked us to speak briefly I would ask for permission in due course to make that connection, because the connection is stark.

CHAIR—Depending on the questions, Mr Wells, you may have the opportunity.

Mr Wells—Thank you.

CHAIR—Mr Feary, do your other colleagues want to say anything now? I also understand you want to go in camera at some stage.

Mr Feary—That is a possibility.

CHAIR—When would you like to do that? Do you want to do that straight off or not?

Mr Feary—No. The next speaker's evidence may address that.

CHAIR—Okay. Could you keep it brief, Mr Mancini.

Mr Mancini—Yes, certainly. I want to address perhaps three issues very briefly. The question of these law and order issues is a very current matter, it is ongoing and, of course, it is a state, national and transnational issue. It has to lead to more sophisticated policing. Police authorities and investigation authorities were years ago given a significant enhancement of powers—surveillance, interception of all sorts—and obviously a lot of resources and time are spent by police authorities on a state level and on a federal level, through the Australian Crime Commission, to investigate and collect criminal intelligence. That is the foundation—this criminal intelligence—by which our legislation is perhaps going to be based. The trade-off for that—that is, giving police so much power, and so much sophisticated power in terms of search warrants and all other aspects of that—was that there had to be proper mechanisms of accountability and transparency. South Australia does not have that.

It is a matter of ongoing debate at the highest levels that the current structures for transparency and accountability in South Australia are arcane, out of date and significantly lacking. There are more than enough public pronouncements about that from the Director of Public Prosecutions, the former Auditor-General and current Ombudsman, and other people concerned. That concern is that we do not have a commission that investigates corruption in respect of public servants and others and we do not have anything that is modern, useful and transparent that investigates police integrity. We have a number of disparate bodies that are uncoordinated and do not have proper ability to investigate. If we are going to set up proper systems of policing and of gathering criminal intelligence to lay the foundation to address these national and transnational problems, then that must be met by ensuring that powers are not abused. And, of course, there is more than enough recent and other evidence that there is a link between organised crime and public authorities and police authorities. If we do not have mechanisms that can investigate those links, then that compromises all efforts across the board. And, again, there are more than enough current matters which may indicate a review, on state and national levels, of all these systems of accountability. We do not have a meaningful whistleblower act, we do not have proper reviews of our state's listening devices act and, as I say, we do not have a meaningful and transparent police integrity commission or a corruption commission.

The second point I want to make is that I suspect our state legislation will more than likely fail in practical terms (1) because it overreaches and (2) because it will unnecessarily divert police resources from proper policing of criminal activities. It creates crimes which are not crimes at all. It compromises potentially the gathering of police intelligence by other organisations such as the Australian Crime Commission because it will be based on that and international criminal intelligence for the purposes of targeting certain people. It will be prosecuted, in terms of crimes, by police not by the Director of Public prosecutions, and therefore not an independent body.

Mr HAYES—If I could stop you there, could you explain that? You are saying the DPP is not going to have a role in prosecuting serious and organised crimes in this state?

Mr Mancini—No, not under this legislation, because firstly—

Mr HAYES—So you are not talking about serious and organised crime?

Mr Mancini—Not generally; I am talking about the legislation. The court orders are made in the magistrates court so, primarily, police will be involved in bringing those proceedings. The DPP could always do it, pursuant to its legislation. And, secondly, the crimes created carry a maximum of five years imprisonment, and all of those would be dealt with in the lower courts. This is as I presently see it. And there has been no devotion of resources and funding and no claim to that by the Director of Public Prosecutions for this legislation. Also, it comes in a vacuum because apparently there is another tranche of confiscation legislation targeting organised criminals that we have not yet seen. Confiscation legislation is very draconian and does work, and it is going to have its own aspect. So, again, it is a bit of a vacuum.

What will happen here potentially is that people will be selected and dealt with in a discriminatory way. It will never target everybody. The legislation is aimed not at criminal activity but at dehumanising people, whether or not they are members of organisations. That brings me to the United Nations Convention against Transnational Organised Crime. It has been ratified by Australia. This legislation in its introduction had no regard or heed to that. I contend, as a matter of opinion, that it not only pre-empts that convention and Australia's obligations but potentially seriously compromises Australia's ability to comply with the convention. Article 5 sets out the crimes that Australia would need to legislate for in terms of organised crime. I will attempt to distil that.

It is really aimed at real criminal activity and conspiracies to advance criminal activities by people who are in organised criminal groups. Our South Australian legislation has got nothing to do with that. It has got nothing to do with conspiring to commit crimes and it has got nothing to do with the prosecution of criminal activities of organised criminal groups. All it is aimed at doing is criminalising groups and criminalising association within groups and people who have got previous convictions. It has nothing to do with crimes. It means that the national, state based and international arrangements by which criminal intelligence is gathered will then be used for a purpose that is outside the convention altogether, it seems to me. The convention seeks to establish the need to legislate to prosecute for criminal activity—that is, the commission of real crime—and gather intelligence for that purpose.

Mr HAYES—That is what intelligence is designed to uncover and unearth.

Mr Mancini—Indeed. In South Australia this legislation is not concerned with prosecuting criminal activity. It does not require the commission of a crime or the conspiracy for a crime to be committed. It creates a crime of association and then of criminalising, in a sense, a group. It does not even require proof that you have committed a crime for the purposes of—

Mr HAYES—Is it fair to argue that it is designed to prevent crime?

Mr Mancini—The legislation may be seeking to prevent crime—that is right—but the convention is not seeking to do more than it states, and that is legislate for the prosecution of criminal activity, as it is traditionally known, by organised criminal groups.

Mr HAYES—Is your submission effectively that we should wait until a crime is committed and there is physical evidence of it, there are victims, before we act, or should we have

legislation which—as this legislation is purported to do, and I am not making comment on that—actually can facilitate an environment which makes it more difficult in which to commit the crime?

Mr Mancini—As I read the convention, it is concerned with ensuring that organised criminal groups that conspire to commit crimes are detected and prosecuted and that people involved in such groups are detected and prosecuted.

Mr HAYES—You mean organised criminal groups?

Mr Mancini—That is right. This legislation is not aimed at people conspiring to commit crimes. It is aimed at dehumanising people and preventing them from doing anything. It does not address the concept of conspiracy to commit a criminal activity.

Mr HAYES—But firstly it has got to be defined—as I read this legislation—that the group is one that comes together for the purpose of criminality.

Mr Mancini—That is if the group ostensibly comes together for the purposes of criminality—but it does not then have to involve any gathering of intelligence to do with an activity concerning criminality. And of course it is targeting not just people who are in such groups; it is targeting people with previous convictions and people who may have been in a group but who have left the group, or people who have some association that is non-criminal with any member or perceived member of a group. So the sheer breadth of it, it seems to me, does not concern itself with the detection, investigation and prosecution of people engaged in or conspiring to engage in criminal activity. It is seeking to criminalise people because of their character or their perceived character, in a way which offends any process by which the law would enable a fair trial, a determination of guilt and an assessment of evidence.

Mr HAYES—I accept that. Finally, it is probably unfair to put this to you, but to what extent in terms of the individual aspects of this legislation do you see that it is actually designed to protect and future-protect the community, given that there is a review mechanism proposed and there is a sunset provision attached to it? We have heard evidence of increased criminal gang activity in serious and organised crime. Can it be said fairly to be an attempt by the state government to do something about addressing crime and reducing the number of victims of crime in the state?

Mr Mancini—It is such a departure from recognised processes of—

Mr HAYES—I accept that.

Mr Mancini—So much so that it is likely to cause so much difficulty in prosecuting successfully and achieving any aim. Commissioner Nixon, I think, said this legislation is unacceptable because it will drive the people underground.

Mr HAYES—She can say that. She has *Underbelly* in her state, I guess.

Mr Mancini—And she has successfully, one might opine, dealt with the problem. It has required a long time and a lot of work, but it has been dealt with successfully.

Mr HAYES—You are talking about individuals and individual organisations. It is probably not fair for the Law Society or the Bar Association, but to what extent can your organisations look to the protection of the community generally, or is that beyond the ability of those associations?

Mr Mancini—Not at all. It is a question of ensuring that the targeting of individuals and groups is done effectively, properly, accountably and so that the public has proper confidence in it. This legislation will never be transparently applied, is open to abuse and can never be investigated where it is abused.

Mr HAYES—I have taken on board what you have said about the integrity regimes, and I am quite familiar with what exists elsewhere. Is the thrust of your submission about looking at the checks and balances or is it outright opposition to the proposition that has been put forward in South Australia and generally?

Mr Mancini—The position is outright opposition to this legislation as it is designed.

Mr HAYES—Is that because it does not have checks and balances? Would it move your position if there were things such as integrity regimes?

Mr Mancini—No. It is putting the cart before the horse. There is an abandonment of proper integrity assessment, but this overreaches so far that it cannot succeed in achieving the aims of what I would suggest is the policy behind it—prevention, protection of the community and the like—because it is not concerned with criminal activity; it is concerned with creating association and investigation of association which is unrelated to criminal activity. People will be stigmatised. People will be dealt with for all sorts of reasons. It will not identify whether or not a person is committing a crime, planning to commit a crime, how they are going about it, what their money trail is, what their resources are. It will not serve any of those purposes, but it may well use all of the intelligence that is gathered for those purposes just to target individual—

Mr HAYES—So you say that this legislation is not designed to deal with serious and organised crime in South Australia?

Mr Mancini—It is not designed to effectively deal with such a problem. It is part of what I see to be a law and order auction which overreaches far too much.

CHAIR—Mr Britton, did you want to make a brief statement?

Mr Britton—I will indeed be brief, because there has been a common theme in what the others have said. It really, without necessarily being stated in these terms, is to do with human rights issues. Australia, of course, has been a signatory to many conventions since 1948 and, as well as our safeguards from the common law, we feel that the rule of law does apply. Regrettably, in this legislation there is just not due process, amongst other things, and that needs to be addressed. It is ironic, too, that, at the very time that Victoria and the ACT have bills or charters of rights, in this state the issue of a bill or charter of rights hardly seems to get any airplay at all in the political process. Rather than putting up legislation like this, perhaps we should be looking at the more fundamental issues of human rights. Also, in conclusion, the issue

of ICAC in this state must be raised. But I do not want to take any more of the committee's time than that because I imagine there are many questions.

CHAIR—There are a number of questions. Mr Wells, we may not get an opportunity to hear your five minutes, but we would love to receive a written submission from you about what you were going to say. Mr Ferry, could you also tell us when you want to go in camera so we can do that?

Mr PYNE—I have a couple of questions. I would be interested in the views of the esteemed colleagues at the witness table relating to the constitutionality of this piece of legislation. The High Court found a few years ago, when the previous government tried to ban advertising for election campaigns in the ACT—which was a good idea; however, it was proven to be unconstitutional—that there was an implied freedom of speech in the constitution which meant that we could not ban television advertising in the ACT. This legislation goes a great deal along the way of removing people's rights and liberties in the name of protection of the general public. I can understand the legitimate basis for this legislation, and the police have presented evidence to us this morning as to why they feel that it is a reasonable response to a serious problem. I think governments have to weigh up whether the problem countenances the legitimate removal of people's rights. Would anyone like to comment on whether this would breach a potential implied freedom of association in the Australian constitution? Has any work been done by the law society or those associated with its various subcommittees on whether an action in the High Court to test the validity of this law would be successful or unsuccessful?

Mr Wells—The implied guarantee under the Constitution in relation to free speech is associated with the political process, so it is a limited form of guarantee because it needs to be associated with the free exchange of discussion of a political kind. I am not aware of any developments which have sought to extend that kind of implied guarantee to association where it is not connected with the political process. There are obvious constitutional issues that arise under this legislation which would take far too long to develop, but they are more focused upon the invasion of the judicial power of the Commonwealth and the extent to which the judicial power of the Commonwealth extends to those courts which are repositories of federal jurisdiction, which are the usual courts of the state: Magistrates, District and Supreme Court. As you know, there is a principle under which legislation, even state legislation, which impugns the institutional integrity of those courts will be unconstitutional—that is, contrary to chapter 3 of the Commonwealth Constitution. On that basis, there is ample room in this legislation for constitutional challenge and I expect it will happen.

Mr PYNE—I expect it will. Mr Mancini, in your evidence you talked about a failure of this legislation in practical terms—you said it will 'fail in practical terms'. It is a question that I have asked myself. While I do not disagree with the course of action that the government is taking, I am perplexed as to how people would react in a situation where if they happen to visit a relation or friend six times in a 12-month period, and they are both members of a proscribed or declared organisation, they would then be jailed for doing so. I wonder what the human reaction to that would be and whether people will say: 'This is beyond the pale. We are all going to gather somewhere in the city and let the police arrest us.' And the ramifications of that, of course, are: would they then be jailed and where would they be jailed? Our current system is apparently chock-a-block, according to an eminent magistrate—and there is an argument going on between the state Attorney-General and the judiciary on this issue already without the potential arrest of

300 or so members of proscribed organisations. So when you said it might fail in practical terms is that what you meant, or were there other issues that you think might be a problem?

Mr Mancini—There are a number of issues. One is it has a risk of seriously undermining public faith in police and the courts because a person who is not a member but is perceived to be or has been a member of an organised criminal group can be subjected to this legislation. Therefore, a person who is a legitimate business person who has an adverse criminal record or an adverse involvement in a criminal group and has never committed a crime will potentially face all this sort of pillory, publicly, for no apparent reason. They will not be able to successfully challenge it and will not be able to justify it to their business, work and other associates, their family and extended family members and the like. They will be stigmatised for no involvement, potentially. So it will lead, I suspect, to persons being criminalised selectively under the legislation. It will lead to people having to subject themselves to restrictions and to a criminal process and all that goes therewith, therefore being criminalised for merely meeting with people in circumstances in which they were not doing anything wrong.

Mr PYNE—Just for argument's sake—and I should have asked the police this—if two different organised motorcycle gangs have been declared and if one member of a family is a member of the Hell's Angels and another member of the same family is a member of the Rebels, and they always spend Christmas together, would they then not be able to spend Christmas together because if they were in the same place for an extended period of time they would be in breach of the law?

Mr Mancini—Indeed.

Mr PYNE—Is that right?

Mr Mancini—Yes, that is right. The more recent example would be if there was a funeral of somebody who had been a member and you had been a member or were a current member—you had never committed a crime but you were a member of such a group. You cannot go to a single funeral because to meet with six people from that same group would be a criminal offence for which you would be liable to five years jail. It is part of what is a dehumanising process. The legislation is not aimed at criminal activity. It is aimed at dehumanising people by cutting them off from their community, not enabling them to be law-abiding, because they will be stigmatised and subjected to a criminal process.

Mr PYNE—But surely the members of the Law Society who are here can recognise that the police are at their wits' end about how to deal with the crime that is being committed by organised gangs. What would you suggest the police do, if not go down this track?

Mr Mancini—Police, and police professionally, and police well; and put their time and resources into detecting and preventing real crime. They can do it, they have done it and they will continue to do it.

Mr Wells—This encourages lazy policing.

Mr PYNE—They say that in fact—

CHAIR—Just one more question, Mr Pyne, if you do not mind.

Mr PYNE—I will ask a different question then. You mentioned, and I think you are quite correct, that South Australia wants an independent commission against corruption. If there were such an independent commission against corruption in this state that had two arms, one dealing with public officials and one dealing with policing, would that meet many of the concerns of the Law Society in relation to all the cards being stacked on one side of the deck, to put it rudely?

Mr Mancini—It would meet some of them but would not meet the concerns about this legislation. It would meet concerns that existed and have existed for years prior to this legislation and are ongoing. But it would at least assist in ensuring that the powers that are given to the police and have been used by the police might be subjected to proper and rigorous assessment to prevent abuse and to detect abuse and to help, again, in identifying links between officials and organised crime. If you do not have those mechanisms, those links will go undetected and might even be subjected to cover-up through this very diversionary process.

Senator PARRY—I just want to come to the dialogue between Mr Pyne and you. I think Mr Pyne is referring to part 5, Criminal associations—would that be correct?

Mr PYNE—Yes.

Senator PARRY—And I think the response, Mr Mancini, has been partly to do with control orders rather than criminal associations under part 5. It is very important that we clarify this because under part 5 there are many safeguards, which have not been highlighted yet and which I am about to highlight, but under the control orders it is very specific, and the funeral scenario would only apply if the control order was between members of the same organisation. Can we just clarify this first: were you responding to part 5 questions?

Mr Mancini—I was giving a yes response, I suppose, to the question of association between members.

Senator PARRY—This is something that would grab a headline. So let us use the funeral scenario. Unless you go to six funerals with the same people in the same year, you are not going to contravene the provisions. Secondly, under—

Mr Wells—But it will be one occasion, won't it?

Senator PARRY—It will be one occasion; that is correct.

Mr Wells—One of the six.

Senator PARRY—But the implication of the evidence that was given and what was left unsaid was the fact that someone could go to a funeral and end up in jail. That is not correct, and I think we need to be very clear about this.

Mr Wells—With respect, that might not be correct at all. That might be the sixth.

Senator PARRY—Okay, that could be the sixth occasion, correct, but let us keep it in perspective with the six occasions. Attending one funeral could be one occasion, but that might not be an occasion to go to jail.

Mr Wells—That is under part 5.

Senator PARRY—Also under part 5, there are associated persons, such as ‘close family members’, who are exempt. You can associate with close family members, and that is defined under subsection (11).

Mr Mancini—It is a very narrow defence.

Senator PARRY—But it is there.

Mr Wells—Can I say something about that in a minute?

Senator PARRY—Yes. I will just go through some of the other provisions that are here that give some other aspects. Also, under subsection (7) there is a ‘reasonable excuse’—you can associate under a reasonable excuse. I would suggest any court of law would suggest that attending a funeral would be a reasonable excuse if you could prove a relationship to the deceased person.

Mr Feary—That is a reversal of the onus of proof.

Senator PARRY—I am not arguing about the reversal of the onus of proof. I am just suggesting there are provisions that have not been suggested or mentioned so far in the evidence we have heard today. I do not want people to walk away from here thinking that it is such draconian legislation that you cannot attend a funeral. That is the important point I just wish to highlight. We can argue about frequency and other issues and reverse onus of proof; I accept those issues. However, let us not just leave it unsaid that there are safeguards.

I also want to highlight two other safeguards, then I would be happy for a response. Under section 37 there is provision for a retired judge to review the legislation, to report each year on how the legislation is working. Also, there is the provision, as we are all aware, of the sunset clause under section 39. On the link between the Attorney-General and the Commissioner of Police: even if they are very closely linked and aligned in any way, shape or form, they still have professional conduct and they still have to exercise their roles in a very professional manner. I am sure that any government of any day would not allow a conspiratorial attitude to develop between an Attorney-General and a Commissioner of Police. And the final safeguard in all this of course—and you can have a go after this; it is my final point—is that the public of South Australia, if they are not satisfied, will not elect a government that continues to support this legislation. And it is in the interests of the police to get it right, otherwise they will lose the provisions of this legislation. I am happy for you to attack my points now.

Mr Wells—Those general propositions, with respect, do not provide any justification for this kind of legislation. Apart from anything else, it is propounding the proposition, which in a liberal democracy has never been accepted, that you just simply entrust uncontrolled power to a member of the executive and leave it at that.

Senator PARRY—Two members of the executive, with respect.

Mr Wells—Not so. The one who makes the decision is the Attorney-General and he is supplied with information by a commissioner who is, similarly, not subject to any review or control. That is what some might call the arrogance of power. In our system, the whole purpose of a democracy is to ensure that power is not exercised in an absolute way, and it does not become necessary to put the argument that you, Senator, just put—namely, we can trust them to do the job. That is not the point. The point is that, as we know, people—and we are not saying necessarily this Attorney or this commissioner, or any particular one, but people—who exercise uncontrolled power do not always exercise it responsibly, and that is why there is a need for checks and balances. That is the very point, and it is no argument to say in response to that: ‘Well, we can trust them.’ That is simply ignoring the institutional error that is involved in this kind of legislation.

I will make one other point too about part 5. Section 35(6) provides that certain forms of association can be disregarded and then it gives them by very ill-defined means. Indeed, in the case of a close family member, where it is defined, it is defined in an extremely narrow way. We see that as, if you like, highlighting the evil of this legislation. The net is cast so wide, the overreaching is so great, that it permits an exploitative use and enforcement in order to coerce selectively and individually—and subsection (6) is actually a very good way of doing it. By expressing these exceptions in ways that cannot be immediately identified as applying in any particular case, it provides the authorities with the opportunity to put to a particular individual a proposition that says, ‘If you stop associating there, then we will undertake a prosecution, and you cannot rely on subsection (6); it is outside it.’ So a subculture is established by this kind of regime. It is all very well to look at subsection (6) and say, ‘There we are; it’s protecting ordinary, daily intercourse in the community.’ It manifestly is not. It is making a general statement which is saying, ‘Well, there may be a case in which that can be protected.’ But how are you going to determine whether it is going to be happening here and who is going to be taking on the risk of challenging it when you are faced with a police officer on your doorstep saying, ‘Look, mate, it might be better if you do it this way because otherwise we’ll prosecute you, and you don’t come within subsection (6)’?

It is the subculture that this regime creates that is the real danger of this legislation. What it does, particularly part 5—and forget about declared organisations; subsection (3) does not care about them—is it exposes anyone who has a criminal record, of a kind we have not been told about yet, to continuing surveillance and even harassment, setting them apart from the community, and calculated to prevent them from becoming useful citizens, even if they want to. That is the spectre that this kind of legislation presents because, as Mr Mancini says, it criminalises people, not current activities.

Senator PARRY—I will just respond quickly with two points. The first one relates to the Attorney-General and the Commissioner of Police. The Commissioner of Police is subject to control and supervision and accountability to the minister. Secondly, the minister and the Attorney-General are subject to cabinet control and cabinet scrutiny. So I do not accept the proposition that they are just uncontrolled, unmonitored or unsupervised. At the end of the day, any decision they make still has to meet public satisfaction, and that is a golden test. Coming back to the issues under subsection (6), I think there are some good provisions there; I can accept part of your argument. But we must keep going back to the premise of the original person—that

is, the person subject to all these conditions and all these provisions. We are not just talking about someone from the street who has not warranted attention by authorities.

Mr Wells—That is the very point.

Senator PARRY—No. It is talking about someone who has come to the attention of the authorities and is then subject to these provisions.

Mr Wells—There is no such provision.

Mr Feary—The person who associates with a member of a declared organisation or a person who is the subject of a control order commits an offence under subsection (1).

Senator PARRY—Yes, and if you are an average Joe Blow citizen who does not know this person and you come into contact with this person, you have ample provisions under the entire section 35 to have an excuse not to have any further action taken against you. If you are associating with persons who are engaged in illegal activity, by and large you are going to know. This is not a sweep-all to go and grab someone from society. The whole idea is not to charge them with the association, it is just a prevention method to break down networks and communication aspects of people who we do not want, or society does not want, associating for the purposes of being able to conduct criminal activity.

Mr Mancini—If the legislation said association between people in the knowledge of their pursuing a criminal activity or conspiring to pursue a criminal activity, then that would be clear. But nowhere in the legislation is it concerned with identifying that. It does not say association, meeting or the like ‘where people are conspiring to commit a crime’.

Mr Wells—Indeed not, and under control orders it does not have to be anything to do with a declared organisation. Subsection (2)(b) can subject you to a control order not just if you are engaged in but if you have in the past been engaged in what is called ‘serious criminal activity’ and you regularly associate with another person who has in the past engaged in some serious criminal activity. That is enough to attract a control order. What we are concerned about here is not the organised criminal but whether this legislation actually targets the organised criminal—and it does not. As I said at the beginning, if you go through this legislation with the innocent person always in your mind you can see how they will end up caught in this, and that is our concern. I have not said in any of the submissions that I have made that any particular Attorney and any particular commissioner may be uncontrolled or may not be responsible. I have put forward the philosophical and institutional argument which we all adhere to, and that is that in our liberal democracy we do not approve of uncontrolled power.

Senator PARRY—I would like to keep going, but in the interest of time I have to concede to the chair.

Mr Mancini—Why should the ordinary person be exposed to the stress, risk and other aspects associated with this when they are just that? The mechanisms are only there once you are facing the criminal prosecution, and therefore injustice is a great potential for an ordinary, innocent person.

CHAIR—We are running a bit behind time. Mr Wood is going to ask a question and then you can take the opportunity to go in camera.

Mr WOOD—We hear about human rights and the average Joe Blow walking down the street and getting subject to legal action. My great concern is this: you have the bikies, as we have heard in the last two or three years—and this is from the South Australian police and other police agencies—actually using youth gangs to assist in crime. They are getting involved in and getting more sophisticated with their crime through intimidating witnesses, blackmail and extortion, and we have had all these shootings over here. We have not heard one proposition for a solution. Have you got any solution at all? What can the police can do? At the moment the laws are obviously not working because otherwise we would not need to go down this path. Have you got any solutions at all which you could recommend to the committee to address the current problem with the outlaw motorcycle gangs?

Mr Mancini—I do not accept the premise or suggestion that the laws are not working because that would indicate a lack of faith in current policing and current prosecuting and other authorities. I think that they are working. What they need is to become better resourced and more professional. It can be done and it is being done here and in most other places in the world. The problem is not peculiar to South Australia or Australia, and it seems to me it is being addressed in South Australia uniquely and disparately to other states at the very least.

Mr WOOD—But, as the police were saying, by the time they get an outlaw motorcycle gang member to court, crime has been committed and there is the likelihood of the intimidation of witnesses and the using of the brand name to actually stop a witness going to court. What they have recommended to us is that these laws are trying to break the association of gang members involved in crime. If you break the gang members up they cannot get together and consort to use their influence to commit crimes or intimidate witnesses.

Mr Mancini—That is what police and police powers are for. That is what they do, I would have thought.

Mr WOOD—But it is not working. Outlaw gang membership is going up. We have heard today that nearly all organised crime in South Australia over the last 10 years has been linked to outlaw motorcycle gangs. It is obviously not working. That is why they need to change the manner in which they are attacking this problem.

Mr Mancini—It is suggesting that local, traditional policing and the resources that they have do not work; it can and does work in other places.

Mr WOOD—Not actually, no. When we have gone around the country we are hearing the same evidence from commissioners of police greatly concerned about the bokie gangs. You need to give the committee a solution. At the moment we are hearing no solutions. You are saying that everything is fine and dandy. We are hearing quite the reverse from everyone else.

Mr Mancini—I am not saying that. I am saying that is a legitimate concern as is all crime prevention. But it needs to be done so as to have full faith and credibility for those institutions and policing and so that it stops real crime. This is not concerned with real crime.

Mr WOOD—Are there any safeguards you can recommend to the committee? I know that you do not support the legislation. Is there anything that you can say, ‘Hey, this is something the committee should really be looking at—this one aspect.’

Mr Mancini—I could, and I will reflect on that. It might be that where you seek to control an individual who is truly criminal, who is recidivistic or who has a disposition to organised crime then you impose a control on that individual subsequent to conviction—as is done with the other most concerning community issue, that is, child sex offenders. You impose controls or parole. You target the individual after assessing their risk, assessing their nature and assessing their predisposition, and you control that individual because you assess that risk and you know that that can work. You monitor that individual, and there are plenty of ways to do that.

Mr Feary—I would like to make one final short point about the funeral scenario. Section 35(5), from my reading of it, makes it clear that if, at a funeral, there are more than six people who are members of a declared organisation that is the subject of a control order then that is a potential offence. Section 35(5) says:

A person may be guilty of an offence against subsection (1) or (3) in respect of associations with the same person or with different people.

Mr PYNE—If they see six different people from six different prescribed organisations on that day you are saying that they could be arrested and imprisoned for five years?

Mr Feary—That is my reading of it.

Mr PYNE—Has the Attorney-General or anybody else given any indication of the interpretation of that section?

Mr Feary—Not to my knowledge.

Mr HAYES—That is not quite right; it does say six occasions. It is not six individuals at one time.

Senator PARRY—Overriding that, subsection (7) talks about having a ‘reasonable excuse’—attending a funeral would be a reasonable excuse.

Mr CHAMPION—It seems to me that one of the critical problems with organised crime is the intimidation of witnesses. As you are going away to turn your mind to some of these matters Mr Wood asked about, it might be good if you could come up with alternatives to protect witnesses. It does not work at the moment and people are scared stiff.

CHAIR—We will now proceed to hear evidence in camera.

Evidence was then taken in camera but later resumed in public—

Proceedings suspended from 11.56 pm to 12.16 pm

SHAND, Mr Adam Wentworth, Private Capacity

CHAIR—I now welcome our next witness, Mr Adam Shand, from Channel Nine's *Sunday* program. Do you have any comments to make on the capacity in which you appear?

Mr Shand—I appear today as a journalist who has covered this area of crime.

CHAIR—I invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask you questions.

Mr Shand—I will just make a very short statement. The proposition that underlies this legislation seems to be that the crime in motorcycle clubs is centralised in the clubs. My experience is that that is not the case; it is actually decentralised and the crime tends to be carried out by twos and threes in connection with other individuals outside the club. The issue, ultimately, will be that, if you break the clubs up, you will have no effect on the commission of that crime. There is ample evidence from other jurisdictions that outlawing clubs simply drives them underground, pushes the moderates in the clubs towards the hardcore and ultimately has no effect on the overall commission of crime in that jurisdiction.

I think there is also a need to look at the use of the word 'gang'. It is very prevalent in today's society, it is very ill defined and it carries with it a whole set of connotations which are more political in nature and are designed to lobby against certain individuals in society, be they Muslims, bikers or any group you would like to name. It is much more useful to look at these clubs as entities in society. I have studied crime gangs elsewhere—in Victoria during the, if you like, *Underbelly* era—and I never met a club there that had to sign up to local council by-laws to get their clubhouse, I never saw a crime gang that advertised its existence and so forth. There needs to be a particular approach to the problem not just of motorcycle club crimes but of crime in general. There needs to be a specific use of the laws we already have rather than enacting laws that really just target association rather than the commission of crime.

I would also like to make a point about Victoria, as well. We have heard numerous times the comment that Victoria cannot comment because it is the state of *Underbelly*. As Jason Wood, who is a former Victorian policeman, would know, Victoria Police responded magnificently to that challenge there. Without any new laws, they managed to break hundreds of millions of dollars worth of crime there, so to say that Chief Commissioner Christine Nixon cannot comment is simply fatuous. They have changed the landscape of crime in Victoria forever, and I do not think that this law will actually change the landscape here whatsoever. I think it is already driving people underground and we will see a much more hardened core of bikies in this state who are not visible and who will exchange their very visible insignia and places of association for hidden ones. There will be new insignia—it might be a flash of colour, it might be a certain handshake or certain tattoos—which would be much harder to discern.

For about four years now, I have been studying the problem here in South Australia. I was told early on that the Avatar Motorcycle Gang Task Force was making magnificent strides towards breaking the crime gangs here. No significant event has taken place between that time and now to justify moving forward to this legislation. I think it needs to be seen within a political

context—that there is a desire to confer a sense of security on the populace through this—because we know from national statistics that gangs generally make up less than one per cent of our organised crime in Australia. So we need to look at that figure holistically, as the police have said. With that, I can answer some questions.

CHAIR—Thank you very much. Regarding your view of bikie gangs: would you be suggesting to us that some are not involved in serious and organised crime?

Mr Shand—That is exactly what I am suggesting. There are some clubs that are completely free of crime. There are others that have some chapters that are riven with crime. Others have some criminals in them. There is an attempt at regulation, certainly in recent years. The clubs are not without some sensitivity towards community attitudes. There have been attempts by more moderate members in clubs to bring others to heel because they want to continue their lifestyle, as well. So there is crime in the clubs, but to suggest that they are set up purely for the purposes of organised crime is, I think, wrong, and there is no empirical evidence to support that in Australia.

CHAIR—You said that sometimes in clubs there was a handful of people who may have been involved in organised criminal activity. You are suggesting that the majority of members of clubs would not be involved in organised criminal activity?

Mr Shand—You are talking about a bill that presupposes a criminal conspiracy at the heart of the association of these members. That is false. There are members who are involved in crime, but it is decentralised and it often takes place in association with other criminal elements not associated with the clubs. I am yet to see—and I have been asking for a long time—

CHAIR—Can you expand on that for us? We have heard a lot about street gangs as well and there seems to be some recruiting going on with people from street gangs moving into bikie gangs.

Mr Shand—That is overstating it and formalising what is going on. Adelaide is a small town, let us face it. If you hang around in certain pubs, clubs and areas for long enough, you will meet people; you will have associations. They will frequent your clubhouse; they will come to your homes. You may indeed get involved in crime together. But there is no precedent for a situation where a president says, ‘We’re going to go out and recruit numbers from street gangs for the purposes of crime.’ These individuals bring with them as many problems as they solve.

Mr GIBBONS—I was interested in your comments about the Victorian situation, because I am a Victorian MP. You mentioned that the Victorian police were successful without having any changes to the law. One of the main reasons for that success was that they had the ability to seize assets that were deemed to be the proceeds of crime and therefore weaken the financial base of organisations. Wasn’t that a major factor in their success? That was a law.

Mr Shand—That was not a key factor in the actual convictions that were secured. That was part of the holistic approach to it, but it had no bearing on the convictions that were secured. It was good, solid police work over a very long time.

Mr GIBBONS—But how do you measure that? How do you know that? Obviously, the money was the thing that caused a lot of so-called criminals to break the code of silence, because their financial situation was going to be—

Mr Shand—In Victoria, the convictions were secured largely because various criminal associates were not paid, and therefore they felt no allegiance to their boss—Carl Williams in this case. He did not pay them, so they thought, ‘Okay, he’s left me high and dry, so I’m going to give statements against him.’ I would challenge the idea that asset confiscation was the main reason why they were brought to heel.

Mr WOOD—I have a bit of an interest in organised crime in Victoria. The differences here that I see are that the members involved in the Carlton Crew—and there were only four at the top: Graham Kinniburgh, Alphonse Gangitano, Mick Gatto and his brother John Gatto—did not do the dirty work; they had their lieutenants do the dirty work. The information we had was that the best way to tackle them prior to when the underworld killings were in full force was to take the pyramid from under them; take all the workers and associates away. We worked on these guys for two years and watched them having nice dinners. We never saw them do anything. With the bikies, that is how the coloured members work most effectively. They get the nominees to do their dirty work—to pick up the guns; to move the drugs.

At the same time—and I again congratulate the members involved in the taskforce—we had many shootings in a small period of time. The amount of police resources used was huge. They had 24-hour surveillance on many members who, information suggested, were the actual hit men. The difference with the bikies is this: look at how many chapters there are. In the last couple of years, from 2001 to 2007, in South Australia they have gone from six to nine chapters. They are obviously growing. The police are not winning the war against the bikies. I find your comments interesting, but I cannot agree with what you are saying. The bikies here are exploding. There are a lot more bokie members compared to members of the Carlton Crew or Carl Williams group. They had smaller, tighter networks that went absolutely out of control.

Mr Shand—The amounts of money involved in the operations of the Carlton Crew and Carl Williams are simply vast compared to what is going on here. There is just no comparison.

Mr WOOD—You are talking about Tony Mokbel.

Mr Shand—The whole crew down there. You are talking about serious organised crime there. What we are seeing here is disorganised crime. We are seeing a lot of street level stuff—assaults, small extortion cases and drug manufacture and supply. Where are these massive convictions? Where are these massive seizures that we keep hearing about?

Mr WOOD—Obviously you are talking about the Tony Mokbels compared to the Alphonse Gangitanos. They did not have huge assets. I also disagree with you on another point: they had very strong association with the Hells Angels down in Victoria. I do not want to digress too much, but they are both organised crime groups. These South Australian laws are not focused directly at bikies. The focus is on their associations—the wannabes who you want to keep out of the organised crime groups. Do you have other suggestions to stop the wannabes or the nominees, as we call them, joining the clubs and doing the dirty work where if they get caught they go to jail and it does not affect the club? Secondly, I disagree with what you are saying

about the involvement in drugs. The bikie gangs are notoriously the groups who have the amphetamine labs and control the speed. They are the ones who have done a lot—

Mr Shand—But being notorious is not enough, Jason. This is about evidence. This bill lowers the evidentiary hurdles in order to make convictions easier. I have been asking the government and the police here for four or five years to tell me the number of convictions that they have secured. You have asked the same question today and you have not got an answer yet, either. There must be a test somewhere in the process here to tell us whether we are targeting a group in society in order to produce statistics or actually stop crime.

Mr WOOD—But that it is the proposition. The outlaw motorcycle gangs are a major focus of this, but it can be used on other gangs. You are right, in a sense. We as a committee are asking for the facts and figures about numbers of bikies and what offences they are involved. If there are drugs, how many cooks have been caught? How much drugs have been seized? We would like that information, too.

We asked the Law Commission this very question: what are the solutions? In South Australia, the police are telling us that crime is going up. There are all these shootings. The bikie gangs are a major focus. Now they are looking at street level crime. To me, the best way is to break up the associations. If you can do that, you can break up gangs. Do you have another solution?

Mr Shand—The consorting laws were used here back in the 1970s for just the same purpose. There was a bikie squad set up that was tasked with breaking them up. They arrested numerous bikies and put them in jail for one to three months and fined them. They came out and continued to associate. When one day a law is passed so that one day you are able to associate and the next day you cannot, most bikies are prepared to take those jail sentences—when their only crime is to associate—in order to show their solidarity. I do not think that it addresses crime in this state.

Mr WOOD—Again: what is your solution?

Mr Shand—The issues are drugs, weapons, intimidation of witnesses and a whole range of other things, which we have discussed here today. Drug reform or at least a national debate on drugs as a starting point would be useful. This is not to legalise drugs but to realise how drugs are corrupting every institution in society, from the police to bikies to the legal profession and so forth. We do not have those discussions. Instead, we have to villainise and demonise people and say: ‘They are the problem; if we sort out this problem, it’ll all go away.’ I am afraid that that is not the case. The availability of firearms is a big issue in all our societies. The intimidation of witnesses and the failure of witness protection to protect people means that people are reluctant to go into this problem. That is not just because bikies intimidate them. Any serious organised criminal can intimidate a witness, not just bikies. We need to look at these things, rather than just saying: ‘Here’s a problem, society, so we’ll solve it for you. We will remove the visible presence of these groups.’ That is not going to sort it.

We also have to entertain the notion on some level that these clubs have some pro-social function and that there are individuals there who, if they were not under the auspices of senior members who have been through the ups and downs of life as a bikie, would be out of control. There are many instances where this happens. I have also spoken with many moderate members of clubs who would like to have a dialogue in order to rid themselves of some of the members

who are causing them problems. It is hardly in any group's interest—particularly if they are involved in crime—to have its members running around town shooting each other. How anyone can say that that was some organised, orchestrated thing is beyond me.

Mr HAYES—So you are saying that some of the major clubs are discussing having some form of dialogue about—

Mr Shand—Yes. They are talking about—

Mr HAYES—Which clubs?

Mr Shand—I would rather not say—but major clubs. They want to see a situation in which they are able to talk across the fence to each other and possibly to law enforcement and to other social groups. Currently, from what I can see, the state government here has taken the view that they do not negotiate with terrorists, which they have been called in this society.

Mr HAYES—Would you be happy to go in camera and name those clubs?

Mr Shand—Yes, I would. But the main point here is that policing, as you would know, Jason, requires the assent of the community at some level. You cannot have a war on bikies; you cannot have a war on anything. You have to police with the assent of the community. What is happening here in this state is that the associates who drink with these people and who work with them are seeing this and thinking, 'What am I doing wrong by associating?' That hardens their democratic resolve to continue their lawful business. We cannot say that prevention of a crime justifies criminalising whole groups in society.

Mr HAYES—But what does it do for a victim, though? Prevention of a crime prevents there being a victim of that crime. Do you wait for the crime to occur and then try and prosecute the perpetrators of the crime or do you—

Mr Shand—Yes. Under our criminal justice system, there is a presumption of innocence.

Mr HAYES—protect society? Which way would you weight that?

Mr Shand—That approach is fraught with danger.

Mr HAYES—Protecting society?

Mr Shand—You protect society by having an efficient criminal justice system.

Mr HAYES—After the event. After the crime has been perpetrated.

Mr Shand—That is the basis of our legal system.

Mr WOOD—But it is not working.

Mr Shand—I would challenge that view that it is not working. The state government here has repeatedly said that they are winning the war. They have brought in lots of things: the anti-fortification laws, the tightening of the security industry, this firearm law and all that sort of stuff. So why do we keep needing more laws if it is working?

Mr WOOD—But we have had evidence in our previous inquiry into serious drugs that the number of amphetamine labs being discovered is greatly increasing. Does that mean that the policing—

Mr Shand—Where are the numbers? Where are the statistics that support that?

Mr WOOD—That was given to us at the last inquiry. If you want to go through the evidence, we raised those questions. We specifically said to the police, ‘Prove your case to the committee.’ Then the figures were revealed. There was a great increase in the number of drug seizures. Does that mean that the police are being more effective? Of course. But they are also putting the proposition that their intelligence suggests that there are more people getting involved in the industry.

Mr Shand—It reflects that the war on drugs has failed and continues to fail. The seizures of all kinds of drugs coming to Australia last year was up to record levels, despite hundreds of millions of dollars worth of expenditure. The war on drugs has failed. Now we want to create a visible presence for that failure. There are much more fundamental issues to address rather than this fairly political and public approach. We have seen the analogy of an Exocet missile used today by My Pyne. It is more like a noisy, colourful penny bunger in this case, because I do not think that it will have any effect.

Mr GIBBONS—You made a statement before about the associations. In your judgement, and specific to the South Australian alleged motorcycle crime gangs, what percentage of members of those organisations would have another form of income? Obviously, they do not all live on the proceeds of crime by any circumstances. How many have a nine-to-five job or work in another industry or have a trade, with the motorcycle association being a hobby?

Mr Shand—I would say more than half. Some own businesses. I know several millionaires who are involved in legitimate businesses. In fact, a couple of them are on government committees for the various industries that they work in. There is a need to consult before we move ahead with this very populist approach. It is time that we sat down with them and said, ‘Let’s forget the rhetoric; let’s forget this ‘you’re the villain, you’re the demon’ stuff. What is your voice?’ At the end of the day, these are citizens with votes. This whole thing of ‘outlaw motorcycle clubs’ is a big misnomer. They are set up council bylaws for heaven’s sake. These are not outlaws. I have seen this repeatedly: ‘outlawed motorcycle clubs or gangs’. They are not outlawed. A lot of the people in them have criminal convictions, yes.

CHAIR—You said that you know of a number who are members of government committees. Are these committees on the proposal that motorcycle gangs are to be outlawed?

Mr Shand—No. They are involved on government committees to do with their various industries. They are participating in the legislative process.

CHAIR—So they are not a member of the Prickly Pear board or something like that?

Mr Shand—Indeed they might be.

CHAIR—And these people are members of motorcycle gangs that are about to be outlawed, are they?

Mr Shand—Yes.

CHAIR—Okay.

Mr Shand—They come in all shapes and sizes. This approach creates a folk devil—this image of this guy who is completely opposed to all the good values in society, who seeks to undermine the rule of law and who seeks to rape and pillage. It is a prehistoric approach.

Mr WOOD—But they promote that image. The one per cent thing is all about that. That is how they define themselves.

Mr Shand—What is your basis for saying that?

Mr WOOD—As I understand it—and I do not have a great knowledge of these things—when the phrase ‘outlaw motorcycle gang’ first got used in America in the 1950s, the official motorcycle riders came out and said, ‘Ninety-nine per cent of us are good and it just the one per cent.’ That is what the one per cent label refers to. It is a—

Mr Shand—Are you putting forward the concept that 99 per cent of motorcycle riders are law-abiding citizens?

Mr WOOD—No. This is how the one per cent came about—you know, the one-per-centers. It is something that the gangs promote.

Mr Shand—They have an alternative view of their place in their society that places them in that one per cent category, yes. And they do seek a solidarity from that otherness. But, with respect, the fact is that it is a failing of this committee that there is not someone from a club sitting here. Why am I answering these questions? You should go to the source to ask them.

CHAIR—We are doing that tomorrow.

Mr Shand—Good. I am glad, because you need to do that.

CHAIR—And this afternoon.

Mr Shand—In South Australia since 2001 there has been a state of hostility between bike clubs and police. There was a very celebrated incident out at Beachport where the Gypsy Jokers dealt out a horrible thrashing to the Starforce Tactical Response Group, which started a chain of events which I think this is a part of. It needs to be seen in the context of a war between the police and the bike clubs. The average citizen in Adelaide has very little to do with bikies, who have very little impact on their lives, in fact. We need to see this in that context.

CHAIR—We will now go in camera to ask some questions.

Evidence was then taken in camera but later resumed in public—

Proceedings suspended from 12.43 pm to 1.02 pm

SUMNER, Mr Basil Wayne, Chief Executive Officer, Aboriginal Sobriety Group Inc.; and Associate Member, Longriders Christian Motor Cycle Club

HAYES, Mr Edward McGilchrist ('Mac'), Founding Member and Public Relations Officer, Longriders Christian Motor Cycle Club

CHAIR—I welcome our final witnesses in Adelaide, from the Adelaide chapter of the Longriders Christian Motor Cycle Club. I now invite either or both of you to make a short opening statement, at the conclusion of which members of the committee will ask you questions.

Mr Hayes—I just wanted to state right at the start that our interest here is not just for ourselves. We realise that we may well be exempt from this law. We may not be. That is unclear to us. But our interest is not for ourselves; our interest is because we have concerns about the social justice aspects of this so-called bikie bill. I would like to read my statement and I will then be open to questioning.

Firstly, I wish to state my own position and that of the Longriders Christian Motor Cycle Club regarding our response to the Serious and Organised Crime (Control) Bill, which I refer to as 'the bikie bill' because this is the term that has been widely used by the media. We the Longriders Christian Motor Cycle Club members do not endorse or support any criminal activity by our own members, members of other clubs or any individuals. We do, however, have major concerns regarding the so-called bikie bill. This statement is a summarised reflection of the many hundreds of conversations I have had and stories I have heard over the last 18 months. I have consulted and had discussion with individuals from all walks of life, as diverse as working-class Aussies, Christian ministers, social workers, politicians, lawyers and many members of so-called outlaw motorcycle clubs. With the latter, I have taken a consultative approach and collected many stories of overzealous and extremely questionable policing tactics being used in this state, even before the bill has been implemented. Our own members, including me, have also been subject to a rise in police pressure and harassment. I am willing to share some of those stories as examples. I will endeavour to reflect the voices of the many I have consulted with over their experiences and their concerns with what the implementation of this bill may mean.

To give a bit of context, it is my belief and the belief of many I have spoken with that there was a carefully orchestrated plan by those in power to manipulate the media to demonise bikies in order to create a climate of fear among the public so that when the bikie bill was introduced—which incidentally, as we would all be aware, does not mention the words 'bikie' or 'motorcycle club'—the public would naively accept it in the misguided belief that it would keep them safe from the 'bikie menace'. Those very bikies our Premier, Mr Rann, has described on public record as 'pond scum' and 'all thieves and murderers'. I am able to expand on this point with examples.

So what is wrong with this law, from our perspective? I do not need to point out the erosion of civil liberties or the injustice of guilt by association, as you have heard about from the Law Society. That is not my area of expertise. The best I can offer is, through 30 years of experience in the subculture and lifestyle of the bike scene in this country and mostly in this state, some insights into what I and my club believe are the potentially negative effects of this law.

Contrary to what Mr Rann and Mr Atkinson have been promoting, not all members of the eight named outlaw clubs in South Australia are criminals. We have heard statistics from other states: 0.6 of one per cent of crime in New South Wales and 0.4 of one per cent of crime in Victoria can be attributed to gangs. Why haven't we seen any statistics here? I suspect that the figures are similar and that, when this is weighed up against the policing and resource costs, the public might, quite rightly, feel ripped off as education and health continue to suffer. The overpolicing of a recent Gypsy Jokers poker run, where approximately 150 police spent the day monitoring fewer than 100 bikies, with the outcome being three reported for drink driving, two positive for methamphetamine and a handful of defect notices, I believe makes this point rather well.

Another reason I believe that not all members of the so-called outlaw clubs are criminals is that some of these men are my friends or have relationships with members of some of those clubs. These men have jobs, families and a mortgage, like many other Australians, and generally hold the position that if any member of their club gets caught doing crime that is their problem—do the crime, do the time. Some clubs are better than others at reining in their loose cannons, and no-one here, including the clubs themselves, are making excuses for those who get caught in criminal activities. It is my belief that these men, who are usually the older and more respected members, are a stabilising influence in their clubs. The bikie bill aims to pressure these men out of the clubs. I know of one long-term member where this is the case already. This in turn will cause the remaining members to become more hard core and turn more towards criminal activity to survive or, at the very least, become more anti-authority—and we have heard evidence that people are saying that a possible outcome of this law is that it will drive the criminal element underground.

From their point of view—and this is the stuff that I feel confident to speak about—they are victims of an unjust system. Their response is, and will continue to be, summed up in the words of Peter Lalor of Eureka Stockade fame: 'When injustice becomes law, resistance becomes duty.' They will not leave the state en masse, as has been suggested. They will dig their heels in and stand their ground. History has shown that prohibition does not stop the activity but pushes it under the surface. It is also my belief that the so-called criminal intelligence collected by operations such as Operation Avatar and the anti-crime 'gang squad' is often wrong. It may be right in the case of one club, but then it is applied to all clubs. For example, there is a belief that all clubs have a pyramid structure of leadership, and that is not the case. There are many assumptions made because of the clubs' code of silence and these assumptions lead to stereotyping.

Over the past couple of years, our own members and many recreational riders have noticed a marked increase in attitudes towards them from the public and uniformed police officers. The public and the average cop on the street can only go on what they have been told, and the past six years of the politics of fear has done its job. This can be backed up with personal examples. The strategy of cutting off clubs' support systems by charging people who are not criminals—innocent people who have not been charged with anything—with association is, as the Law Society and the bar society people have pointed out, fraught with problems because it can only be based on the assumption that anyone who has any association with motorcycle club members must be up to something sinister. They are assumed guilty and have to prove their innocence under an act that does not have to disclose the evidence that assumes them guilty.

In my opinion this is worse than the old consorting laws of the sixties and early seventies when police abused the intent of the law and applied it recklessly and indiscriminately to Aboriginal people in this state—just ask any Aboriginal person who was around at that time. My colleague Mr Sumner will pick up on this point. History also tells us that this has been tried with motorcycle clubs before. Adam Shand mentioned this briefly, too. In the mid-seventies the infamous police officer Sam Bass made a name for himself in this state personally tackling Adelaide's bikies. He was successful in eventually getting the majority of the members of one club in particular jailed for consorting. After those men served their respective three-month sentences they reformed their club, were more closely bonded than before and were a good deal smarter about the workings and absurdities of our legal system. To any fair-minded Australian, guilt by association is not the fair go that this country has been founded on.

My next point and question is: if this law is to be enacted, where the hell are people convicted of association or the breaking of a control order going to be jailed? We already have inmates doubled up in cells designed for one in Mobilong Prison. The rack-'em-and-stack-'em mentality of our state government is, to me, questionable at best. Do we need more people clogging up our courts and prison systems? I personally know of many law-abiding men, including myself, who will not stop associating with bikies and are willing to go to jail for the principle. In fact, I and others in my club and many who do valuable community work in church and charity organisations do have past criminal records. For many like me these convictions are from a past life—in my own case, over 30 years ago. Apparently, under this new law the Attorney-General gets to decide if that is deemed serious or not. In my understanding of this law, not only could I be jailed for associating with bikies but my friends could also be jailed for associating with me.

This law is retrospective. Where does that leave ex-members of clubs and ex-criminals who are now living productive lifestyles contributing to society? Are we going to see individuals double punished for crimes possibly committed in their youth or for crimes they did not commit if they happened to once belong to a motorcycle club? Mr Atkinson trusts the police to use this law appropriately—this is, again, my understanding of the law—to aim it only at the criminal element, but how can that be when at the same time he is assuming all motorcycle club members and associates are criminals? I do not quite understand that.

I have personally been told of a particular group of police who already have taken the law into their own hands on a number of occasions. This I am willing to give evidence to in camera only. The current government, I believe, has created a climate in which corrupt policing tactics can flourish as there is an endorsed mandate to rid the state of 'pond scum' bikies. Who are our police accountable to in this matter—or any matter—when, as has been mentioned earlier, we do not have an independent body to look into allegations of police corruption in this state? We have heard that the intention of this law is to close down the clubs or drive them out of the state.

So my last point is to present the argument that Adam touched on as well, which is that motorcycle clubs do have a place and a right to be in our society, just as any other shared-interest group or club does. Crime does not. Let us separate those facts. A free society, I always thought, was measured by its acceptance of minority groups. Motorcycle clubs provide important social support networks for their members and a context and sense of belonging for individuals who often believe that society has rejected them. This belief is being reinforced at present by the current state government's attitude, comments and this bokie bill. It can be argued that in a club they at least have some accountability to others in that group which may restrain them from

criminal behaviour, just as strongly as it can be argued that that group encourages criminal behaviour. I make myself available for any questioning regarding that statement.

CHAIR—Thank you. Did you want to make a brief statement as well, Mr Sumner?

Mr Sumner—Yes, thank you. Because of this bill, I come here today as a concerned Aboriginal person. Being a past Minister for Aboriginal Affairs, did Mike Rann take into consideration the negative impact that this bill will have on Aboriginal society? As you all know, Aboriginal society at the moment is in disarray all around the country. But we are talking about South Australia, and South Australia is bad enough. I know the community. I have worked for 30 years in the Aboriginal Sobriety Group, working with alcoholics and drug addicts around the state. We know the situation within Aboriginal communities.

I will go back to the consorting issue. In 1967—and Matt just spoke about this too—I was taken to court for consorting with ‘thieves, prostitutes or vagrants’. I was not convicted, but I was fined. I am not too sure how many times a year you could be booked for consorting at that time, but it might have been about 10. The last person I got booked for consorting with was a man called Colin Rex Sumner Sr, my father. I was taken to court for walking down the street talking to him. This law is going to have the same effect on Aboriginal people as that law did. My brothers and sisters, who do not have criminal records, are going to be targeted for associating with me. I do not condone crime and what is happening out there. I lost four of my siblings through drug overdoses. Within eight months three of my siblings were dead from heroin overdoses.

I have mentioned to police and to politicians before that, if I knew who these drug dealers were, I would give them to you on a platter for what they did to my family. This bill will probably make me too scared to speak up about what I know is happening in Aboriginal society. I also ride a bike. I am an ex-member of a club. I got out of it. I have been working with this group for 30 years. It is a group that do not touch alcohol or drugs—total abstinence, from the committee down to the cleaner. I work as the chief executive officer there. We see drugs, disarray, people committing suicide and people overdosing every day. Where are the drugs coming from? I will help you find them. But how we will do that I do not know. We have to work at it.

I have spoken to police about what we can do to help. We have Aboriginal police community constables. They are being used as intelligence gatherers within Aboriginal society. By using them in that way, they have been ostracised by the Aboriginal people, instead of working with the Aboriginal people to gather information to rid our society of what is happening. They are being used in the wrong way.

I am a 58-year-old Ngarrindjeri man from down south, from the Coorong and the lower lakes of the River Murray. My brothers and sisters who I lost through drug overdoses were younger than me. It nearly killed my mother when, within eight months, three of them died. I come from a broken family. Before I got into this job, I was amongst it all. My brother and I had done every jail in South Australia as prisoners. This bill is going to make more criminals out of my people. It is going to be used like the old consorting law. They are calling it the bikie bill; there is nothing in the bill that says ‘bikie’. The only thing I read in there was something about a ‘chapter’. They are going to use this law against any group or association. It is open for abuse.

I would also like to speak in camera about other things that have already happened. I have a police statement here.

CHAIR—Rightio. We might see what we can put on the record first before we go to in camera questions.

Mr CHAMPION—Mr Hayes, I take your evidence as you put it. Part of the problem and part of the cause of this bill is the code of silence. I was wondering if you could envisage the clubs being prepared to give that code of silence up, because that code of silence is what really stops efficient law enforcement so that people who perhaps should be brought before the courts cannot be. You seem to be saying to us, ‘Leave it to the clubs’, but I am just wondering if you could envisage a situation where clubs would give up the code of silence.

Mr Hayes—Maybe a little bit of understanding about the code of silence might help, and I will talk about that. Clubs do self-regulate. Clubs do kick out members who bring disrespect on the club. I know of members who have been kicked out of clubs because their criminal activities have brought heat on the whole club or because their drug use has been outside the guidelines of what that club is about. So, contrary to popular belief, there is self-regulation within clubs. We do not necessarily see that because all we see is the crime that happens within clubs. I think that there is room for dialogue and discussion and I think there would be members from certain clubs—maybe a small handful of members—who would be willing to have a dialogue with the right people. The reason for the code of silence is because of club members’ experience.

From a social kind of aspect, when we have a look at the profile of the average man in a club, he has probably got a whole life history of believing that society is against him. Why should he trust a politician; why should he trust a police officer? That is the background to the code of silence—it is the distrust. That goes for the media as well. Often clubs will not talk to the media because they have tried it in the past and they have been represented in a different way to what their intention was. But there is a possibility that there are people who would talk. I think that there was never any consultation with this whole process. My understanding is that when this bill was written, there was no consultation with anybody representing the biker community. There was consultation with the police, but to me that is a one-sided thing because they are seeing all the evidence that the police have of criminal activity. They are not seeing that there are men in those clubs who are not criminals.

I know personally many men in clubs who are not criminals. I would swear that they are not criminals because I see how hard they work in average jobs. I see how they struggle to pay their mortgages. One well-known, high-profile member of one of the clubs here has worked for about the last 12 years in one of the major factories in Adelaide. He worked his way up from the factory floor to middle management. He has been in that factory for 12 or 14 years. Now, he has held the presidential office in one of the well-known clubs. Tell me, if he was a big time criminal, would he bother working for 12 or 14 years in a factory? You see, there are a lot of inconsistencies, I believe, with the police’s so-called evidence. I am not saying that it is all wrong, but I am saying that it is very questionable. From my experience and from what I see—talking to men in clubs—there are a lot of inconsistencies with what the police are saying. But I am getting off the track. To answer your question, that is a possibility.

Senator BARNETT—Firstly, Mr Sumner, thank you for sharing your story. I empathise with that and sympathise with you and your family. Can you just tell us about Longriders, your objectives and what you do?

Mr Sumner—Yes, I would be glad to. Longriders has been around for 20 years. Our objectives are twofold. One is to be a support group for each other like any other club. In that sense I do not think we differ from the so-called outlaw clubs because we have that common interest in motorcycles and that sense of wanting to belong somewhere.

Our other mission, I guess, is that we want to support each other in our Christian faith and belief because most of us have not grown up in the Christian church but have come to the Christian faith through the school of hard knocks and we also want to be available to other people in the biker culture who might want to look at issues of Christian faith. There have been many men who have been involved with our club, who may still be members or may have moved on in their life, who came out of the hardcore side of the bike scene and had a Christian conversion or embraced the Christian faith. What our club is about is supporting those people.

Senator BARNETT—With regard to the outlaw bikie gangs, as you have referred to them, in South Australia, what proportion of their members would be involved in serious criminal activity?

Mr Hayes—I would need to guess that, but my educated guess would be possibly a third.

Senator BARNETT—Do those bikie gangs in South Australia that we are discussing here have objectives to be involved in serious criminal activity?

Mr Hayes—I do not believe so. I believe that is up to the individual. I think there are individuals within motorcycle clubs who get together and do criminal things, but I do not believe that the clubs exist as criminal organisations. The clubs exist because of the common bond of brotherhood and motorcycles. And there is an element of: ‘Let’s stick it up society!’—sure. There was a discussion before about where the one per cent came from, and that is right that it came from America and the outlaw clubs have embraced that one per cent. But it has never been meant that only one per cent are the bad guys, as in: we are advertising we are criminal. My understanding is that it is more of a rebellion against society and a larrikinism. That is what is underneath it. I do not believe the criminality is to the extent that the police are saying it is.

Senator BARNETT—On your educated guess or estimate of one-third, how educated is that? Can I just test that. How confident are you that, for example, it is less than half? Would you be confident of that? And how can you convince the committee of that fact?

Mr Hayes—I am confident that it would be less than half. I guess the only way I could convince the committee is if we had the statistics of all the members of clubs in South Australia and could put a tick by the names to show they had been caught or that there was evidence they were involved in criminal activity. No-one has got that. The police cannot come up with that. My only evidence is anecdotal, and from my conversations and friendships with people in clubs I see the frustration of particular members who are more moderate and who often are men contributing to society and involved with their children in their local sports clubs and those sorts

of things. This is the picture that we never see. Those men often have frustrations about some of the criminal activities of other members in their own clubs.

Some clubs, as I said, are much better at policing than others. With some clubs, the ethos is: 'We are our own individuals and we don't speak to each other's lives.' They are the clubs that get more police attention, because part of their ethos is that they do not try and tell each other how to live their lives.

Senator BARNETT—How many of the members of these clubs would have full-time jobs?

Mr Hayes—I would say two-thirds.

Senator BARNETT—Would the other one-third be working full-time for the club or would they have part-time jobs and do other things and just have this as an interest?

Mr Hayes—I am not sure. I do not know of anyone who works full-time for their club. They may be on pensions because they are older guys or they may have had motorcycle accidents and be on disability pensions. But I believe the majority of members of clubs either have their own business—which, it could be argued, is for laundering money for their criminal activities—or they work in labouring jobs.

Senator BARNETT—In your opening statement you referred to the structure of these clubs and you said that it is not necessarily a leadership position and then a pyramid type arrangement. Can you describe the structure of these clubs, or is it different in each club?

Mr Hayes—It is different in each club.

Senator BARNETT—Can you describe what you know of the leadership structure and the organisational structure of these clubs?

Mr Hayes—Some clubs have a pyramid structure where the president calls the shots. Other clubs do not and instead have an upside down pyramid in the sense that the office bearers are there to serve the membership. Some clubs are very much proud of the fact that they are run democratically and that they vote on decisions about how they operate their club.

Senator BARNETT—Can you provide further and better particulars to the committee, perhaps in confidence or take it on notice, and let us know your understanding of the structure of these clubs? Would you be happy to do that?

Mr Hayes—I would need to think about that. I possibly could, yes.

Senator BARNETT—You think about it and let us know if you can.

Mr Sumner—Can I just say a bit more about what the Longriders do for the Aboriginal communities? I do not know if you have been to any Aboriginal communities, but if you have you will have seen what state a lot of those places are in. We organise, through the Longriders, community rides or toy runs to the Aboriginal communities. We take toys to the communities and perhaps take some entertainment such as someone to play a guitar, or a bit of a band or

something. We have a full day with a barbecue and entertainment at the Aboriginal communities. We have already done about six communities in South Australia. Coober Pedy wants us to go there next. That is further than Melbourne, so we will have to think about that one. It is going to be a long ride.

Mr PYNE—It is much better than Melbourne though.

Mr Sumner—These are the things that the Longriders do for the Aboriginal communities, and for all the communities. Everybody is invited to these community runs when we take the kids for rides. Even the old people jump on the bikes. Sometimes they burn their legs on the exhaust pipes and abuse us, but that happens. It is a good day for the community. The sad part is when we leave. At these communities we see the battle scars on some of the women, the men and the kids. We see all that. But riding with the Longriders brings a day of happiness and entertainment for the community. That is a big part of what the Longriders club does for the Aboriginal people.

Mr GIBBONS—I have a question for Mr Hayes. How does one become a member of the Longriders? What is the process? How do you grow your organisation, if that is part of your charter, or how does somebody become a member of your club?

Mr Hayes—That is a really interesting question and I am happy to answer it. The process for becoming a member of our club is the same as the process for becoming a member of the so-called outlaw clubs. The reason we do that is we believe it is a good process. For us there is the Christian aspect, so that is different. A man who wants to become a member must show some evidence that he has a fair dinkum Christian faith; that he is trying to do the right thing in life; that he is not abusing drugs or alcohol and that he is getting ahead with his life. Then there is the practical process, which is the same as for the outlaw clubs. A member nominates somebody for membership and they are then termed a nominee or a prospect. They serve a period of time, with a minimum of 12 months, where they serve the club, take on the ethos of the club and get to understand the workings of the club. By the time they get to the 12 months or maybe longer they need to have a 100 per cent vote by the membership to become a member. So by the time a man gets to stand for membership he values his membership because he has had to earn it, and he has earned the right to belong to a family structure. We are not a social club. In that process we operate the same as outlaw clubs.

Mr GIBBONS—How many people on average would you exclude who may wish to apply to become a member but for whatever reason are not eligible or deemed not appropriate?

Mr Hayes—Probably about a third of people who would like to be members do not make it. What often happens with those people is that we still maintain connection with them because we want to see the best for them in their lives. They may be an associate member, but not a full member.

Senator BARNETT—Men only?

Mr Hayes—With our club, full membership is for men only. Women have a role in our club, but it is only men who have the full colours.

Senator BARNETT—What about the other gangs?

Mr Hayes—They are the same.

Mr GIBBONS—Would you exclude somebody if they met all the criteria but rode a Honda?

Mr Hayes—We would encourage them to trade their Honda in on something more appropriate.

Mr PYNE—You said before, Mr Hayes, that about a third of people involved in the outlaw motorcycle gangs were likely to be criminal elements. Your club is an alternative to that. If you were one of the two-thirds of an outlaw motorcycle gang and you knew that a third of the people you were mixing with on a reasonably regular basis were involved in extortion, blackmail, threats, intimidation and beatings et cetera, wouldn't you say, 'I'd rather join the Longriders, who do not have those people, than stay in the club that I'm in?'

Mr Hayes—I would. Some men do that.

Mr PYNE—But doesn't that run counter to your contention that only a third of the people in the club are criminal elements? Surely the people who are not involved would have left by now.

Mr Hayes—Some are and some do. There are some who stay and try to be moderating voices. Their club is their life. My understanding is that part of the angle of this law is to possibly push those moderating people out of those clubs. That is a concern. That could backfire.

CHAIR—We have had evidence given to us about the street gangs starting to be aligned with the proposed outlawed motorcycle gangs, and that they are a recruitment ground. Would you like to respond to that observation?

Mr Sumner—There is a so-called gang in the Aboriginal community at the moment, the so-called gang of 49. But there is no gang of 49. There was a group of 49 people of interest to the police. The media turned it into the gang of 49. It is a scare tactic that the media and the police use to get white fellas against black fellas, if I can put it in those terms. There are high-speed chases, ram raids and all of those sorts of things, and people are doing that. We do not condone that. They run red lights. They are not going to stop at a red light because Basil Sumner's coming through with his family. They are not going to say, 'He's Aboriginal, so we've got to stop here.' They would clean me up, too. They do not discriminate regarding who they might be killing when they go through red lights. That is why we do not condone it. I am starting to be afraid of my grandchildren being targeted by the police as members of this 'gang of 49' and being picked up and charged. I do not want my grandchildren to go through what I went through, so I tell them to try and do the right thing. And they do. I also do not want them being targeted by the police as members of the so-called gang of 49, because there is no such gang.

Mr Hayes—This attribution of a connection between street gangs and motorcycle gangs is more hype than reality. As Adam said, Adelaide is a small town. When you look at someone's social background, the kids that are on the streets in gangs often come from broken homes. When you look at the profile of people like that, they could end up as they get older in a motorcycle club because that is their mindset. But I do not know of any motorcycle clubs who are actively, consciously and deliberately recruiting from street gangs. They may have connections with young people in street gangs and some of them may use some of those young

people in some of the crimes they do. But it is not at a level where the club sits down and says, 'How can we get more members? Let's go and recruit some of these gang of 49.' I do not believe that at all.

CHAIR—Did you want to go in camera to make a few more statements?

Mr Hayes—Yes, thank you.

CHAIR—We will now go in camera.

Evidence was then taken in camera—

Committee adjourned at 2.32 pm