BAIL AMENDMENT BILL 2022

Second Reading

Resumed from an earlier stage of the sitting.

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [4.06 pm]: I am trying to make eye contact with the member for Moore, who valiantly continued his contribution until right on question time, so I was just ensuring that he concluded his remarks before seeking the call. It seems as though that is the case.

I rise to make a contribution to the debate on the Bail Amendment Bill 2022 and in so doing, I want to start by laying out in clear and unequivocal terms that the very foundation of our justice system is the presumption of innocence. This is a very important doctrine that has been a key feature of the law of Australia, before that the law of the United Kingdom, for literally hundreds and hundreds of years. Considerations about the way in which it operates need to be framed in the context of the role of the presumption of innocence. The doctrine of the presumption of innocence is supported by the idea of habeas corpus, a legal concept that members here will be well familiar with. I raised this previously, but to inform my contribution to the debate, I want to take members to the idea of habeas corpus and refer to *Butterworths Concise Australian Legal Dictionary,* second edition, general editors, Hon Dr Peter Nygh and Peter Butt, BA, LLM(Hons)(Syd). The definition of habeas corpus contained in the Butterworths legal dictionary is this —

> *Lat*—have the body. Originally a type of writ issued by a superior court allowing a prisoner to have himself or herself removed from prison and be brought before the court to have the matter for which he or she was being detained determined. This type of proceeding became the method by which the Supreme Court could review decisions of justices or magistrates refusing bail or imposing excessive bail:

The citation that the authors of the dictionary refer to is The Crown v Rochford; ex parte Harvey, a 1967 decision, 15FLR 140. The doctrine of habeas corpus has been present in the commonwealth system right the way back to the Magna Carta in 1215 in the Kingdom of England, through to the United Kingdom and then on through into Australian law. That is our starting off point.

The next thing we need to have consideration for is the legislation we are amending by virtue of this amendment bill, and that is the Bail Act. Western Australia has not always had a bail act. These amendments to this Bail Act are to strengthen the responsiveness of the safe bail system to victims of alleged child sexual abuse. I touch on one of the main motivating factors for the amendment. In dealing with this particular category of victim, we need to look at things such as historical sex abuse, and family and domestic violence. I will talk a little later in my contribution about what this government has done to assist victims of historical sex abuse and what this government has done to tackle family and domestic violence.

I want to take members to the twenty-third report in the Australian Institute of Criminology's research and public policy series, published by David Bamford in 1999. The reason I refer to this report is that it not only provides a good overview of how bail operates in Australia, but also focuses particularly on a study of bail practices in Victoria, South Australia and Western Australia. I refer to page 11, paragraph 2.3.2 where the author says —

> Bail and remand in custody issues have attracted the attention of a wide range of observers in the criminal justice system. While many of the unsatisfactory aspects of the law relating to bail were recognised by the middle of the twentieth century, it is only in the last thirty years that there has been a concerted effort to study and to alter the law. Most of the literature has resulted in, or from, attempts by governments to reform the law of bail. The mix of common law and statutory provisions has led to a complex legal situation with apparent inconsistency in application. Both the United States and the United Kingdom began significant bail law reform in the 1960s leading to legislative amendment with the *Bail Reform Acts* 1966 and 1984 in the United States and to the *Criminal Justice Act* 1967 and the *Bail Act* 1976 in England.

The author says —

> The pattern has been similar in Australia, with inquiries into the state of the law of bail in the 1970s and 1980s leading to legislative reform.

The foundation on which some of those inquiries was conducted is well established. I refer to section 3.2 of "Part 3: Review of the Australian bail legislation" from the same report, *Factors affecting remand in custody: A study of bail practices in Victoria, South Australia and Western Australia*. At that time, the author summarised the position in Western Australia thus —

> The defendant has a right to have their case considered as soon as it is practicable. There is no real statement as to when bail is available; instead, the *Bail Act* lists those situations where it is not.

Then, at section 3.2.1, "Presumption against bail and its significance", it states —

> Statutory presumptions against bail for certain offences exist in New South Wales, the Northern Territory, and Victoria. The Western Australian parliament is currently considering a similar measure.

This is in 1999 —

> In the main, there is a presumption against the granting of bail where the accused is charged with a serious drug-related offence, —

The paper refers to the relevant statutory provisions at that point —

> where there is a history or threat of domestic violence, and in cases of murder …

That is the basis on which the Bail Act provided for presumptions against the grant of bail. I jumped ahead of myself so I could finish the quotes from that particular report, *Factors affecting remand in custody: A study of bail practices in Victoria, South Australia and Western Australia*.

After reading that report, I thought to mention the moves in the 1960s and 1970s across those commonwealth jurisdictions, like Australia, the United States and the United Kingdom, to give structure and cohesion to the various laws relating to bail.

I would like to refer next to some excellent work that was done by the Law Reform Commission of Western Australia in the late 1970s, *Project no 64: Bail*. In its implementation report it states —

> **Terms of Reference**
>
> In 1976 the Commission was asked, as a matter of priority, to review the law and procedure relating to bail.
>
> …
>
> At the time of the reference the law governing the grant of bail was contained in 117 provisions of 14 different statutes and regulations. The diversity of legislation led to the undesirable situation where doubts about irregularities, omissions and ambiguities in the law existed.

After a great deal of research and some significant consultation, which included a lot of stakeholders, advertising in *The West Australian* and so on, the commission distributed a working paper in November 1977. The working paper analysed the existing law, and the paper attracted comments from a wide range of individuals and groups, including government departments, judicial officers, the Law Society of Western Australia, probation and parole services, the Royal Association of Justices of Western Australia and the Council for Civil Liberties in Western Australia. The commission submitted its final report in March 1979. The commission made a number of recommendations, and the one that I want to focus on for the purposes of today is the recommendation that states —

- All unconvicted defendants should have a qualified right to bail. Certain provisions should limit this right. These provisions ranged from the likelihood of certain behaviour whilst on bail to the requirement of further information about the defendant.
- Bail conditions should be reasonable, specified and relevant.

I was just quoting from the project summary of *Project no 64: Bail*.

Delving a little bit more deeply into that Law Reform Commission report, it provides a useful summary of the circumstances pertaining at the time that the review request was made. It says in the introduction —

> There is a proliferation of bail legislation in this State. The law is to be found in no less than 117 separate provisions in fourteen different statutes, dating from 1679 to the present day, and there are also fourteen relevant regulations in the *Criminal Practice Rules* … There is no single source of authority either for the power to grant bail, or as to the relevant principles on which the bail decision should be made.

Then, I jump forward a little bit —

> Against this background, the case for a single, rational and comprehensive enactment dealing with bail and its associated procedures appears to be unanswerable.

The recommendation was that the Parliament introduce specific bail legislation. One of the things it says is —

> In chapters 1 to 8 of this Report, the Commission makes recommendations as to the content of such separate bail legislation. The essential matters covered are —
>
> (a) clarification of the authority to grant bail;
>
> (b) creation of a qualified right to bail for all offences;
>
> (c) clarification of the grounds for refusing bail;

(d) establishment of procedures to enable relevant information to be made available to —

(i) bail-decision-makers;

(ii) defendants;

Relevantly, for the purposes of our debate on this bill —

(e) clarification of the conditions upon which bail may be granted;

Right at the outset, when the state of Western Australia was looking to codify and simplify the law relating to bail in one unified bail act, it was clear that the academics, experts and practitioners who advised and provided evidence to the Law Reform Commission were of the view that there could be circumstances in which conditions could be imposed on bail. This idea is extrapolated further in the Law Reform Commission report in chapter 3, entitled "A qualified right to bail" —

> In some circumstances the legislation in Western Australia provides that a defendant shall be granted bail. In other cases the defendant is merely entitled to apply for bail and the bail-decision-maker is empowered to grant it.

Paragraph 3.2 of chapter 3 states —

> In the Commission's view there are at least three unsatisfactory features of this existing law and practice. They are —
>
> (a) the cases where the legislation provides that bail shall be granted rest on arbitrary and seemingly irrational distinctions, unnecessarily limit the discretion of a bail-decision-maker and create situations in which a defendant is unduly favoured;
>
> (b) in cases where the legislation provides that bail may be granted, there could be a tendency for some bail-decision-makers to regard bail as a privilege for which a defendant must apply and, despite existing practice, a defendant could be remanded in custody simply because the question of bail is never raised;
>
> (c) although guidelines as to the initial approach which should be adopted by a bail-decision-maker when considering a bail decision have been laid down, they are difficult to locate, and in some circumstances they conflict, which makes a consistent uniform approach by bail-decision-makers difficult to achieve.

This is problematic, obviously, because we want consistency in the application of the law. Having identified the problems, the commission then moved on to make its recommendation in paragraph 3.3 —

> In the Commission's view, proposed bail legislation for Western Australia should make it quite clear that bail is neither a privilege, nor necessarily a matter requiring some form of application by a defendant. It has been suggested to the Commission that bail-decision-makers should have a discretion … to grant or refuse bail … In most other jurisdictions … a defendant is given what is referred to as a statutory right to bail. Recognition of such a right appears to have been based on the presumption of innocence which underlies all criminal proceedings. The legislation giving effect to this right provides that bail shall be granted unless the bail-decision-maker is satisfied that it should be refused on one or more of several grounds specified in the legislation.

Paragraph 3.7 of chapter 3 reads —

> In summary, therefore, the Commission recommends that a defendant in Western Australia should have a qualified right to bail at all stages of the criminal justice procedure prior to conviction. This, in effect, would mean that a bail-decision-maker, on each occasion when an unconvicted defendant appeared before him, —

Sic, "or her" —

> would be required to —
>
> …
>
> (c) grant bail, with conditions if necessary, unless he —

That is, or she —

> is satisfied that, notwithstanding such conditions as he might impose, bail should be refused on one or more of the specified grounds.

I want to jump forward to the conclusion of the report and the recommendations. Chapter 10 provides a summary of the recommendations. The first recommendations states —

> A separate Bail Act should be enacted to deal in a comprehensive way with bail and its associated procedures at all stages of criminal proceedings.

Under "A Qualified Right to Bail", recommendation 5 states —

> Whether or not a formal application for bail is made, an unconvicted defendant should be granted bail, subject to a bail-decision-maker's discretion to refuse bail if he is satisfied that, having regard to the conditions that he could impose, there remains —

Then the authors of the report list a number of concerns they have, which I will summarise as general concerns for public safety or in the public interest.

Right from the outset, when this legislation was originally enacted by the Parliament of Western Australia, it was always contemplated that there would be circumstances in which bail would not operate as an automatic right. There was a movement in the 1960s and 1970s across a number of common law jurisdictions towards codifying and simplifying the way in which the law had evolved over hundreds of years in relation to bail. Then, as happens in most responsible jurisdictions at the behest of activist governments with a clear eye on making sure that the balance is right in the criminal procedure system and in the criminal justice system, a couple of jurisdictions undertook a review of these new acts from over the last two or three decades. They were in Victoria in the early 2000s and federally during the Rudd–Gillard years between 2007 and 2013.

I refer members next to the final report summary, called the plain English summary, of the Victorian Law Reform Commission's *Review of the Bail Act*. For members who are interested in looking at it, this report was tabled in the Victorian Parliament on 10 October 2007. The reason I refer members to this report is that I have just introduced into my contribution the idea of balance. Victims of crime are one of the things we need to balance when we are looking at how the law of bail operates. This report touches importantly on the question of delivering justice for victims. I quote —

> Victims of crime are not routinely told what has happened in a bail hearing. Some victims … do not want to be told what has happened, but people who are victims of violent crimes or know the acccused usually do want to know.

The authors of the report from the Victorian Law Reform Commission continue, with reference made to Victoria —

> We believe Victoria Police, the Office of Public Prosecutions and the Victims Support Agency should develop a process so victims of "crimes against the person" are told as soon as possible about the result of a bail hearing.
>
> It is also important that victims be told of any bail conditions which are designed to protect them so they can report accused people if they breach the condition.
>
> The current Act says decision makers should consider the victims' attitudes to bail, but decision makers told us what is actually important is the victims' safety and welfare.

I want to emphasise that point: what is actually important for bail decision-makers is a victim's safety and welfare. The report continues —

> The new Bail Act should include victims' safety and welfare in the decision about whether an accused person is an unacceptable risk.

That was the Victorian Law Reform Commission's review of the Bail Act.

[Member's time extended.]

Mr S.A. MILLMAN: Next, I turn to the question of family and domestic violence. One of the very important considerations in this legislation is the protection of vulnerable communities. The Australian Law Reform Commission produced a report headed *Family violence—A national legal response*. Chapter 10 of that report deals specifically with bail. It provided a good summary. The report was tabled in November 2010, so during the Rudd–Gillard years. I quote —

> 10.3 Bail is a decision on the liberty or otherwise of the accused, between the time of arrest and verdict. Bail is, in theory, 'process-oriented', aiming to ensure that the accused reappears in court either to face charges or be sentenced.

That fundamental proposition comes from a very important instrument that is germane to the law of the commonwealth and of Western Australia. It is the International Covenant on Civil and Political Rights. The report continues —

> 10.4 The *International Covenant on Civil and Political Rights* … to which Australia is a signatory, states that:
>
> > *it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial*.

> 10.5 The purpose of refusing bail is to protect the community and to reduce the likelihood of further offending, and should not be used to punish or coerce the accused into a course of action. A person who is on bail before trial has not been convicted of an offence, and this accords with the principle of the presumption of innocence.

The authority for the proposition that it should not be used to punish or coerce is R v Greenham [1940] VLR 239 and R v Mahoney-Smith [1967] 2 NSWR 158. That was in the introductory paragraph. The authors of the report then go more deeply into the bail presumptions and summarise some of the evidence that was presented to them. I quote —

> A person arrested for an offence related to family violence may be released on bail, either by the police or the court. This could be dangerous for a victim of family violence. Special bail laws have been enacted that might 'tend to counteract the prevalent civil libertarian bias and reverse the onus in general bail legislation towards releasing an arrested person on bail'.

At the time this report was tabled in 2010, the authors noted —

> There are no provisions in the *Bail Act 1980* (Qld) that cater specifically for family violence cases. The *Bail Act 1982* (WA) restricts the jurisdiction to grant bail in respect of breaches of protection orders in urban areas.

It continues —

> In the Consultation Paper, the Commissions asked whether in practice the application of provisions that contain a presumption against bail, or displace the presumption in favour of bail, in family violence cases, struck the right balance between ensuring the safety and wellbeing of victims, and safeguarding the rights of accused persons.

Some of the arguments that were outlined are —

> 10.20 Some stakeholders said they supported a presumption against bail for family violence offences. For example, the Domestic Violence Prevention Council (ACT) considered that this provided better protection for victims:
>
> > *There are too many circumstances where the rights of the accused person have been favoured above those of the victims and the safety of the victims has been compromised.*
> >
> > ...
>
> 10.21 Women's Legal Service Victoria commented that safety concerns were especially important in a family violence context.
>
> …
>
> 10.22 The Wirringa Baiya Aboriginal Women's Legal Centre —

It is the main Aboriginal women's legal centre in New South Wales —

> also supported a presumption against bail and commented in particular on the implications for Indigenous women:
>
> > *While there is a justifiable concern in the Aboriginal community about the numbers of Aboriginal people in custody, we speak to many Aboriginal women who are upset about offenders of family violence being given bail.*

A couple of arguments were raised against the presumption and I want to refer to one because it makes the point about the important place that the presumption of innocence holds in civil society. I quote —

> The Law Society of NSW was opposed to the erosion of the presumptions in favour of bail, which it said 'usually follows an horrific case and is often more a politically charged reaction to public opinion than a carefully considered response'.

That is not what we have here and explains why this legislation was so thoughtfully considered by the Attorney General. The commission went on to say there should not be a blanket rule. It said removing the presumption in favour is warranted in certain specific circumstances. I quote —

> The Commissions make no specific recommendation about what those circumstances should be, but suggest that they would include, for example, where an accused has been violent against the victim in the past— as is the case in NSW.

Clearly, despite the ruling that there should not be a blanket presumption, the commissioners of the Australian Law Reform Commission felt it was appropriate to have circumstances in which the right could be constrained.

Why is this government well-placed to introduce this change to the Bail Act? It has an incredible track record on the things that this bill touches upon. I want to break them down into three categories—alleged perpetrators of violent or terrorist acts, family and domestic violence, and representing the rights and interests of victims of child sex abuse. When it comes to tackling family and domestic violence, we have for the first time ever a Minister for Prevention of Family and Domestic Violence. We introduced the Family Court Amendment Bills, the Family Violence Legislation Reform (COVID-19 Response) Bill 2020, the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 and the Domestic Violence Orders (National Recognition) Bill 2017. Time and time again, during both the fortieth Parliament and forty-first Parliament, the McGowan Labor government has introduced the necessary legislation to elevate and tackle family and domestic violence. This is a government that consistently strikes the right balance with people who pose a threat to the community. The Terrorism (Preventative Detention) Amendment Bill 2016 and the Bail Amendment (Persons Linked to Terrorism) Bill 2018 are two exemplars of the way the legislative arm of government has been used to ensure that the right balance has been struck.

As I said at the start, this particular amendment bill focuses on the question of victims of child sex abuse. This government, the McGowan government, and this Attorney General are the same people who are responsible for signing us up to the National Redress Scheme for institutional child sex abuse. More importantly, when regard is had to the article on the ABC news website this morning about what allegedly transpired at Christian Brothers College Fremantle, this government introduced the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017. I have spoken about both of those in the past; I do not need to go back over old ground. But with the legislative track record of this Attorney General and the McGowan Labor government when it comes to tackling family and domestic violence and striking the right balance for people who constitute a clear and present threat to the safety of the community while giving justice to victims of child sex abuse, we have runs on the board. Our track record puts us in exactly the right position to introduce this legislation.

That is all by way of introduction and now I am going to turn specifically to the bill, in the time that remains. I refer to the Attorney General's second reading speech. He stated —

> Some in the community have called for a mandatory denial of bail for adults accused of sexual offences against children.

As I said right at the outset, the very foundation of our justice system is the presumption of innocence. He continued —

> The Bail Act operates in general to preserve this principle, while allowing the bail decision-maker to consider the risks should an accused person be released. A presumption against or mandatory denial of bail is an extraordinary step with wideranging ramifications …

That is not where we are going. The Attorney General continued —

> In drafting this bill, the government has had to balance these principles with the desire to improve protections for child victims …
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> …
>
> … the bill will give extensive guidance to bail decision-makers when considering bail. Those considerations include having regard to the conduct of the accused towards the alleged victim … extending this consideration to the conduct of the accused towards victims and family members of victims of offences they have been convicted of in the past …
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> …
>
> New clause 3AA in the bill provides that in turning their minds to the question of whether an accused will endanger the safety, welfare or property of any person if not kept in custody, where the offence is a sexual offence against a child victim, a bail decision-maker must have regard to the following matters: the age of the child victim; the age of the accused; whether the child victim is in a family relationship with the accused … the child victim's living arrangements …

And so on and so forth. Bail decision-makers are still empowered to make the decision, but the guidance is provided explicitly in the statutory instrument. The second reading speech continues —

> Additionally, the bill will introduce an express provision for elevating the voices of child victims, where they have raised concerns for their safety and welfare if the accused is not kept in custody.

In relation to new clause 3AB, the speech outlines —

> … a family member or police officer investigating the offence informs the prosecutor that the victim has expressed a concern about their safety and welfare if the accused is not kept in custody, the prosecutor must inform the bail decision-maker of that concern and the reasons for it … The bail decision-maker must have regard to that information …

On Thursday, 11 August, when we were debating the Casino Legislation Amendment (Burswood Casino) Bill 2022, I spoke about the pillars of a free and democratic society—an elected Parliament, an independent judiciary, and a free and inquiring media. For today's purposes, I will add to that list the protection against arbitrary detention. I will also add free speech. Soon after I made that contribution last week, on 11 August, I was shocked and saddened to hear that acclaimed author Salman Rushdie was punched, stabbed and attacked on stage before a lecture in New York. He was on a ventilator. One of the witnesses at the event in New York said —

> "The news is not good," … "Salman will likely lose one eye; the nerves in his arm were severed; and his liver was stabbed and damaged."
>
> Stunned attendees helped wrest the man from Rushdie, who had fallen to the floor.

I raise this because free speech is so important in our society. I want to thank one of my constituents who emailed me. He said —

> I am writing specifically in relation to the recent attack on Salman Rushdie in New York State. I am sure you are as outraged as many around the world. Over the last 30 years many institutions and countries—western and non-western, Islamic and non-Islamic—have publicly voiced their support for Salman Rushdie. In addition to being one of the most important artists of our generation, Salman Rushdie has been a tireless supporter of free-speech, antiracism, and socially progressive causes …

When I think about the important pillars of a free and democratic society such as those I have enunciated during the course of my contribution today, I say to my constituent and other constituents in the seat of Mount Lawley who are concerned about the attack on free speech that the physical attack on Salman Rushdie represents, I stand with you; I stand in support of the pillars of a free and democratic society, and against these violent attacks on freedom of speech and the symbols of freedom of speech.

With that, I commend the Attorney General for this outstanding piece of legislation and I commend the bill to the house.

MR D.A.E. SCAIFE (Cockburn) [4.36 pm]: I rise today to make a contribution on the Bail Amendment Bill 2022. I say at the outset that it is always a pleasure to follow the member for Mount Lawley. As I have said before, I have followed the member for Mount Lawley around for a number of years now. I followed him to Slater and Gordon, then to Eureka Lawyers and then into this place. Now, I am following him in this debate.

Ms M.M. Quirk: Oh, you stalker!

Mr D.A.E. SCAIFE: I know. One might use that description of me, member for Landsdale, but I certainly would not.

It is a privilege to follow the member for Mount Lawley because he always gives a contribution that reflects on the values that sit behind many of the bills before this Parliament and the work that is done by this Labor government. As a member of the Labor Party, I know that we are all driven here out of a strong sense of values such as those the member for Mount Lawley has discussed—freedom of speech and, in respect of this legislation, the presumption of innocence, but also the importance of protecting society and the most vulnerable in our society. It is certainly the case that this bill is aimed at protecting some of the most vulnerable people in our society—that is, children who have been victims of sexual offences.

I would also like to say that I am very grateful to the member for Kalamunda who allowed me to speak now so that I am not holding you, Acting Speaker, up in the chair. I also thank you, Acting Speaker, for remaining in the chair beyond 5.00 pm while I make my contribution; it is very much appreciated.

I join the member for Mount Lawley in commending the Attorney General on bringing this bill into the Parliament. It is a significant bill. It obviously has its genesis in events that we, unfortunately, have to come to terms with in our society—the scourge of child sexual abuse. As I said, this bill is directed towards ensuring that we protect those victims while also striking the right balance with protecting the presumption of innocence. I want to make the point that this bill still preserves the presumption of innocence. The presumption of innocence is a foundational value—some might even say a constitutional principle—of our legal system. Viscount Sankey made a statement many years ago that described the presumption of innocence as being the "golden thread" running through English criminal law. Of course, Western Australia inherited the English system of law. That same statement by Viscount Sankey is applicable to our legal system—the presumption of innocence is the golden thread that runs through our legal system.

The concept of bail is based upon the presumption of innocence. Bail provides a mechanism whereby if someone is accused of an offence, that person may have their liberty preserved until such time as they are proven guilty of that offence. Bail has always been based on striking a balance. Although bail protects the liberty of the accused, it is also the case that bail is not necessarily automatically granted. It is a discretion that must be exercised by the magistrate or the judge, whichever the case may be. In exercising that discretion, the magistrate or the judge has to take a variety of considerations into account. Those considerations are many and varied, but they are about striking that balance between preserving the liberty of the accused and protecting the public from further offences in the

event that the accused is someone who has engaged in criminal behaviour. The point that I want to convey to the chamber is that bail is a foundational expression of the presumption of innocence in our legal system, but it is also and always has been a concept that has to strike a balance between the protection of the public and the protection of the accused and the protection of the value of the presumption of innocence. In that context, it is worth noting that this bill does not provide a mechanism for the mandatory denial of bail. Instead, this bill seeks to provide a series of considerations that must be taken into account when a magistrate or judge exercises their discretion in relation to bail when the offences fall into a particular category. Those offences are directed towards the protection of children and they involve child sexual abuse or similar conduct, which is some of the most heinous conduct we see in our society. I congratulate the Attorney General not only for bringing this bill into this place, but also for bringing in a bill that strikes a balance between preserving the presumption of innocence while also protecting the public.

In recent years there have been significant developments in community expectations of the protection of children, in particular the investigation and prosecution of child sexual offences. The Royal Commission into Institutional Responses to Child Sexual Abuse is one of the great legacies of the federal Gillard Labor government. It took Prime Minister Julia Gillard to stand up and bravely bring forward that royal commission to turn a light on some very dark places, not only in the history of this country, but also in recent times in this country. As the member for Mount Lawley alluded to, almost 10 years after that royal commission was announced, we are still coming to grips with the findings, the recommendations and the work demanded by that royal commission. The royal commission exposed that we have to puncture the culture of silence—the culture of secrecy that surrounds allegations and practices of child sexual abuse. It is only through reforms such as this and things like working with children checks that we can build a culture over time that will puncture that secrecy and silence what has been put up with for far too long.

One of the things that I want to comment on is that this legislation encompasses some of the most important work of this Parliament. It will add to a series of reforms that this Parliament has engaged in for many years. It is also work that has, by and large, established bipartisan and cross-party support in this country. In that context, I was quite disappointed to see some of the public commentary on this bill by the opposition, particularly by the shadow Attorney General. In my view, some things that we do in this Parliament, some bills that we debate, should be above criticism. They should be above the urge that some members feel to throw a partisan barb, to score a point. Sometimes it is best not to criticise and instead be constructive. Some things in this Parliament should be above that kind of behaviour, and this bill is one of those things. It will do incredibly important work to reform our legal system to make sure that victims of child sexual abuse are protected and their interests are considered by the courts while also protecting the presumption of innocence. Instead, regrettably, I saw that the shadow Attorney General issued a media release just under a week ago, on 10 August 2022, in which he criticised the bill and criticised the Attorney General for his conduct. The media statement went into many of the tropes that the opposition has wheeled out in relation to the Attorney General in recent debates. I thought it was a bit tawdry to see that kind of partisan political pointscoring attack on the Attorney General being mixed in with a statement about a bill as important and sensitive as the one before us. Unfortunately, it is reflective of what the opposition does in this place.

The opposition endlessly criticises, even on bills such as this, which really should be above criticism. I appeal to the opposition. I know it is difficult for the opposition because I know that it is not a traditional opposition; it is an opposition alliance, as it describes itself. I do not think members of the opposition know what the word "alliance" means. It means that they are supposed to be on the same team. I do not think the Liberal Party and the Nationals WA are on the same team. We have seen that in the North West Central by-election, where the Liberal Party and the National Party are running against each other and will no doubt be attacking each other over the coming months. I understand that because it is a fractious coalition of the Liberal Party and the National Party. Sometimes they are not on the same page. I appeal to the opposition alliance to get on the same page when it comes to significant bills like this.

I should say that I have been referring to the shadow Attorney General by his role as the shadow Attorney General. I do that deliberately. If I were to refer to the shadow Attorney General by name, I would have to use the title "honourable" and that is not something that I am willing to do in this place. I will refer to him as the shadow Attorney General instead so I do not have to use the honorific "honourable". The shadow Attorney General really should not be slinging mud at the Attorney General in the context of a bill like this when it is well known that he is a member of "The Clan". I think by definition—the way that the Liberal Party did it, or does it, or used to do it—by virtue of being a member of the Liberal Party in the other place, a member automatically belongs to what is known as the "Black Hand Gang". I am sure the Attorney General will correct me if I am wrong about that, but as I understand it, all Liberal Party members in the upper house are members of some secret society known as the "Black Hand Gang", which is very sinister sounding. It is a very sinister name; it sounds like a pretty sinister group.

Mr M. Hughes interjected.

Mr D.A.E. SCAIFE: I think that is right, member for Kalamunda. It has been used in various contexts, none of them positive. Anyway, the shadow Attorney General is a member of "The Clan", and we all know that "The Clan" has

engaged in some absolutely despicable behaviour and made comments towards women members of this Parliament that really are not acceptable. They are not in keeping with community expectations. I really think that the shadow Attorney General should be the last person to sling mud and aim criticism at the Attorney General. He certainly should not be doing it in the context of a bill as serious as this one. We are all politicians here; we all understand the need to engage in politics, but just because we can make a criticism does not mean that we have to. In the context of a serious bill such as this, which seeks to protect victims of child sexual abuse and is an important reform to our criminal justice system, I think that it completely misses the gravity of this bill to issue a statement seemingly purely for the purposes of attacking the Attorney General, attacking his conduct and attacking his handling of not only this bill, but also the general portfolio of the Attorney General. I call on the opposition to make sure that that does not continue because it really just lowers the credibility of the shadow Attorney General. It lowers the credibility of the opposition alliance, and it does nothing to progress the sensible debate of legislation in either this chamber or the other place.

I move now to discussing the text of the bill and the way that this bill achieves its purpose of protecting victims of child sexual offences. Members will be aware, if they have read the explanatory memorandum or the text of the bill, that the bill will introduce a list of mandatory considerations. In the exercise by a magistrate or a judge of his or her discretion in relation to bail, this bill will prescribe a list of conditions that must be taken into account when the accused is alleged to have committed one of the prescribed offences, and I will broadly refer to those as child sexual offences.

[Member's time extended.]

Mr D.A.E. SCAIFE: One clause in particular sets out these prescribed considerations. Clause 8 of the Bail Amendment Bill 2022 inserts three proposed sections that set out various matters that are relevant to the exercising of the bail discretion and must be taken into consideration. Proposed clause 3AA is titled "Additional relevant matters in cases of sexual offences against child victims". I am referring to the protective function in relation to victims of child sexual offences. It sets out the circumstance in which the proposed section will apply but then it describes those certain considerations that need to be taken into account. Proposed clause 3AA(3) sets out —

> The matters are the following —
>
> (a) the age of the child victim;

I note at this point that members might be wondering how the bill can refer to a child victim when, of course, at this stage in the process, it is the bail stage before conviction. How could it be determined that there is a child victim because, of course, the offence has not been finally adjudicated by the court? The reason is that the bill has a definition of the term "child victim". That term is specifically defined in the legislation at clause 7, which will insert proposed clause 1A —

> ***child victim***, in relation to a discretion to grant bail, means a person —
>
> (a) against whom a relevant offence is alleged to have been committed; and
>
> (b) who is under 18 years of age when the discretion is to be exercised;

That definition means that, essentially, the term "child victim" in the bill refers to a person who is alleged to have been a victim of one of these relevant offences. Returning to proposed clause 3AA(3), the various characteristics that must be taken into account include —

> (a) the age of the child victim;
>
> (b) the age of the accused;

That is critical to note because the difference in age between the victim and the accused might be a relevant consideration because it may go to the level of power imbalance between the accused and the victim. Regrettably, we know that in some of these cases we see victims who are children but who might be only a year or a couple of years younger than the accused because the offence has occurred in the course of a relationship of some sort or through the fact that the victim and the accused know each other through school or some context like that. It is important for those two factors to be taken into account, and it can go to the issue of power imbalance. The matters also include —

> (c) whether the child victim is in a family relationship with the accused;
>
> (d) the living arrangements of the child victim and of the accused;
>
> …
>
> (f) the physical and emotional wellbeing of the child victim.

They are all factors that must be taken into account by the judge or magistrate. I think that that is a really significant set of criteria for the reasons I outlined, but also because they are what I might term—I use this term loosely and not

in a legal sense—objective characteristics that the court can take into account. Things such as age, living arrangements or whether the accused is living with the child victim, for example, can be definitively ascertained. Those matters can be easily or relatively easily ascertained by the judge or magistrate and then the judge or magistrate can factor those into the exercise of his or her discretion. What is important though, of course, in bearing this in mind is that all these matters need to be taken into consideration by the judge or magistrate, but that does not mean that all of them will carry full weight. It also does not mean that all will be relevant. It may be the case, for example, that one factor is not particularly relevant on the facts of that case. This will provide a safeguard because it will mean that the judge or magistrate in exercising their discretion needs to be very careful. I have to say, all judicial officers are very careful with the exercise of their discretion.

But it is the case sometimes that discretion miscarries. If that were not the case, we would not have any need for appeals. We know that judicial discretion does miscarry sometimes. This provision will set mandatory considerations to guide the exercise of judicial discretion and reduce the possibility of a discretion miscarrying. A judge or magistrate will go through a list of factors and take them into account. If they decide that one of those factors is not particularly relevant, that may be fine. If they think that one of those factors is not particularly weighty, again, that is fine. But the judge or magistrate would have at least directed their attention in a very deliberate manner to those mandatory considerations, and that, in a sense, will be a protection against the miscarriage of judicial discretion. It will also be a protection against overlooking the objective circumstances of a child victim and their relationship with the accused.

It is really important to point out proposed clause 3AB because it moves away from being just a list of objective mandatory considerations to a requirement for the judge or magistrate to actually take into consideration the concerns, the subjective state of mind, of the child victim. This is significant because one of the lessons out of the Royal Commission into Institutional Responses to Child Sexual Abuse is that we have to listen to the personal experiences of child victims of sexual offences. We have to listen to and believe and take seriously any allegations made of child sexual abuse. The lesson from that is to put first the interests of children and make sure that their concerns are taken seriously. It is not just about looking at the circumstances from an objective, or overhead, point of view; this provision will require the judge or the magistrate to look closely at the views of the child victim.

The proposed clause says —

> (1) This clause applies if —
>
> (a) a relevant offence is a sexual offence against a child victim; and
>
> (b) either —
>
> (i) the child victim expresses concern to the prosecutor that the accused, if not kept in custody, may endanger the safety or welfare of the child victim; or
>
> (ii) a family member of the child victim or a police officer investigating the relevant offence informs the prosecutor that the child victim has expressed that concern;
>
> …
>
> (2) The prosecutor must inform the judicial officer or authorised officer about —
>
> (a) the child victim's expression of concern; and
>
> (b) so far as practicable, the reasons for that concern.

This provision will place an obligation on the prosecutor to inform the judicial officer, or the authorised officer, whoever that might be, about any concerns that have been expressed by the child victim about their safety or their welfare in respect of the accused. That is really important because, as I said, we need to make sure that children are seen, heard and believed in all areas of life, but particularly in relation to allegations of child sexual abuse.

That takes me back to the point I made fairly early in my contribution—that is, the need to puncture the culture of secrecy and silence around child sexual abuse. We can only effectively puncture that silence if we listen to the voices of victims of child sexual abuse. It is not enough to just go through the motions or to introduce legislative reform. We have to, in the process of doing those things—introducing bills like this one—build a culture in which we do not turn away from difficult issues and confronting allegations and offences so that we are not part of the regrettable history in our country, and many other countries, of turning a blind eye to child sexual abuse. Instead, we are going to build a culture in which we do not merely pay lip-service to the concept but we as a society actively seek out and prioritise the views of children who are victims and make allegations of sexual abuse. In that respect, I think it is worth reflecting on the fact that although the work we do in this place is often limited to particular bills, motions and committee inquiries, there is a bigger picture. It is never just about the one bill or one inquiry; it is about the culture that is built and the values that are expressed through the collective body of work. I have to say, this is a government and an Attorney General who are doing a great job over time to put in place the pieces to build a culture that roots out the dark problems in our society, like child sexual abuse and family and domestic violence.

I am very proud to serve as a member on the government benches with an Attorney General like the one we have; he is prolific and reformist.

MR M. HUGHES (Kalamunda) [5.07 pm]: I rise to make a contribution on the Bail Amendment Bill 2022. The Attorney General announced these amendments in December 2020 and made clear that he would give the protection of vulnerable children the utmost priority. I note that comment exercised interest, yet again, in the contribution this afternoon by the member for Moore. He wants to turn our attention to the definition, if you like, of "utmost priority". The member in his contribution failed to provide the complete sentence that the Attorney General made on this legislation in December 2020. The Attorney General said that the amendments would ensure —

> … that the best possible measures are put in place as soon as possible to ensure in future that the vulnerability of child complainants of sexual abuse are considered at each step of the process."

He said "the best possible measures are put in place as soon as possible", but, yet again, as the member for Cockburn said, the opposition is seeking to gain political capital out of the situation rather than acknowledging the importance of ensuring that the amendments contained in this bill will achieve the intended outcome—that is, to put the best possible measures in place to ensure in the future that the vulnerability of child complainants of sexual abuse is considered at each step of the process.

At the outset I want to underscore my support for the amendments. They are a measured response to the set of circumstances that give rise to their framing. I will not go into what gave rise to bringing this important legislation before Parliament. I also wish to comment, on principle, on the importance of proceeding with caution, which the Attorney General demonstrably has done to ensure the framing of this bill meets its intended purposes—that is, preserving an accused person's right to the presumption of innocence until proven guilty and to bail. Bail is a right that needs to be protected. As with sentencing and parole, bail is an issue that is ripe for politicisation, as evidenced by the predictable comments from opposition members, not least Hon Nick Goiran, MLC. Law and order is a predictable fall-back position for the Liberal and National Parties and the far right of both parties at each and every state and federal election. It is not surprising that they have done the same with their criticism of the Attorney General, yet again. They use it to wedge the community, and we can see this in the way they have used the stance in their responses to issues—for example, within the Carnarvon community. They are not looking for solutions; in fact, they have nothing constructive to offer by way of contributing to supporting the community. They encourage others and themselves to use inflammatory language. The member for Cockburn mentioned in his contribution the importance of the opposition members needing to deal with real and serious issues so that the community could take them seriously, yet they are not able to do it.

Although each state and territory has a different structure and expression of the laws governing bail and custodial remand, which is when bail is denied, each jurisdiction, in managing bail, has to balance three at times conflicting goals—firstly, ensuring the integrity and credibility of the justice system; secondly, protecting the community; and, thirdly, safeguarding the best interests of defendants. It can be argued, though, that over the last decade or so, across each of our states and territories, and with the commonwealth, changes to the bail laws have led to a shift away from the primary concern of ensuring that an accused does not abscond to a focus on the second outcome—namely, preventing offending while on bail. This is conceptualised by some law academics as a move from seeing bail as basically a procedural mechanism to a substantive, independent forum in which crime prevention aims are pursued through the rise of risk-based mentalities.

In part, as a result of this pronounced shift, our Australian unsentenced prisoner population has risen to unprecedented levels. Ten years ago, the unsentenced prisoner population was 24 per cent of the total; 10 years later, it is in the region of 32 per cent. Close to one-third of our prison population is made up of accused persons on remand awaiting trial. Apart from the considerable national cost associated with keeping people in custody on remand, which is estimated to be well in excess of $1.5 billion annually, importantly, there are significant human rights concerns relating to this increase in the number of accused persons held in custody on remand. Research shows that in Victoria, 40 per cent of remandees will be either found not guilty or sentenced to a period equal to or less than the time they have already served on remand. Similar research in New South Wales found that 55 per cent of people held on remand were subsequently released without conviction. There is every reason to believe that the situation in Western Australia is not appreciably different. Hidden in this broad statistic is the over-representation of Aboriginal Western Australians making up our prison population, including those on remand.

As we contemplate further tightening our Bail Act—in the circumstances that give rise to this; it is very important that we should proceed with the amendments to the Bail Act—we should remind ourselves at the outset that every accused person is entitled to expect to remain free until their trial and possible conviction. The presumption of innocence is fundamental to our criminal justice system, and it sets us aside from those regimes whereby arbitrary detention and the absence of justice and fairness characterise the way they deal with their citizens. In this regard, the starting point for any debate in the area of enacting restrictive changes to our Bail Act must be that pre-trial

deprivation of liberty prior to conviction be regarded as an extraordinary remedy and be carefully considered. The shadow Attorney General, Hon Nick Goiran, MLC—the unprincipled leader of the discredited and disgraceful Liberal Party faction, "The Clan"—would do well to remember this rather than, yet again, shooting off his mouth in the pursuit of cheap political point scoring.

In our state, an accused's right to have bail considered is set out in section 5 of the Bail Act 1982. The provisions that apply in respect of less serious indictable offences and summary offences are set out in section 6A(2) and (3) of the act. Section 6A states —

> (4) Not releasing an accused is justified if there are reasonable grounds to suspect that if the accused were released —
>
> (a) the accused —
>
> (i) would commit an offence; or
>
> (ii) would continue or repeat an offence with which he or she is charged; or
>
> (iii) would endanger another person's safety or property; or
>
> (iv) would interfere with witnesses or otherwise obstruct the course of justice …
>
> or
>
> (b) the accused's safety would be endangered.

Clause 1 of part C of schedule 1 of the act requires a court, when considering whether to grant or re-use bail for an adult in custody, to determine —

> (a) whether, if the accused is not kept in custody, he may —
>
> (i) fail to appear in court …
>
> (ii) commit an offence; or
>
> (iii) endanger the safety, welfare, or property of any person; or
>
> (iv) interfere with witnesses or otherwise obstruct the course of justice …
>
> (b) whether the accused needs to be held in custody for his own protection;
>
> (c) whether the prosecutor has put forward grounds for opposing the grant of bail;
>
> (d) whether … there are grounds for believing that, if he is not kept in custody, the proper conduct of the trial may be prejudiced;
>
> (e) whether there is any condition which could reasonably be imposed under Part D which would —
>
> (i) sufficiently remove the possibility referred to in paragraphs (a) and (d); or
>
> (ii) obviate the need referred to in paragraph (b); or
>
> (iii) remove the grounds for opposition referred to in paragraph (c);
>
> …
>
> (g) whether the alleged circumstances of the offence or offences amount to wrongdoing of such a serious nature as to make a grant of bail inappropriate.

In common with other jurisdictions, we also have a show-cause provision. In our state, the exceptional circumstances provisions are linked to a range of serious offences requiring the accused to demonstrate why bail should be granted. An extensive list of serious offences is set out in schedule 2 of the act.

As part of my contribution to this debate, not detracting from my support of the amendments contained in this bill, I would like to look at the operation of our Bail Act and the over-representation of Indigenous Western Australians in our prisons as both sentenced and unsentenced prisoners. The shift over the last decade or so in the purpose and use of bail, from an emphasis on the presumption of innocence to a focus on risk and community safety and its increasing use as a crime prevention tool, has made it, I would argue, disproportionately harder for Indigenous people to qualify for bail. Research by the Australian Institute of Criminology—that is, Willis, 2018—supports this conclusion. It states —

> Some defendants may not seek bail because they anticipate that they will not qualify and/or weigh up the fact that they will not need to worry about meeting bail requirements if held in prison on remand … Other factors include the lack of accommodation or bail support programs, while some women indicate

that time in prison provides respite from family violence, drug use and being caught up in their partner's criminal behaviours.

The evidence is clear that the number of sentenced and unsentenced Indigenous prisoners is at very high levels; but the growth in unsentenced prisoners has been marked. What follows is 2018 data from the Australian Bureau of Statistics relating to unsentenced Indigenous prisoners in Western Australia; however, given that our Indigenous prison population has grown by over seven per cent from 2016 to 2021, I would argue, in broad terms, that the statistics are reflective of the current situation in Western Australia. In 2018, Western Australia had the highest rate of Indigenous persons on remand at 1 430 per 100 000 persons—well in excess of any other jurisdiction other than South Australia, where the figure was 1 263 per 100 000 persons. Lorana Bartels, the professor and head of the School of Law and Justice at the University of Canberra, in the article "Bail, risk and law reform: A review of bail and legislation across Australia" observes that the changes that a number of Australia's Parliaments have enacted have predominantly directed the judiciary and the police to become more risk-averse when it comes to bail decision-making.

Although there is evidence of a few non-punitive reforms, overall, bail legislation around Australia has been significantly tightened over the past decade or so. This has happened primarily in response to a number of high-profile cases in which the decision to grant bail was shown, with the benefit of hindsight, to have been the wrong decision. The key tool of these changes has been to require bail authorities to discard the presumption of bail in favour of the presumption against bail, which requires the applicant to show cause why he or she should be granted bail, rather than a police officer or prosecutor having to offer persuasive reasons why bail should be refused. As an example, in Western Australia, in common with a number of other jurisdictions, we have introduced presumption against bail in relation to family violence, along with reform to make it harder to secure bail in situations in which an accused has previously been convicted of sexual offences or has been a member of a criminal organisation. These are all very important measures. Nevertheless, the changes to our Bail Act in respect of lesser offences have, I believe, had the deleterious effect of increasing the number of Indigenous people on remand in our jails.

It is, I believe, important to continue to restate that determining bail is not a question of whether the accused is guilty of committing the crime with which they are charged. Bail has always been, and remains, an exercise in risk-management—the risk originally being the failure to appear in court to answer the charge, or the risk of reoffending while on bail. Some observers would argue that the perceived purpose of bail has changed over the last decade or so to the point at which it has come to symbolise judgement and serve as a proxy for guilt and punishment. It is argued that, because high-profile cases and the consequential general decrease in the appetite for risk have shifted fundamentally, Australian bail practices have moved away from their foundational principles. Bartels and others have observed that we are now at a point at which bail has been said to represent a moment when accusation, guilt and punishment are conflated. When seeking to further tighten our laws regarding bail, we should be mindful of this trend.

I support the Bail Amendment Bill 2022's proportionate and balanced response to the identified need to further protect the safety and welfare of child victims of child sexual offences, along with the victims of domestic violence, and the delivery of the Attorney General's commitment to legislate to ensure that, in these circumstances, as contained in the amendments to the Bail Act within this bill, the best possible measures are put in place to ensure in future that the vulnerability of child complainants of sexual abuse are considered at each step of the judicial process. The member for Cockburn outlined the ways in which the various clauses of the bill will achieve that outcome, so I will not go through them again.

I accept that the issue of bail and remand in custody is not an easy field of policy development. There are many thousands of decisions made by bail authorities that give rise to satisfactory outcomes. Risk assessment is no easy task. As parliamentarians, we have to be careful not to allow the bail system to become a political scapegoat, susceptible to the vicissitudes of newspaper columnists and right-wing commentators, who have all the clarity of vision that myopic hindsight provides.

I will make a few concluding comments. I note WA Labor's comprehensive raft of initiatives related to family and domestic violence, which is in line with the national plan to reduce violence against women and children, and our commitment to and delivery of funding of family and domestic violence programs for women in prison. These are evidenced-based initiatives, and they build on projects that have proven to be successful.

[Member's time extended.]

Mr M. HUGHES: However, a fundamental question for me is the realisation of the ambitious target promised in the 12 key targets that will define the WA Labor government: that being the reduction, by 2029, of the over-representation of Aboriginal people in custody by 23 per cent. This is an ambitious target. Unfortunately, the plan was shelved when the COVID-19 pandemic took hold. When WA Labor came to government in March 2017, the number of Aboriginal and Torres Strait Islander people in full-time custody was 2 482. As at June 2021, the number was 2 664. This

represents a 7.3 per cent increase. From the data available, it is clear that the most significant increase in the Indigenous prison population is for women. We know that more Indigenous people have been in prison before than is the case for non-Indigenous people. We know that Indigenous people tend to serve shorter sentences than non-Indigenous people, and that few of them apply for or receive early release.

University of Western Australia Associate Professor Hilde Tubex calls for greater investment in diversionary options; further investment in family and domestic violence initiatives; more culturally appropriate treatment programs, particularly for women; and, importantly, support for early release and through-care services to break the cycle of reoffending. I hope, given our parliamentary majority in both houses of this Parliament, and the prospect that we can expect further terms in government, that ahead of the 2029 200th anniversary of European settlement in Western Australia and the consequential dislocation, marginalisation and disempowerment of our First Nations peoples, we set about in a rigorous and determined fashion to address Indigenous over-representation in the criminal justice system, including, Attorney General, raising the age of criminal responsibility from 10 years of age.

Juvenile detention is criminogenic; it increases, rather than decreases, the odds of reoffending and can have some serious negative consequences for a child's health, education, and future employment, including a shortened life expectancy. We have heard contributions from the opposition in question time and during today's matter of public interest, attacking what the government is doing in our detention system. The places of detention for juveniles are the places our courts send them. If there is going to be any reform of the ways in which we deal with the issue of juvenile offending, particularly by Indigenous youth, we have to look at the way we are raising children within our community, and the kinds of situations they find themselves in. I understand that there is only so much that governments can do, but we should not be railing against the Minister for Corrective Services on the basis of what might be happening in our detention centres as a result of children being very much hardened by their experiences of our justice system, from a very early age. It is something that we have to attend to.

Both the Australian Medical Association and the Law Council of Australia have called for the age of criminal responsibility to be raised to 14 years. I share that view; we should strive to achieve that outcome. In Western Australia, the imprisonment rate of Indigenous young people between the ages of 10 and 17 years of age is 21 times that of young non-Indigenous Western Australians. We should pause to think about that, but it is perhaps a subject for another debate at another time. I thank you for your indulgence, Acting Speaker. I conclude by reiterating that I support the Bail Amendment Bill 2022 and the proposed amendments to the Bail Act 1982.

MS M.J. HAMMAT (Mirrabooka) [5.29 pm]: I rise to make a contribution to the second reading debate on the Bail Amendment Bill 2022. We have already had a number of good contributions, including your own, Acting Speaker Scaife. I want to do a few things by way of introduction and then make some specific comments.

As many have done before me, I want to acknowledge the work of the Attorney General and the incredible reform agenda that he has implemented across a range of different areas. We have commented before, as bills have come to this place, on how he is creating a significant legacy of legislative achievement, reforming in a way that is very progressive and driven by very Labor values. He is very mindful of creating fairness and a justice system that is available to the people of Western Australia, no matter who they are, where they come from or how much they earn. I want to commend the Attorney General for his work in this area. This bill is another important plank in a significant body of work that I think will be much commented on for many years to come. Although the bill deals with bail in particular circumstances, it should be seen as part of a body of work by this Attorney General that is driving significant change in our legislative framework here in Western Australia.

I also want to commend the Attorney General for the work he has done in finding an appropriate balance. Others have said this before me, but I think it is important to reiterate that this bill will not result in the mandatory denial of bail. That is important because the presumption of innocence is a fundamental tenet of our legal system—something that I and many people in this place hold very dear, and I know the Attorney General is very mindful of those basic principles. This bill will try to find a balance between the presumption of innocence and protecting child victims in particular. I can appreciate that that is not an easy balance to find. I think it is difficult to strike the right balance. The Attorney General noted in his second reading speech that many in the community had called for the mandatory denial of bail in these circumstances, perhaps in a situation of elevated emotion. I think the Attorney General has found a pathway that protects the foundation of our justice system, particularly the presumption of innocence, but is also very mindful of ensuring that child victims are protected by bail deliberations.

I will come to the specifics of the bill towards the end of my contribution. Others have already touched on that. What I really want to speak about is how this bill is part of a broader agenda that is being progressed by this government and, in particular, the work the government is doing to keep our children and young people safe. Others have commented on the substantial body of work arising from the Royal Commission into Institutional Responses to Child Sexual Abuse and how that royal commission was a significant piece of work initiated by the Gillard Labor government in 2013. The commission undertook extensive work; people have commented on that in debates on

other bills in this place. I think it is important to understand the very thorough process that the commission went through to arrive at its recommendations. During the course of its investigations, the commission received nearly 26 000 letters and emails, conducted 8 013 private sessions, took over 42 000 phone calls and referred 2 575 matters to authorities. It undertook a significant amount of work. The final report comprised 17 volumes, two supplementary reports and 409 recommendations, recommending a wide range of things to ensure safeguards for children and young people. The commission's report was released in 2017, and the task since then, for both federal and state governments, has been to turn their minds to the implementation of those recommendations and to take steps to ensure that our young people are protected—particularly, but not only, in institutional settings.

The McGowan Labor government has been undertaking a significant body of work to address those recommendations. This work, which I am very proud of and which we as a government are collectively very proud of, has been undertaken across a range of different areas; it is not just legislative. I want to acknowledge the work of Minister McGurk, Minister for Child Protection; Women's Interests; Prevention of Family and Domestic Violence; Community Services—and other ministers as well—in overseeing the substantial work that has been undertaken to implement the recommendations of the royal commission. One of the things that we have learnt from the work of the royal commission is that it requires a coordinated response across government to ensure that we are taking appropriate steps to implement those recommendations and, importantly, to ensure that young people are kept safe.

In my comments today I will go to the Western Australia government's progress report on its implementation of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, appropriately called *Creating a safer WA for children and young people*. It is important to understand the broader framework that exists. This bill sits within that broader framework and will be an important part of the steps we are taking. The work undertaken by this government is broadly grouped into three categories, one of which is "healing past hurts". The National Redress Scheme, as others have mentioned in their contributions to this debate, is an important part of ensuring that, for victims and survivors of child sexual abuse, there is a process or a scheme that provides redress, counselling and support. Part of our obligation is to address historical events and do what we can to ensure that those past hurts heal.

It is also important that we protect children now, and this is the important piece of work that I want to talk about in a little bit more detail tonight. In the work that we are doing to protect children now, we are making sure that we have appropriate safeguards and an appropriate legislative framework. Members in this place are well aware of some of the work that we have been doing in this space. Indeed, bills have progressed through this house that go to putting in place a legislative framework that will ensure children have appropriate protection in the future. One of those bills, the Children and Community Services Amendment Bill 2021, received royal assent in October last year. People will recall that bill; there were a number of speakers on it. It expanded the mandatory reporting scheme and included new categories of reporting—including, significantly, ministers of religion and other groups as well. It put in place provisions to ensure that those who are in a position to hear of child sexual abuse are required to report it.

The other bill that has recently passed through this house is the Parliamentary Commissioner Amendment (Reportable Conduct) Bill 2021, which was debated earlier this year. Significantly, that bill will legislate for the Ombudsman to provide independent oversight of how important institutions are dealing with their responsibilities to report instances of child sexual abuse. Again, a number of very good contributions were made when that bill came to this place. The work the government is doing in expanding mandatory reporting, making sure that we have appropriate oversight like reportable conduct schemes and supporting the passage of legislation are very important pieces of the jigsaw to make sure that we have appropriate planks in place to ensure that young people and children are safe and protected in our state. That work has been unfolding, but there is more to it. One important piece of work under the broad headline of what we are doing to keep children safe is the implementation of child-friendly complaint processes and making sure that we have opportunities for children and young people to make complaints in a way that makes sense for them. This is a requirement from the Commissioner for Children and Young People, who has developed a self-assessment tool. The Department of Communities had a look at applying that tool and really taking on board the need to make sure we have a complaints process that is accessible to our young people and children so that, in the event they need to raise complaints or issues, they have easy-to-read guides and easy-to-understand communication material. This will enable them to understand the complaints process and raise the things that they are concerned about. It will give our young people a voice in the circumstances in which they need it.

Under this heading, we are also providing access to justice. This is a really important part of the ongoing work that the government is undertaking to ensure that survivors of sexual abuse have access to justice. It is about making sure we embed processes into our systems so that when people make complaints, they feel they have been heard and have received justice. From the work the Royal Commission into Institutional Responses to Child Sexual Abuse undertook, one of the things that came through very strongly was people's sense of not having received justice on occasions when they tried to raise their complaints. They felt unheard and as though they were not taken seriously.

They were not able to pursue fair and just outcomes because they simply did not have the tools available. It is very important that, at every step along the way, we understand and have structures in place that will ensure people are able to seek justice when they feel they have been wronged. Part of that is working with the Western Australia Police Force to ensure that, as the potential first port of call where complaints are made, they have the tools, resources and the understanding to provide safe, supportive and trauma-informed processes for victims and survivors of sexual abuse. When young people are involved, we need to be particularly sensitive and responsive to the needs of those young people. I believe that the first of the resources has been developed to provide guidance for people who are 16 years old and over. This is an important step in ensuring that, at all points along the way, people will have responsive and appropriate support from the various points of call and how the matter is heard and addressed. Putting in place appropriate trauma-informed responses ensures an understanding that coming forward with complaints is often a very difficult step. It needs to be treated in a particular and sensitive way.

I want to come now to the part of our current response that deals with criminal and civil reforms. In this context, the Bail Amendment Bill 2022 is part of a range of things that are happening in this space. It is an important reform that will provide appropriate support for victims of child sex abuse and ensure that they are put at the centre of the decision-making about bail for alleged perpetrators. That is a really important step in ensuring that we deliver support and justice, and an appropriate system for people who have experienced child sexual abuse. Under the broad area of criminal and civil reforms, a number of recommendations arose from the royal commission. They include providing support to vulnerable witnesses and recognising that our justice system is a trail that has many steps on the way. The Bail Amendment Bill is an important part of that but so is providing support to witnesses, many of whom may be vulnerable and may find themselves having to provide difficult and uncomfortable evidence. I know members will be excited to hear about the justice facility dog pilot program that has commenced. It is looking at ways to provide people who are giving evidence with support to do so in a way that is less stressful. I want to particularly mention Winston, a five-year-old black labrador who has been trained by the Guide Dogs of Western Australia to work in the Perth Children's Court. The member for Victoria Park will be pleased to know this. That is just another example of some of the work we are doing across a wide range of fronts to assist in protecting our young people and ensuring they get justice. There are a range of initiatives of which the Bail Amendment Act is one. I am sure that if the Attorney General were to bring Winston the dog here, there would be many more people in the chamber to welcome him and listen to my contribution on the Bail Amendment Bill!

The third thing that the government is doing in this space is implementing a range of strategies that are designed to prevent further harm. This recognises that our work needs to not just provide redress or protect children today, but also ensure we prevent further harm. The government's approach has been well guided by ensuring we take an evidence-based approach and that we are working towards implementing proven strategies that will help victims of child sexual abuse.

[Member's time extended.]

Ms M.J. HAMMAT: I want to commend the work that has been done in the Western Australian government's response to implementing the recommendations of the royal commission. The recommendations are wideranging and many, but the work is very important and I think we all understand that. Many members have reflected on that in their contributions tonight. One of the great hallmarks of this government is having a plan, working diligently to implement that plan, and ensuring that we are not deterred by the complexity of the challenge. In the implementation of the royal commission's recommendations, members can see that work happening across a range of different portfolios, bringing together the work of a range of ministers. Again, I want to congratulate and commend the Attorney General for his work across a broad range of areas, particularly to understand this bill as part of broader body of work that the government is undertaking.

In my comments tonight, I want to briefly acknowledge one of the things that this government is doing to prevent further harm—that is, taking seriously the need to provide protection and support, particularly to children who are in the child protection system. I wanted to take this opportunity to congratulate the ministers involved for the recent announcement that the Home Stretch program would be permanently extended for young people in the child protection system aged 18 to the age of 21 years. The government has committed $37.2 million to achieve this. I think people understand that the age of 18 is very young to be out in the world on your own. Until now, that has been the case for children in the child protection system. They have been required to transition out of that care at the age of 18. As the parent of a 20-year-old who is still at home and contributes little to the house in general, I can relate to the idea, as would many others, that 18 is very young to be out in the world on your own. Many 18-year-olds are still completing school. Not surprisingly, research shows that young people transitioning out of care at the age of 18 are at greater risk of unemployment, homelessness, mental health issues and interactions with the criminal justice system. This announcement and this commitment to protect young people, particularly those in the child protection system, is an excellent initiative and part of an important legacy that this government is creating in response to dealing with young and vulnerable people.

I conclude by turning to some of the elements of the bill, although others have covered it before me and undoubtedly done it far better than me. Not being a lawyer, it is probably a better area for others to talk about. At the heart of this legislation, as I said earlier, is giving victims the opportunity to have a voice in the decisions that are made about bail when people are alleged to have committed child sex offences; and ensuring that proper considerations are in the bill, particularly amendments to serious offences under schedule 2 of the act to ensure that they are included and recognised as being serious offences. I have also talked about deleting the existing definition of "serious offence" from section 6A of the Bail Act, ensuring that a global definition applies. Basically, this will mean that there is no opportunity for certain offences to not be considered serious offences. It is also important that the consideration for certain offences to be included ensures that appropriate regard is had to the person who is seeking bail and that it is an informed decision in relation to not just what the offender is alleged to have done, but also other issues.

In bringing my comments to a conclusion, I wish to reiterate that this is another example of a bill—we have had a number—that perhaps look more technical and less far ranging but it is really important to see both this bill and many of the others we have dealt with as part of a significant and substantial legacy. As I said at the outset of my comments, I think the Attorney General is doing incredibly important and valuable work to undertake very progressive reform of our legislative system. He is a very energetic minister who is doing really important work to ensure that this state has a legal system with strong foundations and the opportunity for all people to access justice in the true and proper meaning of the word, regardless of who they are and where they come from, and to strike that fair and right balance between protecting victims and protecting those in the justice system. I conclude my comments and commend the bill to the house.

MS H.M. BEAZLEY (Victoria Park) [5.54 pm]: I am pleased to rise today to speak to the government's Bail Amendment Bill 2022—or perhaps "relieved" would be a better verb. As the Attorney General said when he read this bill for the second time in this place, the McGowan government committed almost two years ago to examine the operation of the Bail Act 1982 and identify ways to better respond to bail applications for adults accused of sexual offences against children. We recognise the traumatic effects that the release on bail of alleged abusers can have on their victims. We believe it is critical that we emphasise the importance of and seek to mitigate this trauma whenever we can. This is especially the case when the victim is a child. That is what the Bail Amendment Bill 2022 seeks to achieve. Thank you, Attorney General. These points summed up the intent of the bill perfectly. I also thank you for your incredible work in getting this bill drafted and to this place.

This bill has been over a year in drafting as the government consulted and sought to get the balance right. I believe this balance has been struck and been struck well. The result has kept the safety and care of child victims of child sexual abuse paramount. The proposed reforms will ensure that child victims are at the centre of decisions around bail. Under this bill, new bail considerations will ensure that concerns specific to child victims of alleged sexual offences are front of mind for all of those bail decision-makers. Those considerations include having regard to the conduct of the accused towards the alleged victim and their family since the time of the alleged offence. This will allow a bail decision-maker to determine whether there is a pattern of behaviour, such as grooming, controlling or coercive conduct, which anyone who has any exposure to offences regarding child sexual abuse know are very common threads to that offence. This consideration will be further extended to include the alleged offender's conduct towards victims and family members of victims of offences that they have been convicted of in the past—again, to examine the accused's behaviour and assist in the development of a risk profile to inform the decision as to whether they should be released on bail.

In addition, the Bail Amendment Bill 2022 provides for a bail decision to be deferred for up to 30 days. This will allow a bail decision-maker to consider what, if any, bail conditions should be imposed to enhance the protection of a child victim of an alleged sexual offence. Under this amendment, it is important to note that bail decisions will be able to be made by both judicial officers and authorised officers. Commonly, authorised officers are police officers. Currently, when a police officer may be required to consider bail, they may not have comprehensive information before them—information most reasonable people would consider necessary for such a decision to be made. This includes matters such as the child victim's physical and emotional wellbeing or detailed information about their living arrangements. Under the Bail Amendment Bill, the bail decision-maker's ability to defer consideration for up to 30 days allows them to gather and consider this information and have that information —

The ACTING SPEAKER (Mrs L.A. Munday): Could everyone please bear in mind that the member for Victoria Park is trying to make a speech here. If we could all just give her some energy and time.

Ms H.M. BEAZLEY: Thank you, Madam Acting Speaker.

Under the Bail Amendment Bill, the bail decision-maker's ability to defer consideration of bail for up to 30 days allows them to gather and consider this information and have that information inform their decision, regarding what, if any, bail conditions should be imposed. This ability to defer consideration of bail does not limit an accused's right to be brought before a court as soon as practicable.

The Bail Amendment Bill also requires a prosecutor to inform a bail decision-maker of any safety or welfare concerns expressed by the child victim in relation to the release of the accused and the reason for those concerns. Under this bill, the bail decision-maker will be required to have regard to those concerns when determining bail. In other words, the concerns of child victims cannot be ignored when making a decision regarding an alleged offender's possible bail and its conditions. This express provision will elevate the voices of child victims. That is important because their safety will be considered when bail decisions are made. It also asserts to these child victims that their voices matter throughout the justice process—that their voices matter now and will always matter. This can go quite some way in their path of recovery, as being a victim of a sexual offence is indisputably a trauma.

In addition to the voice of the child victim, the voices of the victim's family member or a police officer investigating the offence will also be counted. These voices can also inform the prosecutor that the victim has expressed a concern about their safety and welfare if the accused is not kept in custody, and the prosecutor must then inform the bail decision-maker of that concern and the reasons for it. Again, the bail decision-maker must have regard to that consideration and that information. The voices and concerns of the child victim and those who care for them cannot be ignored.

The introduction of these new bail considerations will ensure that concerns specific to child victims of alleged sexual offences are front of mind for bail decision-makers. Proposed clause 3AA in the Bail Amendment Bill 2022 will also ensure that when a bail decision-maker is making bail decisions for an alleged offender of a sexual offence against a child victim, that decision-maker must have regard to the age of the child victim; the age of the accused; whether the child victim is in a family relationship with the accused, which is all too common; the importance of safety, continuity, security and stability in a child victim's living arrangements and family and community relationships; and the physical and emotional wellbeing of the child victim.

The Bail Amendment Bill 2022 will also require the court to consider whether a person has been convicted of an offence, together with any sentence that is likely to be imposed, when determining bail for an accused when awaiting sentencing. Very importantly to my mind, this bill will also expand the list of serious offences under the Bail Act 1982 to include sexual offences against children and several other offences in the Western Australian and commonwealth statute book. The bill seeks to delete the definition of "serious offence" currently in the Bail Act. Currently, "serious offence" is defined as an indictable offence that attracts a penalty of imprisonment of five years or more. However, some child sexual offences can attract penalties of less than five years' imprisonment, such as indecent dealing with a child over 13 and under 16 years of age. Let me say that again, as I am sure there are members of this place, and definitely members of our community, who would be surprised and disturbed to know that some child sexual offences, such as indecent dealing with a child over 13 and under 16 years of age, are not currently considered a serious offence. I believe such offences are very much serious. The proposed amendments in the bill before us reflect this fact.

This bill will indeed get the right balance between the rights of alleged child victims and alleged sexual offenders. Both those parties have rights. This bill will keep child safety paramount, but will not diminish the rights of the alleged offender. It will not erode the presumption of innocence. As the member for Cockburn has stated, the very notion and existence of bail reflects this presumption. What this bill will do is elevate the voices of alleged victims. It will give them a voice in this critical step of the justice process that they did not have before and should not be denied.

I also cannot emphasise enough the traumatic effect of sexual offences on child victims. Those effects are lifelong. At the beginning of this lifelong journey of recovery is the justice process. In this place in the consideration of this bill, we must recognise the traumatic effect that the release on bail of alleged abusers can have on their victims. As the Attorney General has said, it is critical that we emphasise the importance of and seek to mitigate that trauma wherever we can. These reforms seek to go as far as possible to ensure that the vulnerability of child complainants of sexual abuse remains front and centre at each step of the bail decision-making process, without undermining the precepts of our justice system. The value of elevating the voice of child victims to ensure that their voices, the voices of their family and the voices of those investigating these alleged crimes are heard cannot be underestimated.

As I have mentioned, the reforms within this bill can go some way towards the healing process for child victims, because as we elevate the child victim's voice, we also help elevate them from being a child victim to being a child victim–survivor. I believe that this Bail Amendment Bill 2022 will go some way towards ensuring that child victims, and child victim–survivors, are our priority and remain so. I wholeheartedly congratulate the Attorney General on the development and presentation of this meaningful legislation and commend the Bail Amendment Bill 2022 to the house.

MS C.M. ROWE (Belmont) [6.05 pm]: I, too, wish to make a contribution tonight to the debate on the Bail Amendment Bill 2022, as many of my colleagues have already done. We are privileged in this place that many of our members on the government bench were formerly lawyers, and they have gone through in great detail how this bill will be

enacted. Therefore, I do not think it is necessary for me to go into exorbitant detail on the ins and outs of the bill, but I will touch more broadly on some of the proposed reforms and why they have come about.

I wish to begin by taking the opportunity to acknowledge the Attorney General for again bringing another important bill to this place, and one that deals with a matter that I am very passionate about, that being, of course, protecting children, particularly vulnerable children who have been the victim of child sexual abuse.

As many members will be aware, this bill is in response to the terribly tragic death in October 2020 of a child who was aged only 11. At the heart of this bill, it seeks to elevate the voices of children who have been the victim of sexual abuse when considering the granting of bail. All these reforms are geared towards ensuring that child victims of sexual abuse are protected to the utmost when bail applications are considered.

Without getting into the detail of the bill, I would like to highlight some of the examples that were given in volume 3 of the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse. I want to talk about the importance of considering child victims of sexual abuse, because it is very clear when we look at the findings in this report how impactful it is for children who are survivors and how some of these children struggle immensely and in a profound way for the remainder of their lives. I would like to share with the house some of the information contained in the final report. I am quoting directly from the royal commission. The opening comment on page 9, under the heading "Summary", states —

> As a victim, I can tell you the memories, sense of guilt, shame and anger live with you every day. It destroys your faith in people, your will to achieve, to love, and one's ability to cope with normal everyday living.

Further down that page, it states —

> In private sessions and public hearings, we heard many stories of profound and wide-ranging impacts on the lives of victims, in both their childhood and throughout their adult lives.

That is partly why I was moved to make a contribution tonight. We are not talking just about something that happens in ordinary childhood. We talk a lot these days about children being more resilient and learning to go with the rough and tumbles of life. This is a completely extraordinary experience that has far-reaching and devastating impacts in many instances. When we are dealing with a bill that seeks to enhance and strengthen powers to protect really vulnerable children, I cannot speak more highly of such reforms.

I would like to again refer to the final report from the royal commission. It states that child sexual abuse can affect many areas of a person's life. That includes their mental health; interpersonal relationships; physical health; sexual identity, gender identity and sexual behaviour; connection to culture; spirituality and religious involvement; interactions with society; and education, employment and economic security.

I quote again —

> For some victims, child sexual abuse results in them taking their own lives.

There could not be anything more dramatic and more tragic than that. I continue to quote —

> The impacts of child sexual abuse most commonly described in research and in our private sessions and public hearings were mental health impacts. Of the survivors who provided information in private sessions about the impacts of being sexually abused, 94.9 per cent told us about mental health impacts. These impacts included depression, anxiety and post-traumatic stress disorder … other symptoms of mental distress such as nightmares and sleeping difficulties; and emotional issues such as feelings of shame, guilt and low self-esteem. Notably, mental health issues were often described as occurring simultaneously, rather than as isolated problems or disorders.

I think the other element that was incredibly disturbing to read not only in news articles but also throughout this report is how oftentimes the profound impact on that person becomes intergenerational trauma. That is incredibly sad. The report refers to how it has ripple effects and found that it can have intergenerational impacts. It can have effects on family life, the ability of families to remain together and, of course, communities; particularly in remote Indigenous communities, these types of events can have huge impacts on the community as a whole. Again referencing the royal commission report, I quote —

> Part of the explanation for the profound and broad-ranging impacts of child sexual abuse lies in the detrimental impacts that trauma can have on the biological, social and psychological development of a child. Child sexual abuse can result in profound trauma, affecting the chemistry, structure and function of the developing brain and potentially interrupting normal psychosocial development at every critical stage of a child's formative years.

When we are faced with those findings and that information, right here in this report, it is patently clear that we need such measures in place and enshrined in our legislation to take every step and look at every measure that we

can implement to protect children who are victims of alleged sexual abuse. I would just like to quote again. One victim said —

> As a victim, I can tell you the memories, sense of guilt, shame and anger live with you every day. It destroys your faith in people …

Beg your pardon; I think I have already read this one. He continues —

> It has [been] and is an enormous struggle to stay on top of life.

What really struck with me from that quote is those ongoing and pervasive and really strong and powerful emotions of shame that stay with people and that interrupt and interfere with their ability to have functioning lives. It is truly devastating for them. I again quote —

> For many people, these impacts are interconnected in complex ways …

I will quote one of the victims —

> It's not like you can isolate it like – just one organ; not like you've just got kidney damage but your liver is working fine. It's like every part of your person is affected by that [abuse], so it's really difficult to separate out. It's almost impossible to know what could have been if it hadn't been for the trauma, because every part of your being has been affected by it.

I really wanted to highlight those really important comments that are contained within the royal commission's findings in its final report because I think that it is demonstrative of the need for this reform. As I said previously, I wholeheartedly support it and absolutely commend the work of the Attorney General on bringing yet again another important bill to the house. I think it is a serious bill and I absolutely support it, so thank you very much, Attorney.

MR J.R. QUIGLEY (Butler — Attorney General) [6.15 pm] — in reply: I rise to thank members for their contributions on the Bail Amendment Bill 2022 and to comment on some of those contributions. I will start with the member for Moore and note that the opposition will not oppose this bill. He said he took the opportunity to raise certain points and in raising some of those points, referenced answers given to the shadow Attorney General during the consultation process. The member for Moore suggested that nothing had happened on this bill to get it introduced. Of course, this is a hopelessly misleading statement. In the next breath, the member for Moore read out a list of people who were consulted during the preparation of this bill, and they included the heads of each jurisdiction, the Magistrates' Society of Western Australia, the State Solicitor's Office, the Director of Public Prosecutions, Legal Aid of Western Australia, the Commissioner for Victims of Crime and the Aboriginal Legal Service of Western Australia. All this required time to consult, revise, rework and re-instruct Parliamentary Counsel.

We also consulted the authorities in the Northern Territory because the bill includes proposed clauses 3AA and 3AB, which are modelled on sections 24 of its Bail Act. The advisers undertook consultation at officer level with their Northern Territory counterparts and for advice on how the Northern Territory provision is operating in practice. This does not happen quickly. There are elections in other jurisdictions with a change of officers. The advice coming out of the Northern Territory was that the provisions were operating without any identified issues and had been raised by prosecutors opposing bail and the Supreme Court of its own accord. I will come back to this later when I am addressing the remarks of the member for Cockburn.

As I mentioned earlier, an amendment will be moved later, in the consideration in detail stage. It will essentially deal with including new offences in the schedule of soliciting girls for prostitution or soliciting them in public. Before we move to that table, as I said, I propose to introduce two new offences in schedule 2 of the Bail Act, being sections 5 and 6 of the Prostitution Act. Both those offences deal with prostitution involving children and were identified by advisers as suitable for inclusion in the bill during preparation for the debate. I hope that the house and the opposition will support the amendments that stand in my name.

There has been some sad commentary on this bill by the shadow Attorney General—we know what he is like. Hon Nick Goiran is very unreliable and is a friend and supporter of Mr Palmer. In his press release, which was referred to by the member for Cockburn, Hon Nick Goiran said —

> It is difficult to avoid the conclusion that had the Attorney General resisted being embroiled in the pointless ego game between the Premier and a billionaire, he would not only have avoided a finding of unreliability, but he would have had the time to consult with stakeholders and deliver sweeping reform —

Of course, he would say that in relation to this bill, because he is a friend of Mr Palmer. We all remember it was Hon Nick Goiran who sought to delay the passage of the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill and further endanger the state of Western Australia being liable for a claim of $30 billion. Hon Nick Goiran sees the Premier of Western Australia resisting Mr Palmer's outrageous claim on this state as an ego game and attributes this in some way to non-consultation on the bill. It is an appalling performance by

Hon Nick Goiran—absolutely appalling. He knows there were extensive stakeholder consultations—absolutely extensive. I will go through the list again. There was consultation with the court and tribunal services division of the Department of Justice. There was consultation with each of the heads of jurisdiction, being the Chief Justice of the Supreme Court, the Chief Judge of the District Court, the Chief Magistrate and the President of the Children's Court. There was consultation with the Magistrates Society. There was consultation with the State Solicitor's Office, which appears on so many matters for the state. There was consultation with the Commissioner for Victims of Crime. There was consultation with the Department of the Premier and Cabinet. There was consultation with the Director of Public Prosecutions. There was extensive consultation with the Western Australia Police Force; consultation with the Legal Aid Commission of Western Australia; consultation with the Northern Territory Department of the Attorney-General and Justice, as previously mentioned; and consultation with the Aboriginal Legal Service of Western Australia. But the shadow Attorney General, being far less than honest and very much the hypocrite, says if I had not been involved with the Premier in resisting Mr Palmer's claim for $30 billion against the state taxpayers of Western Australia, I would have had the time to consult. He shreds his own credibility—the little that he has amongst his fellows in "The Clan" and members of the "Black Hand Gang" who have been identified as corrupt and are on charges. He shredded the morsel of credibility he had, even amongst that discredited group.

He said that "sweeping changes were promised"—and sweeping changes are delivered. But someone of Hon Nick Goiran's somewhat limited vision would think sweeping changes involved tomes of legislation—pages and pages. Sweeping changes can be effected by economic clauses, well drafted and well thought through; and they were and have been as will be demonstrated in consideration in detail. For example, we can see in the bill six pages of amending clauses inserted by clauses 4 through to 9. I will hold up the blue bill for the chamber. What we will strike out in schedule 1, part C, clause 3A, is about half a page in length and simply states —

> … the judicial officer or authorised officer shall have regard to the following matters, as well as to any others which he considers relevant —
>
> (a) the nature and seriousness of the offence or offences (including any other offence or offences for which he is awaiting trial) and the probable method of dealing with the accused for it or them, if he is convicted; and
>
> (b) the character, previous convictions, antecedents, associations, home environment, background, place of residence, and financial position of the accused; and
>
> (c) the history of any previous grants of bail to him; and
>
> (d) the strength of the evidence against him.

That has been replaced by what is now in new clauses 3, 3AA and 3AB. We will deal with these in detail, but they are significant and far reaching. In addition to the requirements of the clause I have read out, new clause 3AB deals specifically in the cases of sexual offences against child victims in circumstances in which the accused is himself or herself not a child. Proposed clause 3AA(2) reads —

> In considering … whether the accused, if not kept in custody, may endanger the safety or welfare of the child victim, the judicial officer or authorised officer must have regard to matters mentioned in subclause (3).

None of this is mentioned in the clause I read out before.

Hon Nick Goiran is most disingenuous in his assertions in his press release and in the notes that he has handed to the hapless member for Moore to read in this chamber. Proposed clause 3AA(3) sets out the matters that are to be considered by the court or the authorised officer —

> (a) the age of the child victim;
>
> (b) the age of the accused;
>
> (c) whether the child victim is in a family relationship with the accused;
>
> (d) the living arrangements of the child victim and of the accused;
>
> (e) the importance of safety, continuity, security and stability in the child victim's —
>
> (i) living arrangements; and
>
> (ii) family and community relationships;
>
> (f) the physical and emotional wellbeing of the child victim.

This is all new. It will be mandated that the court or the authorised officer must take these matters into account. Hon Nick Goiran in his disingenuous press release and in the silly notes he must have passed to the member for Moore mentions none of this.

Then we come to proposed clause 3AB, which states —

(1) This clause applies if —

(a) a relevant offence is a sexual offence against a child victim; and —

The conjunctive —

(b) either —

(i) the child victim expresses concern to the prosecutor that the accused, if not kept in custody, may endanger the safety or welfare of the child victim; or

(ii) a family member of the child victim or a police officer investigating the relevant offence informs the prosecutor that the child victim has expressed that concern;

They will have to do that now. They will have to give the child's anxiety and concerns voice during the bail consideration.

Proposed clause 3AB(2), which will be mandatory, states —

The prosecutor must —

Under the Interpretation Act, that is mandatory —

inform the judicial officer or authorised officer about —

(a) the child victim's expression of concern; and

(b) so far as practicable, the reasons for that concern.

Proposed clause 3AB to be inserted concludes —

(3) In considering under clause 1(a)(iii) whether the accused, if not kept in custody, may endanger the safety or welfare of the child victim, the judicial officer or authorised officer must have regard to that information.

They must have regard. The genesis of this chamber's and this government's concern was when a child victim seriously self-harmed because she was afraid that the perpetrator who had been admitted to bail lived in the same town. None of her concerns were put before the court. As I said before, this is a really significant change by giving a statutory mandate to child victims. If during an interview with child protection officers or police they disclose or voice concerns, it will be mandated that those concerns have to be put before the court. The hapless Hon Nick Goiran would have it that these reforms are underwhelming. "Underwhelming" is the word he used. He does not put any value on or have any concern for the voice of the child victim. He said this legislation is nothing and it will not do much more than codify the existing practice. Nothing could be more misleading than the statement by Hon Nick Goiran of the other place. It was deliberately misleading. When Liberal Party members were in government, they did not do anything like this. They did not reform like this. All they can say is that this legislation does not require mandatory denial of bail when there is a child victim. Members on the government side of the chamber, including the members for Cockburn, Kalamunda, Victoria Park, Mount Lawley and others, have all spoken to the presumption of innocence—that golden thread that runs through our nation's criminal law that a person is presumed to be innocent until proven guilty beyond reasonable doubt. There must be a balance. In the time between when the person is charged and faces trial, during which the presumption of innocence runs, what happens to the person? We are opposed to mandatory denial of bail because we do not know all the circumstances. We do not know whether the child is concerned, or whether it is a situation of pending danger. We have introduced into this Parliament a bill that will mandate that the court or the authorised officer is told of the child's concerns. The provision introduced by proposed clause 3AA will mandate —

… if not kept in custody, may endanger the safety or welfare of the child victim, the judicial officer or authorised officer must have regard to the matters mentioned in subclause (3).

Proposed subclause (3) adds that the court must have regard to certain matters. In the case referred to, there is no evidence that regard was given to any of these matters —

(a) the age of the child victim;

(b) the age of the accused —

There was a disparity of 40 or 50 years in that case —

(c) whether the child victim is in a family relationship with the accused;

(d) the living arrangements of the child victim and of the accused;

(e) the importance of safety, continuity, security and stability in the child victim's —

(i) living arrangements; and

(ii) family and community relationships;

(f) the physical and emotional wellbeing of the child victim.

Those mandated criteria are new to the legislation. Hon Nick Goiran in his desire to attack this government in a way that is dishonest has, himself, no regard to those matters set out in the bill—no regard at a personal level. He puts politics above the welfare of and consideration for the young victim's family. I say that because he named the child victim in his press release. That caused our office to contact Hon Nick Goiran to point out that there was a suppression order. It was not a widely published suppression order, so he might not have known about it, but we pointed out the suppression order. The court said that this child is not to be named. But anyone can print out the press release from the Liberal Party's website now, so the shadow Attorney General remains in wilful contempt of the court.

Mr D.A.E. Scaife: And so is the Liberal Party—the whole Liberal Party.

Mr J.R. QUIGLEY: The whole Liberal Party is in contempt of the court. Those members can no longer put their hand on the banner of law and order; they dropped that years ago. The Liberal Party remains, as of today, knowingly in contempt of the District Court. The court could understand a mention of a person's name when they had no notice of a suppression order, but the Liberal Party was given specific notice of it. Having received specific notice of it, the member then put out a press release drawing back the name, but keeping it on the website, and the Liberal Party keeps it on the website. That is a deliberate contempt. That is not a contempt done by mistake or in ignorance. They do not care about the welfare of the child's family. They do not care about the welfare of the child victim's siblings. All they care about is trying to attack this government when it is doing its best to protect child victims.

We are doing good with this bill, and I know we are doing good because of the feedback that we have had from none other than the Chief Justice, the Chief Judge, the Chief Magistrate and the President of the Children's Court. We know that we are on track. We know that we are doing good, but all that Hon Nick Goiran does—I must confess that I have trouble with the honorific, but I realise that a rule of this chamber is that I must address him as "Hon Nick Goiran"—is to deliberately keep his party in contempt of the court. He remains in contempt, having been put on notice of the suppression order to protect the family. He does not care a whit! He has been told about this, but he does not care a whit. He then has the hypocrisy to put out statements with headings such as "Unreliable Attorney General's Bail Bill fails victims" because I made a mistake in giving evidence about when I found out about something—whether it was on the twelfth or the eleventh—and the judge said, "Well, he's unreliable because he said the twelfth and he had to come back and say the eleventh." The judge described that as, whilst unreliable, a storm in a teacup! It had no bearing on the case or the litigation at all. It was not like the mistake that was made in the chamber by the member for Moore earlier today, which was pointed out by the Premier.

Mr R.S. Love: I've actually checked the *Hansard*, so I think the Premier's response wasn't right in what he said. But, anyway!

Mr J.R. QUIGLEY: Sorry, I missed that under your mask, member for Moore.

Mr R.S. Love: I took my mask off to speak, but I actually did check the *Hansard* from that contribution, and I did not say what the Premier said I said.

Mr J.R. QUIGLEY: Yes, you did! We will check that again, and during consideration in detail, we will find out whether you have made a further mistake, and the pressure for you to resign your position will become all the more imperative!

Mr P. Papalia: Or whether you changed the *Hansard* from what you actually said!

Mr J.R. QUIGLEY: We will listen to the tape.

We digress a little. As the member said, he will leave it to Hon Nick Goiran to carry the weight of the criticism of this bill in the other place. As I am pointing out, Hon Nick Goiran's criticisms have so far been disreputable and dishonest. He has maintained his contemptuous behaviour by keeping on his and the Liberal Party's websites that which the court says is to be suppressed—they publish it to the world. I can understand if someone does not "know" about a suppression order and innocently, and without intent to break it, mentions a name. That is one thing. But to have notice of the suppression order and then wilfully proceed in the way that Hon Nick Goiran has proceeded is dangerous to our community—dangerous! Can members imagine him as the Attorney General—a danger!

Mr R.S. Love: Can I ask when you gave notice of that suppression order? When did you give him notice that that suppression order was there?

Mr J.R. QUIGLEY: As soon as we saw this!

Mr R.S. Love: What date was that?

Mr J.R. QUIGLEY: If the Deputy Leader of the Opposition asks me about that tomorrow, I will give him the exact date, okay? I will bring in the email. We are not here to try him—yet! It will be a matter of reference, knowing that the Liberal Party still publishes this victim's name. Of course the Director of Public Prosecutions will have to look at that conduct. Of course they do! It is not just his misleading statements about this bill; it is his very conduct.

Another matter that reveals Hon Nick Goiran's problematic, if not utterly disingenuous, behaviour is when he said in his press release that the bill will not do much. I draw the chamber's attention to the amendment to schedule 1, part C, clause 4, which for the first time will put in the act —

> (1) Subject to clauses 3A, 3C, 3D, 3E and 3F, the grant or refusal of bail to an accused, other than a child, who is in custody waiting to be sentenced or otherwise dealt with for an offence of which the accused has been convicted shall be at the discretion of the judicial officer in whom jurisdiction is vested, and that discretion —

We were going to add —

> shall be exercised having regard to the questions set out in clause 1 as well as to any others which the judicial officer considers relevant.

However, we have taken that out and will instead insert —

> … having regard to … the following —
>
> (a) the fact that the accused has been convicted of the offence —

If he is a convicted person, the presumption stops —

> (b) the probable method of dealing with the accused for that offence and for any pending offence;
>
> (c) the questions set out in clause 1;
>
> (d) any other considerations that the judicial officer considers relevant.

This pertains to those offenders who have already been convicted. This wording was not in the Bail Act. I can remember some infamous cases. I am just trying to think of the accused's name, who had been granted bail, pending sentence, and did a runner. He had been convicted of the offence and would inevitably end up with a term of imprisonment, but between conviction and the striking of the sentence, he was granted bail and then did a runner, and the police and the community were put to the expense of chasing him down. The member for Moore said that in this chamber, the bill will be supported; I do not know what will happen in the other place. I expect that it will be supported by a majority, but not by Hon Nick Goiran, who virtually is saying that this bill is smoke and mirrors and does not achieve anything.

A lot of work has gone into striking a balance, just as a lot of work went into the Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2020, when the friend of Clive Palmer, Hon Nick Goiran, did everything he could to try to stop the passage of that bill in time to defeat the arbitration by moving it off to a committee inquiry to attempt to slow it down to keep the window of opportunity open to Mr Palmer to lift $30 billion out of Western Australian coffers. All Hon Nick Goiran said is that if the Attorney had not been involved with the Premier in resisting this, he would have had time to confer with stakeholders. Hon Nick Goiran knew before he constructed this deceitful press release that we had consulted with stakeholders, including himself. We know that because the member for Moore in his address to the chamber—I have already thanked the member for indicating the opposition is supporting the bill—read responses provided to the shadow Attorney General. He said that the consultation included heads of jurisdiction, the Magistrates Society of Western Australia, the State Solicitor's Office, the Director of Public Prosecutions, Legal Aid Western Australia, the Commissioner for Victims of Crime and the Aboriginal Legal Service. The member for Moore read all that from a response given to the shadow Attorney General. When Hon Nick Goiran constructed this deceitful press release, he already knew. We know that beyond a reasonable doubt because the member for Moore gave him up by reading the responses of the people who had been consulted. That is scandalous. What Hon Nick Goiran put in this press release is scandalous. Not only is he deceitful to the public of Western Australia when he says the Attorney General would have had the time to consult stakeholders and deliver sweeping reform as a priority, he knew we had, but he wanted to deceive the public of Western Australia by saying that this bill had been constructed by the McGowan Labor government without consulting people—the stakeholders, the courts, the prosecution service and legal aid. He did not want the public to know that. He was just deceitful. It is scandalous.

He has kept on the Liberal Party website, in contravention of the suppression order of which he has full knowledge, the victim's name. How more contemptuous of a court, of an independent court, could a member of this Parliament be, to act in wilful contempt of the order? How responsible is the Liberal Party in maintaining that there when it

knows about the suppression order from the shadow Attorney General? Moreover, the shadow Attorney General knows that we have considerably added to schedule 2 of the Bail Act to include offences that have not been in schedule 2 before, being the "Occupier or owner allowing a young person on the premises for unlawful carnal knowledge" and "facilitating sexual offences against a child outside WA". There are about 33 more—I might have counted them wrong; it might be 30 or it might be 33—new offences in schedule 2 that the court must take into account because of our legislation when considering an application for bail in a child sex offence.

The other thing I want to say is that it is all well and good for the opposition to say that this does not do much more than codify the law as it is already, but the bill sets out what a court or authorised officer must take into account. I have gone through that already; however, I want to address the concept of "authorised officer". Although magistrates are legally trained and might read this, the authorised officer is a sergeant or above in charge of a lock-up. We have no expectation that sergeants will be across all case law and across all considerations, so we have codified it for them and what they must—not "shall"—take into account, because these authorised officers can also grant bail. If they refuse to grant bail, they will have to bring them before the court at the first available opportunity. When a person is arrested by a detective or police officer for a child sex offence and they come before the sergeant, the Bail Act mandates the criteria that must be taken into account, including finding out from the officers and interviewing officers whether the child has any concerns, fear or apprehension for his or her safety.

We will deal with more of this tomorrow during consideration in detail, when members will perhaps get an opportunity to deal with more of the Liberal Party's contempt and the contempt with which the shadow Attorney General holds orders of the District Court. We totally disregard the disreputable shadow Attorney General's criticisms. The contemptuous criticisms will be disregarded. May it please you, Madam Acting Speaker.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

House adjourned at 6.58 pm