

**HIGH RISK OFFENDERS BILL 2019**

*Returned*

Bill returned from the Council with amendments.

*Council's Amendments — Consideration in Detail*

The amendments made by the Council were as follows —

No 1

Clause 1, page 2, line 3 — To delete “*High Risk Offenders Act 2019*” and substitute —  
*High Risk Serious Offenders Act 2019*

No 2

Clause 2, page 2, after line 7 — to insert —  
(ab) section 90A — on the day after that day;

No 3

Clause 2, page 2, after line 9 — To insert —  
(2) However —  
(a) if no day is fixed under subsection (1)(b) before the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent, this Act is repealed on the day after that period ends; or  
(b) if paragraph (a) does not apply, and a provision of this Act does not come into operation before the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent, the provision is repealed on the day after that period ends.

No 4

Clause 3, page 2, line 12 — To delete “(Sexual and Violent)” and substitute —  
Serious

No 5

Clause 3, page 2, line 26 — To delete “*high risk offender*” and substitute —  
*high risk serious offender*

No 6

Clause 6, page 6, line 26 — To insert after “found” —  
not

No 7

Clause 7, page 6, line 30 — To delete “*high risk offender*” and substitute —  
*high risk serious offender*

No 8

Clause 8, page 8, line 11 — To delete “*persons of a particular class*” and substitute —  
*high risk serious offenders*

No 9

Clause 8, page 8, line 15 — To delete “*persons of a particular class*” and substitute —  
*high risk serious offenders*

No 10

Clause 14, page 11, line 1 — To delete “(Sexual and Violent)” and substitute —  
Serious

No 11

Clause 14, page 11, line 5 — To delete “(Sexual and Violent)” and substitute —  
Serious

No 12

Clause 33, page 25, lines 18 to 20 — To delete the lines and substitute —

- (3) A person must not without reasonable excuse remove, or interfere with, or interfere with the operation of, an electronic monitoring device required to be worn or installed under section 31(3) in such a way as to prevent or impede monitoring of the offender's location.

No 13

Clause 33, page 25, line 22 — To delete “If” and substitute —  
Except as provided in subsection (4A), if

No 14

Clause 33, page 25, after line 28 — To insert —

- (4A) If a term of imprisonment of at least 12 months would be clearly unjust given the circumstances of the offence and the person, the court may decide —
- (a) to sentence the person to a term of imprisonment of less than 12 months; or
  - (b) not to sentence the person to a term of imprisonment.

No 15

Clause 46, page 34, line 26 — To insert after “high risk” —  
serious

No 16

Clause 48, page 36, line 9 — To insert after “high risk” —  
serious

No 17

Clause 62, page 44, line 21 — To delete “may” and substitute —  
must

No 18

Clause 62, page 44, line 26 — To delete the line and substitute —

- (b) that is withdrawn; or
- (c) to the extent that it contains material not relating to the need to ensure adequate protection of the victim.

No 19

Clause 68, page 46, line 28 — To insert after “high risk” —  
serious

No 20

Clause 68, page 47, line 1 — To insert after “high risk” —  
serious

No 21

Clause 80, page 54, line 16 — To delete “If” and substitute —  
Except as provided in subsection (2A), if

No 22

Clause 80, page 54, after line 22 — To insert —

- (2A) If a term of imprisonment of at least 12 months would be clearly unjust given the circumstances of the offence and the person, the court may decide —
- (a) to sentence the person to a term of imprisonment of less than 12 months; or
  - (b) not to sentence the person to a term of imprisonment.

No 23

New Clause 90A, page 60, after line 24 — To insert —

**90A Review of this Act**

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review —
- (a) as soon as practicable after the 5<sup>th</sup> anniversary of the day on which this section comes into operation; and

- (b) after that, at intervals of not more than 5 years.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5<sup>th</sup> anniversary or the expiry of the period of 5 years, as the case may be.
- (3) The Minister must transmit a copy of the report to the Clerk of a House of Parliament if —
  - (a) the report has been prepared; and
  - (b) the Minister is of the opinion that the House will not sit during the period of 21 days after the finalisation of the report.
- (4) A copy of the report transmitted to the Clerk of a House is taken to have been laid before that House.
- (5) The laying of a copy of a report that is taken to have occurred under subsection (4) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

No 24

Clause 92, page 61, line 12 — To insert after “*High Risk*” —  
*Serious*

No 25

Clause 92, page 61, line 14 — To insert after “*High Risk*” —  
*Serious*

No 26

Clause 97, page 63, line 25 — To insert after “*High Risk*” —  
*Serious*

No 27

Clause 100, page 64, line 15 — To delete “(Sexual and Violent)” and substitute —  
*Serious*

No 28

Clause 100, page 64, line 21 — To insert after “*High Risk*” —  
*Serious*

No 29

Clause 101, page 64, line 27 — To insert after “*High Risk*” —  
*Serious*

No 30

Clause 101, page 65, line 4 — To insert after “*High Risk*” —  
*Serious*

No 31

New Clause 102A, page 65, after line 10 — To insert —

**102A. Section 4 amended**

- (1) In section 4(2) insert in alphabetical order:  
*community* has a meaning affected by subsection (4);
- (2) After section 4(3) insert —
  - (4) A reference in this Act to the *community* includes any community and is not limited to the community of Western Australia or Australia.

No 32

Clause 103, page 65, line 15 — To insert after “*High Risk*” —  
*Serious*

No 33

Clause 104, page 65, lines 17 to 26 — To delete the clause.

No 34

New Clause 104, page 65, after line 26 — To insert —

**104. Section 74A amended**

(1) In section 74A delete the definitions of *prisoner* and *serious violent offence*.

(2) In section 74A insert in alphabetical order:

*prisoner* means a person —

(a) who is serving a fixed term for a serious offence; or

(b) who —

(i) is serving a fixed term for an offence or offences other than a serious offence; and

(ii) has been serving that term at all times since completing a fixed term for a serious offence;

*serious offence* has the meaning given in the *High Risk Serious Offenders Act 2019* section 5;

*serious offender under restriction* has the meaning given in the *High Risk Serious Offenders Act 2019* section 3.

No 35

Clause 113, page 70, line 4 — To insert after “*High Risk*” —

*Serious*

No 36

Clause 115, page 70, line 15 — To insert after “*High Risk*” —

*Serious*

No 37

Clause 115, page 70, line 23 — To insert after “*High Risk*” —

*Serious*

No 38

Clause 115, page 71, line 16 — To insert after “**High Risk**” —

**Serious**

No 39

Clause 116, page 71, line 22 — To insert after “**High Risk**” —

**Serious**

No 40

Clause 116, page 71, line 25 — To insert after “*Risk*” —

*Serious*

No 41

Clause 116, page 71, line 28 — To insert after “*High Risk*” —

*Serious*

No 42

Clause 117, page 72, line 7 — To insert after “*High Risk*” —

*Serious*

No 43

Clause 118, page 72, line 15 — To insert after “*High Risk*” —

*Serious*

No 44

Clause 118, page 73, line 6 — To insert after “*High Risk*” —  
*Serious*

No 45

Clause 119, page 73, line 15 — To insert after “*High Risk*” —  
*Serious*

No 46

Schedule 1, Division 2, Subdivision 1, page 80, after line 4, the Table after the 1<sup>st</sup> row before item 1 —  
To insert —

1A.	s. 401	Burglary	If within s. 401(1)(a) or (ba) or (2)(a) or (ba) (aggravated home burglary or aggravated burglary) and if the circumstances of aggravation are not merely being in company with another person or other persons
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No 47

Long Title, page 1 — To delete “persons of a particular class,” and substitute —  
high risk serious offenders,

**Mr J.R. QUIGLEY:** — by leave: I move —

That the amendments made by the Council be agreed to.

**Mr P.A. KATSAMBANIS:** We live in interesting times. I was a member of another Parliament in another state for practically seven years. I was a member of the Western Australian upper house for four years and I have been in this place for three years and some months, and until today I have never seen a bill leave this place with one name and come back to us with another. We sent the High Risk Offenders Bill 2019 to the Legislative Council some time ago, and we have been sent back the High Risk Serious Offenders Bill, or the High Risk Serious Offenders Act, as it will be called when it becomes an act of Parliament. The name of the bill has changed, amongst the 47 amended clauses we have been sent. In common with the bill we considered a few minutes ago, the Residential Parks (Long-stay Tenants) Amendment Bill 2018, this bill has been considered by the Legislative Council at significant length, over a long period. The Council has determined 47 amendments. Again, some of those amendments are opposition-led amendments, some of them are government-led amendments, and some of them are hybrids in the sense that one of the non-government parties proposed the amendment and eventually the government thought the concept was good but did not like the words and proposed its own amendment. Regardless, we have 47 amendments here that, again, passed the other place without too much consternation; I think most of them were supported unanimously, if not all of them. This bill has been heavily scrutinised by the other place and the government has indicated that it supports these 47 amendments that have been put before us from the other place. We, as the opposition, also support them. Again, if the Attorney General wants to take a few minutes to explain any of the substantive changes, he is free to do so, but as I said, these amendments and the bill itself have been heavily scrutinised in the other place. We received these amendments only about an hour or two ago. I have had a look through them, and none of them seem to be overly controversial. The opposition indicates that, based on the will of the other place and of the government, the opposition will also accept passage of the amendments and the bill.

**Mr J.R. QUIGLEY:** I thank the member for Hillarys, who raised the fact that the name of the bill has changed. This is of no consequence to the government. What is in the bill, and the import of the bill, is the capacity now for the Director of Public Prosecutions and the State Solicitor’s Office to bring applications in respect of a range of offenders who upon release present a risk to the community. As I have said before from this very spot at the minister’s table and when interviewed on radio about the release of dangerous sex offenders under the Dangerous Sexual Offenders Act 2006, which was initiated by Hon Jim McGinty when he was Attorney General in Dr Gallop’s Labor government back in 2004, it applied to serious sex offenders. Whenever I am on the radio and I am being interviewed about an imminent release on supervision of serious sex offenders, there are callers who ring in to say, “What about other violent people who are being let out and are attacking us in the community?” It was to offer wider protection to the community that we decided to introduce the High Risk Offenders Bill. I think, from memory, we borrowed the name from a New South Wales bill.

In one of his more disgraceful efforts in the other place, my shadow argued up hill and down dale, for hours, on the name of the bill. He insisted that the title be not just “High Risk Offenders Bill” but “High Risk Serious Offenders Bill”, so we have added the word “serious”—you know? Really! I said when standing here and debating other matters not that long ago, “This bill has been parked in the Council for months and months because the

government doesn't have the numbers there. It was bogged down on the title of the bill." There is no-one in Western Australia who cares a rat's tail about the title of it; what they want is the government to have the powers contained therein to offer them protection against some of these maniacs who have served their full sentence but present a real risk, a high risk, to the community upon release, so that we can have some further control over them.

So, yes, the name was changed, the commencement date was changed, the review clauses were changed and there were some other matters relating to interference with electronic monitoring devices and the presumption that there could be a term of imprisonment for interference with the same. There was also an amendment requiring the court to have regard to victim impact statements lest the submission was not available at the hearing. A further amendment was made to provide that the court is not to have regard to matters not relating to the need to ensure adequate protection of the victim, so the victim impact statement has to be pointed at the continuing protection of the victim. Another significant change is the review of the act, which is at new clause 90A.

**Mr S.J. PRICE:** I would like to hear more from the Attorney General.

**Mr J.R. QUIGLEY:** I thank the member; I am very pleased that he finds my speech so gripping that it should be longer.

In all seriousness, there are a few more things to explain. One amendment was to amend the term "community" to ensure that it includes any community's safety, not just the Western Australian community. This relates to situations in which if a person has ended their prison term and we are looking at community safety, it is not limited to the safety of Western Australians. What happens if we have someone who is a real maniac but is not a citizen of Australia and at the end of their term is to be released and deported? We sometimes deport them back to the United Kingdom or wherever, where they can commit further violent offences, so the word "community" now has a more global capture. There were a number of other amendments, such as those to clauses 116, 117, 118 et al, where after the words "High Risk" the word "Serious" was inserted. As I said, there was a lengthy, lengthy, drawn-out debate to include the word "Serious", so then there had to be consequential amendments throughout the bill.

An amendment was made to schedule 1, division 2, subdivision 1, and that was to include the offence of aggravated burglary. Let me explain. It was not included in the first iteration of the bill because when someone burgles a residence, that is not necessarily a violent offence. Once in the premises, they can commit a violent offence, like injuring the inhabitant of the premises, but in all those cases, the person is charged with two offences—burglary and assault occasioning bodily harm or grievous bodily harm or unlawful wounding or whatever—and the offence would have fallen within the ambit of the legislation by reason of the violent offence that is assault occasioning bodily harm, grievous bodily harm or whatever. The Legislative Council decided in its wisdom that aggravated burglary should be included. I have to say, this was of some concern to the State Solicitor and the Director of Public Prosecutions, because that can bring in so many people who have not committed an actual violent offence. This was talked about the other evening. I thought that all members of the chamber contributed to the third reading speech in a most positive way on the reduction of Indigenous prisoner rates. We know that a lot of burglaries are committed by young Indigenous people who have fled their home because it is too violent at night. They wander the streets of some of our regional towns like Kununurra, Halls Creek, Fitzroy, Kalgoorlie and other towns, enter homes and steal for food. We did not want to capture all these people in this; we would never reduce the Indigenous prisoner rate. Do not forget that these people have served the actual term for their offence. So, aggravated burglary was eventually included, but not if the only circumstance of aggravation was being in company. Burglary with a weapon or burglary and injuring someone is now in, but if the circumstance of aggravation is merely that it happened in company—two offenders entered the property—that is excluded under the Legislative Council's amendment.

I think I have given an overview of the amendments that are before the Parliament, and I ask that the amendments be put en bloc.

**Question put and passed; the Council's amendments agreed to.**

**The Council acquainted accordingly.**

**The ACTING SPEAKER (Ms J.M. Freeman):** I will leave the chair until the ringing of the bells.

*Sitting suspended from 9.32 pm to 12.27 am (Friday)*