DANGEROUS SEXUAL OFFENDERS LEGISLATION AMENDMENT BILL 2017

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 9: Schedule 1 Part C clause 3D inserted —

Debate was interrupted after the clause had been partly considered.

Mr P.A. KATSAMBANIS: When debate on this clause was interrupted for question time, the Attorney General had told us that despite his very public position that it was possible to refuse bail in these circumstances, subsequent to attaining the rank of Attorney General, he received advice from parliamentary counsel and the Director of Public Prosecutions that such a move may be unconstitutional. However, the Attorney General has not tabled any of that advice in the house. Only a few short months ago, the Attorney General told the house that we should refuse bail in these circumstances. Full stop. Period. No exceptional circumstances. No comparison to any other crimes. We should refuse bail, because this is such a serious situation. We agreed with the Attorney General at that time.

The reason it is difficult for this house and for the public to accept the explanation from the Attorney General that we have been given today is that the explanation is not coming from a novice. It is not coming from a person who walked into a room one day and someone turned on a light bulb about constitutionality and about the operation of the Bail Act. We are talking in the Attorney General about a person who is an accomplished and distinguished practitioner of the law, particularly in the criminal law space. I have often said in this place that of all us lawyers in this place, and in the Legislative Council, the Attorney General is probably the most accomplished and distinguished, particularly in the area of criminal law. Therefore, either the Attorney General was knowingly misleading the public for political advantage when he told us continually prior to the election that bail should be denied in these circumstances, with no opportunity to weasel out of it, or he has given us an explanation today on the hop because he has been caught out for saying one thing before the election and doing another thing today.

In the absence of legal advice to the contrary, the opposition will pursue the amendment to clause 9, and I so move that amendment. It is very simple; it makes sure that the Attorney General's stated position last year and the Labor Party's stated position during the election campaign is given effect. In circumstances in which these dangerous sexual offenders have been released into our community and have contravened their order, and they are taken before the court, they will not be able to obtain bail. It is very simple. The amendment adds the words "jurisdiction is vested must refuse to grant bail." This is what everyone in the Labor Party said they would do, before the election, at the first opportunity.

The ACTING SPEAKER (Ms S.E. Winton): Member, are you moving the amendment?

Mr P.A. KATSAMBANIS: I move —

> Page 5, line 4 to page 6, line 7 — to delete the lines and substitute —
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> jurisdiction is vested must refuse to grant bail.

I think we have ventilated the issues. This is not really a debate around law. The debate is around whether this government will honour its commitment. The Attorney General has refused to table the legal advice that he is relying on to renege on his own commitment. We are giving the members on the other side the opportunity to support their election commitment. If they do not do that, that is fine. We will move on. We will not vote down the clause because, as I said earlier, we think any toughening up of the Bail Act is a good thing. It is just that we do not think the Attorney General has either gone far enough or even done enough to meet his own commitment to the public of Western Australia.

Dr M.D. NAHAN: I want to confirm very briefly that it was not only the Attorney General who has in the past supported this amendment; it was also the now Premier when he was Leader of the Opposition. Back in 2016, in the case of another Evil 8 paedophile, the then Leader of the Opposition called on the Premier of the day to take action against the paedophile and to make sure that the Attorney General used his powers to keep that person in jail without bail. This was a commitment going way back from both the Attorney General and the Premier when they were in opposition; it was made repeatedly in the case of a previous paedophile who was given bail and on the streets. Then it was reiterated in amendments to this same act. Then it was reiterated in the run-up to the election. They could not be any clearer in seeking a mandate for something than this. The Attorney General said that he has received legal advice to the contrary that he should not do what he repeatedly promised, but he refuses to table that and utters something right out of *Law for Dummies*—that is, we cannot override the presumption of innocence. To overcome this clear, unambiguous election commitment and promise to the public of Western Australia, he should table evidence to the contrary. He has not and therefore we moved this amendment. We could not get a clearer case for an amendment from a government than this. We have asked for the advice to the contrary, but he says no. This is a clear case of us asking the Attorney General to do what he said and has been implying to the public that he was going to do. Just do what you said.

Mrs L.M. HARVEY: I note the Attorney General's comments in this place earlier today when he said that to detain somebody without an offence having been committed is unconstitutional, and I refer him to his comments on 28 June 2016 when in reference to this issue he said —

> The state does not have a reserve power to lock its citizens up; it is a conferred power. Where is this power conferred from? It comes from the Dangerous Sexual Offenders Act.

Why can we not now confer that power to the Bail Act in consideration of the refusal of bail for dangerous sexual offenders who have contravened their orders? Apparently, the Dangerous Sexual Offenders Act does not offend the Constitution when it is used to hold and detain people beyond their term of imprisonment, so why can we not confer that power in these circumstances to the Bail Act to ensure that offenders who breach their bail conditions can be held in custody pending the consideration of those breaches by a court? That is consistent with what we already do under the Dangerous Sexual Offenders Act. Why is the constitutionality of the conferral power different for the two pieces of legislation?

Mr J.R. QUIGLEY: The member predicated her question on two premises. Firstly, why can we not refuse bail for people who have breached their conditions? Secondly, why can we not refuse bail for people who have breached bail?

Mrs L.M. Harvey: No, breached their conditions, I said—the conditions of their order.

Mr J.R. QUIGLEY: That is what the member said first and, secondly, she said, "and who have breached bail". I refer to the first thing she said and the first matter upon which she predicated her question was: why can we not refuse bail for people who have breached their conditions?

Mrs L.M. Harvey: I said: why can we not confer the power to the Bail Act to hold people in custody if they breach their conditions?

Mr J.R. QUIGLEY: Exactly. There is very little difference. The point is that at that time there is no proof that a murderer or a person who is alleged to have breached their bail conditions has in fact breached their bail conditions. We are not dealing with people who have breached their supervision conditions. We are dealing with people against whom it is alleged that they have made a breach and in respect of whom there is a presumption of innocence that they have indeed not breached the conditions. While there is that presumption that they had not breached their conditions, to deny the consideration of bail outright, I am advised is unconstitutional against a person whom it has not been proven has done anything wrong.

Mrs L.M. HARVEY: Further to that, Attorney General —

The ACTING SPEAKER: Direct your questions through me. Thank you, Deputy Leader of the Opposition.

Mrs L.M. HARVEY: Further, why is it not unconstitutional to detain dangerous sexual offenders after the completion of their sentence via an application to the court, whereas it is unconstitutional to hold the same offenders who have allegedly breached their orders until their court appearance? I do not see that there is actually a difference. If we conferred that power to the Bail Act, why would that be a breach of the Constitution, given we have conferred the power to the Dangerous Sexual Offenders Act and it is not?

Mr J.R. QUIGLEY: Certainly.

Mrs L.M. HARVEY: It is the Attorney General's choice to accept this amendment and confer similar administrative powers to the court under the Bail Act to hold a dangerous sex offender in custody for alleged breaches of their order, in a similar way as we would prohibit the release of dangerous sex offenders post sentence on the premise that we believe they would be a danger to the community. I do not understand why we cannot confer the same power that we have under the Dangerous Sexual Offenders Act to the Bail Act in these circumstances.

Mr J.R. QUIGLEY: It is because what we confer upon the court under the Dangerous Sexual Offenders Act is a discretionary power. It is not an order; it is not legislation that says, "At the finish of the head sentence, you will be mandatorily detained for an indeterminate period of time." It allows the Director of Public Prosecutions to make an application that a person is a dangerous serious sex offender. The court then has to make a determination of that. If it makes a determination of that, it then has the discretion to exercise as to whether to release the person on a supervision order or detain them in custody. That passed through the High Court because it reposed in the court that discretion in the exceptional circumstances of the person being declared a dangerous serious sex offender. Similarly, with this provision, there is retained—although it is very, very unimaginably hard to obtain—the provision that a person who is presumed to be innocent of the allegation before the court can make an application for bail, but the bar is set so high, the same as for murder, that there would have to be absolutely exceptional circumstances as to why they got it, and that is why it passes the constitutional test. That takes us back to the previous position that the member for Scarborough posited—that there is a conferred power. There is a conferred power under the Dangerous Sexual Offenders Act for detention, but it is discretionary. It is up to the court to decide whether to release the person on a supervision order or to detain them in custody.

Mr P.A. KATSAMBANIS: We can twist this around all we like, but the fact is that until two weeks ago, the Attorney General, as an eminent legal person and the senior law officer of this state, was telling us that in these

circumstances we not only could, but should, refuse bail to dangerous sex offenders—full stop, period. That is what he was telling us. When he brought this bill into the house and made his second reading speech he had the opportunity to say, "I did say this in the past; however, I have been advised that there are constitutional issues." He did not do that. When pressed on it today, he said, "Oh, there are constitutional issues." We asked him for the advice that he based that on, and he said no; he just glibly said no, and sat down. There is no point in continuing to beat on about this. If he is admitting that he was wrong in the past, he ought to have known that in the past, so he was deliberately misleading the public of Western Australia. If he was not wrong in the past, there is no reason he should not support this provision, which is actually his own provision, right now. Let us put it to the test and see how it stands the test of time, because at the moment the Attorney General's personal credibility and his word on the constitutionality or otherwise of these ideas is just not worth the paper it is written on.

Division

Amendment put and a division taken, the Acting Speaker (Ms S.E. Winton) casting her vote with the noes, with the following result —

Ayes (16)

Mr C.J. Barnett	Mr P. Katsambanis	Mr R.S. Love	Mr D.C. Nalder
Mr I.C. Blayney	Mr Z.R.F. Kirkup	Mr W.R. Marmion	Mr K. O'Donnell
Ms M.J. Davies	Mr A. Krsticevic	Mr J.E. McGrath	Mr D.T. Redman
Mrs L.M. Harvey	Mr S.K. L'Estrange	Dr M.D. Nahan	Ms L. Mettam *(Teller)*

Noes (37)

Ms L.L. Baker	Mr M. Hughes	Mr S.J. Price	Mr D.A. Templeman
Dr A.D. Buti	Mr W.J. Johnston	Mr D.T. Punch	Mr P.C. Tinley
Mr J.N. Carey	Mr F.M. Logan	Mr J.R. Quigley	Mr B. Urban
Mrs R.M.J. Clarke	Mr M. McGowan	Ms M.M. Quirk	Mr R.R. Whitby
Mr R.H. Cook	Ms S.F. McGurk	Mrs M.H. Roberts	Ms S.E. Winton
Ms J. Farrer	Mr K.J.J. Michel	Ms C.M. Rowe	Mr B.S. Wyatt
Mr M.J. Folkard	Mr S.A. Millman	Ms R. Saffioti	Mr D.R. Michael *(Teller)*
Ms J.M. Freeman	Mr Y. Mubarakai	Ms J.J. Shaw	
Ms E. Hamilton	Mrs L.M. O'Malley	Mrs J.M.C. Stojkovski	
Mr T.J. Healy	Mr P. Papalia	Mr C.J. Tallentire	

Pair

Mr P.J. Rundle	Mr D.J. Kelly

Amendment thus negatived.

Clause put and passed.

Clauses 10 to 15 put and passed.

Clause 16: Section 17 amended —

Mr P.A. KATSAMBANIS: This is the substantive clause that makes the changes the Attorney General told us would have kept DAL behind bars had these changes been made. In debate, the opposition made the point very strongly that these clauses are actually substantially different from the ones the Attorney General proposed when he was in opposition last year and from what the Labor Party proposed at the state election. Moreover, in debate and public discourse, the Attorney General stated that had the provisions he put up to the Parliament last year been passed, DAL would still be behind bars. The Attorney General smeared members of the opposition by suggesting we were personally responsible for DAL's release for not supporting his provisions. What I am foreshadowing is that I will keep him to his word to reintroduce the provisions that he said would have kept us safe, and I seek an explanation of why he changed them between the election and now. Again, he cannot have his cake and eat it too. If those provisions would have worked, why are they not being introduced? Why are substantially different provisions being introduced? Before we even get into that, I seek from the Attorney General that he table any legal advice he has received from the Solicitor-General or anyone else that indicates that these provisions would have made a material difference to the findings of Justice Archer in the DAL case, because he has indicated that they would have. I am not seeking his opinion. I heard his long explanation in his reply to the second reading debate of what he thinks would happen under these provisions. I am seeking the legal advice that he is relying on and I ask him to table it.

Mr J.R. QUIGLEY: I decline to do so.

Mr P.A. KATSAMBANIS: That will just sit on the record.

I heard the explanation of why "substantially comply" has been introduced as a concept, rather than the concept put forward by the Attorney General last year, and by the Labor Party during the election campaign, of

"comply", which was not proceeded by the adjective "substantially" so it meant full compliance. I heard the Attorney General talk about substantial breaches. He and I both know that the concept of a substantial breach is not the same as substantial compliance. They are different. We are talking about different acts and different omissions. When we are talking about making a finding that someone will, in the future, comply, we are making a leap into the future. Talking about a substantial breach is to assess something that has happened in the past. He knows that. I dare say that if he were still practising law, there might be a time when he would want to argue in a court that someone could substantially breach certain conditions yet still substantially comply with a condition. I did not find his explanation either plausible or persuasive. There is no need to debate it. He put it on the record. I do not find it plausible or persuasive. The Labor Party and this Attorney General talked tough before the election. They talked tough when they were in opposition. They wanted people to comply with all of the conditions of their order. That is what we are asking them to do today.

They also talked tough by wanting the onus of proof to be satisfied by the offender not on a balance of probabilities, as we are being presented with today, but to a high degree of probability. The balance is a weighing exercise—a 50–50; 51 per cent one way and 49 per cent the other way. It is really a civil law concept that is being introduced into what is a criminal jurisdiction. The balance of probabilities is an understood term. That is not the test the Labor Party wanted to introduce last year. That is not the test the Attorney General told us a few short weeks ago would have sufficed to keep DAL behind bars. That test was a high degree of probability. That is what the Attorney General had last year and that is what he told us would have kept DAL behind bars. I foreshadow that I am going to move an amendment to enable the members of the Labor Party to actually fulfil their election promise that a court would need to be satisfied that an offender will comply with the conditions of an order, not that they will substantially comply only with the standard conditions. Standard conditions are standards—they apply to everybody. The specific conditions are the important ones, because they are the ones the court believes apply to the specific offender. The standard ones are important, too, obviously, but the specific ones relate to that specific offender. If we are going to put a high bar, if we are going to have a reversed onus of proof so that the offender will have to prove that they comply with the conditions, then it should be those specific ones that really relate to them and their special circumstances—contacting victims, visiting certain parts of the state such as suburbs or the like, accessing child pornography or other pornography and any other condition that a judge thinks is really important to put on that particular offender. That is what we are asking to be brought into the net here. Before the election, that is what the Labor Party wanted to do.

Mr A. KRSTICEVIC: I would like to hear more from the member for Hillarys; he is doing a great job.

Mr P.A. KATSAMBANIS: That is what the Labor Party wanted to do before the election, but that is not what it is doing in this bill. Government members talk tough but legislate weak. That is becoming a pattern in just six short months. I move —

> Page 9, lines 15 to 20 — To delete the lines and substitute —
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> (3) A court cannot make an order under subsection (1)(b) unless it is satisfied that the offender will comply with the conditions of the order.
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> (4) The offender has the onus of satisfying the court as described in subsection (3), and the court must be satisfied —
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> (a) by acceptable and cogent evidence; and
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> (b) to a high degree of probability.

The Attorney General had his chance to explain why he has gone down one path and not the other. As I said, he did not persuade us. If he had persuaded us and the public of Western Australia, we would not need to put this up. If the Attorney General wants to get tough, let us get tough. He told us that that was how we were going to get tough last year. He should vote on it. He should not weasel away or use weasel words—substantially comply with the standard conditions. Let us make it "totally comply with all the conditions" and we will support it. Do not just bring in a balance of probabilities test—bring in a high degree of probability test. The onus will remain on the offender, as the Attorney General put it, to prove it to a high degree of probability and even a higher test than the balance of probabilities. He said last year that the test was appropriate, and only the other day he said that had this test been applied last year, DAL would not have been returned to the community. That is what the Attorney General told us. He should back up his words with actions—tough words are no substitute for tough action. Tough words are not a substitute for effective legislative provisions that will keep these dangerous people behind bars. In moving the amendments to clause 16, the Liberal Party is giving the Labor Party the opportunity to vote on its own policy,

to vote on what it told us we ought to have done. If the amendments are voted down, we will let the Attorney General's clause go through —

Mr A. Krsticevic: His credibility will be shot.

Mr P.A. KATSAMBANIS: I will pick up on the member for Carine's interjection. I am not necessarily sure there is much credibility to be shot at!

Several members interjected.

Mr P.A. KATSAMBANIS: This is too important to turn into a laughing matter.

The Attorney General used this provision as a battering ram in this place in the last sitting week. This is the provision that he used to attack the now members of the opposition. He said that if we had done what he told us to do a year ago, this would not have happened. But he is not introducing that provision himself; he is introducing a weaker one. We are asking the Attorney General to back up his rhetoric and to back up his tough words with tough action. He should back up his tough words with his own action. Either way, whichever version of the clause goes through—the one in the bill or the one that we are proposing—it is the Attorney General's clause. He owns this from now on. I have omitted from the amendment the matter that the Attorney General had in his amendments last year in which he basically asked the court not to take into account electronic monitoring. That is an absurdity because electronic monitoring is one of the standard conditions. It was brought to my attention by the Parliamentary Counsel's Office that it would be non sequitur, which is why I have not included it. In the main, this is the provision that the Attorney General told us would work just a couple of weeks ago. Here it is, Attorney General; here an opportunity to vote for your own words.

Dr M.D. NAHAN: In support of the need for this amendment, it was not just in opposition that the now government made these commitments. On 14 June 2017, which is not too long ago, Quigley, the Attorney General, and the Premier announced that cabinet had approved the drafting of legislation. The arguments for it had been submitted to, and approved by, cabinet. This legislation was to implement in full the Labor Party's commitments before the state election, including banning no bail and that all conditions had to be considered before applying for release into the community. In other words, on 14 June, the Attorney General announced that cabinet had approved the drafting of legislation that implemented in full, unaltered, the amendments that he proposed last year and that the Labor Party put up to the election without any caveats about constitutionality or any other issue. That was on 14 June. Now the Attorney General has come to this place and said, since cabinet approval, there has been some alteration due to other advice. Was cabinet itself advised of the subsequent advice given to the Attorney General about the constitutionality of these issues? We have no other choice—in fact, cabinet has no other choice—but to pass these amendments. These amendments were put to the people and cabinet, unless the Attorney General was misleading the public on 14 June. I expect that when we divide, at least the cabinet members will vote with us, because according to claims by the Premier and the Attorney General, that is exactly what they agreed to some time in early June to form the basis of this legislation. They agreed with us. I might add that the Attorney General and members opposite are voting against their own amendments, against their own election commitment, and against, apparently, according to the Attorney General, what cabinet agreed to.

Division

Amendment put and a division taken, the Acting Speaker (Ms S.E. Winton) casting her vote with the noes, with the following result —

Ayes (16)

Mr C.J. Barnett	Mr P. Katsambanis	Mr R.S. Love	Mr D.C. Nalder
Mr I.C. Blayney	Mr Z.R.F. Kirkup	Mr W.R. Marmion	Mr K. O'Donnell
Ms M.J. Davies	Mr A. Krsticevic	Mr J.E. McGrath	Mr D.T. Redman
Mrs L.M. Harvey	Mr S.K. L'Estrange	Dr M.D. Nahan	Ms L. Mettam *(Teller)*

Noes (37)

Ms L.L. Baker	Mr M. Hughes	Mr S.J. Price	Mr D.A. Templeman
Dr A.D. Buti	Mr W.J. Johnston	Mr D.T. Punch	Mr P.C. Tinley
Mr J.N. Carey	Mr F.M. Logan	Mr J.R. Quigley	Mr B. Urban
Mrs R.M.J. Clarke	Mr M. McGowan	Ms M.M. Quirk	Mr R.R. Whitby
Mr R.H. Cook	Ms S.F. McGurk	Mrs M.H. Roberts	Ms S.E. Winton
Ms J. Farrer	Mr K.J.J. Michel	Ms C.M. Rowe	Mr B.S. Wyatt
Mr M.J. Folkard	Mr S.A. Millman	Ms R. Saffioti	Mr D.R. Michael *(Teller)*
Ms J.M. Freeman	Mr Y. Mubarakai	Ms J.J. Shaw	
Ms E. Hamilton	Mrs L.M. O'Malley	Mrs J.M.C. Stojkovski	
Mr T.J. Healy	Mr P. Papalia	Mr C.J. Tallentire	

Pair

Mr P.J. Rundle	Mr D.J. Kelly

Amendment thus negatived.

Clause put and passed.

Clause 17: Section 20 amended —

Mr P.A. KATSAMBANIS: This clause continues the theme, amending section 20 of the principal act. I move —

Page 10, lines 6 and 7 — To delete "substantially comply with the standard conditions" and insert —

comply with the conditions

Again, this amendment gets rid of the words "substantially comply with the standard conditions" and mandates full compliance with all conditions. We have made our point. This is another opportunity for government members to vote for their own policy—the policy they told us would work, the policy they took the election, and the policy that that the Premier and Attorney General announced to the public a few short months ago when this bill was in its drafting stage. It is exactly the same principle and idea. We should not be substantially complying only; we should be fully complying. We should not be complying with the standard conditions; we should be complying with all of the conditions, especially in an area like dangerous sex offenders, where the specific conditions imposed on specific offenders are highly critical and can sometimes be highly personal to victims and their families. I urge the Attorney General and members of the government to support this amendment.

Mr J.R. QUIGLEY: The government will not support this amendment. In the DAL order of Her Honour Justice Archer, standard conditions are the root source of nearly all the other conditions. For example, being under the supervision of a community corrections officer includes complying with any reasonable direction of the officer, including for the purposes of conditions 19A or 19B. We then go down to condition 10; that is, that any overnight stays, as defined between 10.00 pm and 7.00 am, at the offender's permanent place of residence by a third party must be approved in advance by the CCO. If the third party left at 7.30 am, for example, that is a very minor and trivial matter. He must substantially comply with the standard terms and conditions, and it is the government's position that if any overnight stay by someone between 10.00 pm and 7.00 am overran by 15 minutes, that is substantial compliance. It is not right to say that, because the third party was timed to leave 15 minutes late, there must be a cancellation. We are staying with what we have settled upon; that is, that the standard conditions that are the root of all of the conditions of the order must be complied with, and that in respect of those, the offender has to convince the court, as we have always said, to the civil standard, on the balance of probabilities, that they will substantially comply. We reject the amendment.

Mr P.A. KATSAMBANIS: This goes to the heart of what this government is about. The concept of substantial compliance is in the eye of the beholder. In the example the Attorney General used, 15 minutes might be seen by some people to be substantial compliance. Would 20 minutes be substantial compliance? Would 45 minutes be substantial compliance? Would two and a half hours be substantial compliance? It leaves it open to debate and conjecture. All this was well known to the Attorney General when he proposed last year, prior to the election, that we should have full compliance with all conditions. This is what he proposed. He has backed away from that. Dangerous sexual offenders who are released into our community on a set of conditions after they have been suggested to be a continuing, serious risk to the community ought to be complying to the full letter of the law with the conditions that have been set for them. That is my opinion, and the opinion of the opposition. It is clearly no longer the opinion of the government. These people do not deserve the benefit of the doubt. They do not deserve second-guessing, because second-guessing leaves our community—women and young children—at risk. These are people who are assessed to be at serious risk of reoffending, which is why they are being supervised. They are released into the community on licence, if you like, and that licence includes a set of conditions—in DAL's case, 47 of them—and not substantial compliance with a few of them or with the standards, but with all of them. Full compliance with

all of them was what the government told us it was going to do, and we are holding it to its word. Members opposite should vote for this amendment or go back on their word and leave our community less safe. It is their choice.

Division

Amendment put and a division taken, the Acting Speaker (Ms S.E. Winton) casting her vote with the noes, with the following result —

Ayes (15)

Mr C.J. Barnett	Mr Z.R.F. Kirkup	Mr W.R. Marmion	Mr K. O'Donnell
Ms M.J. Davies	Mr A. Krsticevic	Mr J.E. McGrath	Mr D.T. Redman
Mrs L.M. Harvey	Mr S.K. L'Estrange	Dr M.D. Nahan	Ms L. Mettam *(Teller)*
Mr P. Katsambanis	Mr R.S. Love	Mr D.C. Nalder	

Noes (37)

Ms L.L. Baker	Mr M. Hughes	Mr S.J. Price	Mr D.A. Templeman
Dr A.D. Buti	Mr W.J. Johnston	Mr D.T. Punch	Mr P.C. Tinley
Mr J.N. Carey	Mr F.M. Logan	Mr J.R. Quigley	Mr B. Urban
Mrs R.M.J. Clarke	Mr M. McGowan	Ms M.M. Quirk	Mr R.R. Whitby
Mr R.H. Cook	Ms S.F. McGurk	Mrs M.H. Roberts	Ms S.E. Winton
Ms J. Farrer	Mr K.J.J. Michel	Ms C.M. Rowe	Mr B.S. Wyatt
Mr M.J. Folkard	Mr S.A. Millman	Ms R. Saffioti	Mr D.R. Michael *(Teller)*
Ms J.M. Freeman	Mr Y. Mubarakai	Ms J.J. Shaw	
Ms E. Hamilton	Mrs L.M. O'Malley	Mrs J.M.C. Stojkovski	
Mr T.J. Healy	Mr P. Papalia	Mr C.J. Tallentire	

Pair

Mr P.J. Rundle	Mr D.J. Kelly

Amendment thus negatived.

Clause put and passed.

Clause 18: Section 21 amended —

Mr P.A. KATSAMBANIS: Clause 18 will remove the opportunity for people who have breached their supervision orders to be brought before a court by summons; there will be a warrant issued for their arrest. We support this and have no issue with that principle. Like many in the community, I am not sure why we allowed summonses in these cases. As I said about the previous clause, as a community in Western Australia we allow these people out on strict conditions. A breach of those conditions ought to be treated as something very serious. Serious matters are treated by warrant—not by summons. There will be no opportunity for them to get a notice and for us to hope that they roll up to the court in a few weeks; a warrant will be issued for their arrest. All that is well and good, but I foreshadow as an amendment that when these people who have breached their conditions are brought before the court under warrant, there will be no opportunity for them to get bail, for the reasons that we have articulated and for the reasons that the government itself articulated prior to the election. They have breached their conditions, so they have lost their licence to be back out in the community. They will come in under warrant with no opportunity for bail. They will wait until their matter is heard again. This is the same principle on which we argued earlier on clause 9. Absolutely nothing is different. We are asking government members to support their own policy position. I move —

Page 10, after line 27 — to insert —

(3) At the end of section 21 insert:

(6) Despite anything in the *Bail Act 1982*, a person who is arrested under a warrant issued under subsection (2) in respect of a suspected contravention must not be granted bail but must be detained in custody until brought before the Supreme Court.

Having moved that, I invite members of the government once more to stop talking tough and acting weak. It should not disregard its own policy or let the people of Western Australia get the impression—which they are already getting—that the government said a hell of a lot of things that it did not mean to get elected to government and now that it has been elected to government it is backflipping on all these things one by one. If government members keep doing this over the next four years, they will become Olympic champions at backflipping, which they are already starting to become. More importantly, in this issue the government will leave our community exposed if it does not limit and shut the door on bail for dangerous sex offenders who have breached the conditions of their release into the community and so they do not come before a court and start the revolving door of bail once more.

Mrs L.M. HARVEY: I do not want to labour this point either, but I draw the Attorney General's attention to comments that he made when he announced that cabinet had approved the drafting of this legislation. That was in

June this year around the time of the release of dangerous sex offender, Macker Joseph Dinah. At that time the Attorney General said that the legislation would include provisions to remove the court's discretion to release an offender on bail during proceedings relating to a supervision order breach until those proceedings conclude. In June this year, just a few months ago, the Attorney General said that this legislation would include those provisions; he has backed away from that. Our amendment makes it crystal clear that those provisions will be included, consistent with what the Attorney General and the Premier announced in June this year when announcing the drafting of the legislation prior to the imminent release of Macker Joseph Dinah.

Mr J.R. QUIGLEY: The government will not be accepting this amendment and I will give some explanation. Firstly, if a person is alleged to have breached a supervision order, they can be charged with an offence under section 40A of the legislation. If they are charged with an offence under section 40A of the legislation, that person will be brought before a magistrate. As far as bail is concerned, those matters will be considered in accordance with the amendments that have been passed by this chamber this afternoon; that is, only in exceptional circumstances will bail apply. This is not an allegation that they have committed an offence under the legislation. This is under division 4, "Contravention of supervision order". This is an alternative route by which a person might be brought back before the Supreme Court. Section 21(1) states —

> A member of the police force or community corrections officer who reasonably suspects —

We have not even got a breach of a supervision order at this stage—only suspicion. It continues —

> … is likely to contravene, —

That is, perhaps he may contravene. We reasonably suspect that he may contravene. It continues —

> … or has contravened … may apply to a magistrate for the issue of a … warrant under subsection (2).

If that warrant issues under proposed new section 21(2), the warrant is to bring the person before the Supreme Court. The only thing the arresting officer can do is return the person in custody to the Supreme Court. The amendment is couched thus —

> … must not be granted bail but must be detained in custody until brought before the Supreme Court.

The only place he can be brought to is the Supreme Court, and once he is before the Supreme Court, it is up to the Supreme Court to decide whether to detain the person on a breach or to otherwise deal with the supervision order. But the person is then already before the Supreme Court. It is not a case of there being an intervening period when he goes to a magistrate and is not to be bailed. The police officer or community corrections officer, having obtained a warrant under proposed section 21(1) or subsection (2A), must apprehend the person and bring them before the Supreme Court forthwith for it to consider the suspected or anticipated contravention.

Mr P.A. Katsambanis: Under which section?

Mr J.R. QUIGLEY: Under the amendment, proposed amended section 21 of the legislation will be restructured, but that does not change the fact that having obtained the warrant, the apprehending officer must take the person to the Supreme Court, not before a magistrate for bail or anywhere else. The legislation is quite specific and reads —

> … and brought before the Supreme Court for it to consider the suspected or anticipated contravention.

That is why we do not agree with the opposition's amendment, which does not make a lot of sense in some respects. It reads that they will —

> … be detained in custody until brought before the Supreme Court.

That is exactly what proposed subsection (2) requires. It requires the officer who gets the warrant to apprehend the person and bring them to the Supreme Court. It is then for the Supreme Court to consider what to do with the anticipated or suspected contravention.

Mr P.A. KATSAMBANIS: I hear the Attorney General. He has not persuaded us, and at the end of the day the issue we are considering here is whether someone who has breached an order is entitled to bail. This provision makes it very, very clear that no matter what the Supreme Court does once he gets there, until he gets to the Supreme Court, for many reasons, there is no opportunity for bail whatsoever. It makes it crystal clear. If it is doubling up, well so be it. That is great. If it is a double up, that is great, but what if it is not? Too many times in this debate the Attorney General starts sounding like lead counsel for the offender in talking about things like there is no allegation, there is no finding—all that sort of stuff. That is fine. At the very least, even if everything the Attorney General says is correct, it makes crystal clear that there is no bail in these circumstances. But if there is any slippage along the way, this picks that up to make sure that the offender does not get bail. We will happily test it.

Mr J.R. QUIGLEY: I can only but repeat that the amendment seeks to prohibit a grant of bail until the person is brought before the Supreme Court. The warrant the officer obtains under proposed amended section 21(1) and subsection (2A) requires the officer or community corrections officer to apprehend the person and take them to the Supreme Court. This is a nonsensical amendment and the government does not accept it.

Amendment put and negatived.

Clause put and passed.

Clause 19: Section 22 replaced —

Mr P.A. KATSAMBANIS: This clause is, essentially, backwards because it gives effect to what we are foreshadowing at clause 20 because that is how the clauses in the legislation are framed. Clause 19 will replace the existing section 22 with a new section 22, and allows the Director of Public Prosecutions to seek orders. They can be a series of orders as set out in amended section 23, which is dealt with at clause 20. The opposition foreshadows to limit by way of clause 20 the sort of orders that can be made to only a continuing detention order. This is for someone who has breached their order. They have had their chance in the community, they have breached, they go back in and they do not get the opportunity to have their order varied and go back out on the streets and continue. They get a continuing detention order, and then they are dealt with. They are then dealt with in the normal way a dangerous sexual offender subject to a continuing detention order is dealt with: a review in the first year, and then a review every two years after that. It is closing the window for the revolving door once more. We really have to read the amendment to clause 19 with the amendment to clause 20, and we really need to read those two clauses together. I am instructed by parliamentary counsel—I accept their instructions; I have looked at them—that this is exactly how it will work. I have said we are foreshadowing in clause 20 that we would simply be deleting what is proposed to be the new section 23 and replacing it with the words —

> **23. Court to make continuing detention order**
>
> If, on the hearing of an application under section 22, the court is satisfied, on the balance of probabilities, —

Allowing the government the test it has already put in —

> that the person to whom the application relates has contravened, is contravening or is likely to contravene a condition of a supervision order, the court must rescind the supervision order and make a continuing detention order in relation to the person.

Full stop, period—"You have breached your order, you go back in. You're subject to a continuing detention order." Subsequently, we need to amend proposed section 22, contained in clause 19, so that proposed subsection (3), which reads, "The application must state what order is sought under section 23", is deleted. It is no longer required because only one order will be permissible with what we are proposing under proposed section 23, and that is an order for continuing detention. I move —

> Page 11, lines 17 and 18 — to delete the lines.

I foreshadow that amendment, as I said, to clause 20. I foreshadow the amendment to delete section 23 and insert at clause 20 a new section 23 that reads —

> **23. Court to make continuing detention order**
>
> If, on the hearing of an application under section 22, the court is satisfied, on the balance of probabilities, that the person to whom the application relates has contravened, is contravening or is likely to contravene a condition of a supervision order, the court must rescind the supervision order and make a continuing detention order in relation to the person.

It is very simple. A person who has breached an order should not be allowed to go back into the community on the same conditions, amended conditions or new conditions. A person should not be allowed to say, "I'm sorry, Your Honour; I won't do it again." The person has breached the condition of the order that allowed them to go back into the community. The person is a serious continuing danger. The person has been assessed as being at serious risk of reoffending. The person should not get at a second go but should be subject to another continuing detention order.

Dr M.D. Nahan: I would like to hear more from the member for Hillarys.

Mr P.A. KATSAMBANIS: By testing the amendment to clause 19, we are also testing the foreshadowed amendment to clause 20, which seeks to amend section 23 of the act. We want to ensure that we do not just talk tough but are tough. In moving this amendment, we are doing what the now government and the Attorney General told us before the election they would do, and what they told us after the election they would do, but when they brought this bill into this place have not done. Without dragging out the procedures of the house, I invite members

of the government to support their own policy and what they told us would work, and not back away from it as they have done so far today.

Mr J.R. QUIGLEY: The government will not be accepting the amendment moved by the opposition to delete the lines at page 5, line 4 to page 6, line 7. I foreshadow also that the government will also not be accepting the amendment foreshadowed by the member for Hillarys to clause 20.

Division

Amendment put and a division taken, the Acting Speaker **(**Mr S.J. Price) casting his vote with the noes, with the following result —

Ayes (15)

Mr C.J. Barnett	Mr P. Katsambanis	Mr R.S. Love	Mr K. O'Donnell
Mr I.C. Blayney	Mr Z.R.F. Kirkup	Mr W.R. Marmion	Mr D.T. Redman
Ms M.J. Davies	Mr A. Krsticevic	Dr M.D. Nahan	Ms L. Mettam *(Teller)*
Mrs L.M. Harvey	Mr S.K. L'Estrange	Mr D.C. Nalder	

Noes (37)

Ms L.L. Baker	Mr M. Hughes	Mr S.J. Price	Mr D.A. Templeman
Dr A.D. Buti	Mr W.J. Johnston	Mr D.T. Punch	Mr P.C. Tinley
Mr J.N. Carey	Mr F.M. Logan	Mr J.R. Quigley	Mr B. Urban
Mrs R.M.J. Clarke	Mr M. McGowan	Ms M.M. Quirk	Mr R.R. Whitby
Mr R.H. Cook	Ms S.F. McGurk	Mrs M.H. Roberts	Ms S.E. Winton
Ms J. Farrer	Mr K.J.J. Michel	Ms C.M. Rowe	Mr B.S. Wyatt
Mr M.J. Folkard	Mr S.A. Millman	Ms R. Saffioti	Mr D.R. Michael *(Teller)*
Ms J.M. Freeman	Mr Y. Mubarakai	Ms J.J. Shaw	
Ms E. Hamilton	Mrs L.M. O'Malley	Mrs J.M.C. Stojkovski	
Mr T.J. Healy	Mr P. Papalia	Mr C.J. Tallentire	

Pairs

Mr P.J. Rundle	Mr D.J. Kelly
Mr J.E. McGrath	Mr M.P. Murray

Amendment thus negatived.

Clause put and passed.

Clause 20: Section 23 amended —

Mr P.A. KATSAMBANIS: I would describe clause 20 as the revolving door clause. We tested our foreshadowed amendment to clause 20 by voting on the amendment that I moved to clause 19, and that was defeated, so unfortunately this proposed amendment will fall away. Now that those amendments have fallen away, we are in the worst possible of situations. A person has been deemed by the court to be a dangerous sex offender and sentenced under the Dangerous Sexual Offenders Act 2006. The person has been deemed to be at high risk of reoffending, which is why the person has come under this regime, and the person has been released into the community under a set of strict conditions. Yesterday, in relation to the offender known as DAL, the Attorney General described those conditions as allowing the authorities to watch the offender "like a hawk". The person has breached the conditions of their release. The person has breached the licence that our society gave them to walk around freely in our society. The person has been brought before the court and has said, "Sorry, Your Honour, I won't do it again", and they are released back into the community on a new supervision order, or on the continuation of the old one, to which a few amendments are made or a few of the conditions are changed around, they are given a slap on the wrist, and they are told they are a naughty boy.

It is not good enough. It is not what this government promised prior to the election. It is not what our society expects or deserves. However, fortunately, because the government will not vote to introduce even its own stated election policy, our community will be left at the mercy of a revolving door of offenders who are continuing to breach the conditions of their release into our community and continuing to be re-released into our community. I do not think it is good enough. Members of the opposition do not think it is good enough. Unfortunately, given the vote on the amendment to clause 19, that is what we are left with. I do not think that is a good enough solution to what our community is asking us to do in these circumstances.

Mr J.R. QUIGLEY: Amended section 23 provides the court with the discretion that will be exercised having regard to the condition of the order that the offender is found to have breached. The offender might have been required to report at a certain time at the central police station and something has intervened. I was going to

a function, for example, recently, and a car had flipped on to the railway lines of the freeway; the traffic was held up for hours. A person could be late for their appointment at the police station. He might have a perfectly valid excuse for why he did not attend at four o'clock in the afternoon and could not get there until 6.30 or 7.00 pm. It might be that it was impossible to get there. Under the opposition's proposals, that possibility could not play any part in the Supreme Court's decision. Alternatively, there was a case in which a person was required to report to a police station at a certain hour a certain number of days a week and have his diary with him. On one of those occasions, he forgot and left his diary at home. The Supreme Court can have regard to the circumstances of such a breach and whether it was wilful that he left his diary at home and was hiding it or whether the clot went there forgetting his diary. I should imagine and expect that the Supreme Court, if it found no malign intent in not attending with the diary, would give that person different consideration under section 23 other than immediate incarceration for another two years, because it is a two-yearly review.

The amended section will provide that the court can rescind the supervision order. One would expect that if it is a breach of one of the standard conditions set out in clause 18, that is what would flow. We trust our courts to interpret our laws properly. Another person could have a tyre blow out. It has happened to me. I had a flat tyre. The person has to get out and call the RAC or get out a jack and change the tyre. They may be half an hour late to the police station because they had an unexpected flat tyre on the way. The opposition would expect that in such circumstances, the person would be incarcerated for two years before their suitability for a further supervision order could be considered.

The amended section, however, requires that before the court can make an order that is not an order of detention under 23(1)(a)—that is, by rescinding the supervision order—for the first time in Australia, it has to be satisfied on the balance of probabilities that the person will substantially comply with the standard conditions and that the onus for persuasion falls upon the offender. This is the toughest law in Australia. This is as hard as it has ever been. We are very comfortable with the amendment that we have moved and that it does what we told the community we would do prior to the election. We have done it within six months.

Mr P.A. KATSAMBANIS: This is where the trickery of this government comes into all its glory. We bring these provisions to the house and we are amending the act to toughen the law, and then the Attorney General walks in and asks what if there is a blown tyre or a delay on the freeway and someone inadvertently breaches a condition of their order. In this bill before the house, in those circumstances the Attorney General is eliminating the opportunity to have that supposedly trivial breach dealt with by summons. The Attorney General is dragging that person before the Supreme Court by warrant. The Attorney General thinks it is so serious that it issues a warrant for their arrest and drags them into court, but then it slaps them over the wrist with a wet lace. I think our community corrections officers and our police have a lot more sense than to burden the court's time with triviality.

We are talking about substantial compliance with some conditions now. The Attorney General is lowering the bar. If someone has been put in the community on a set of conditions because they are deemed to be at serious risk of reoffending in sexual offences, they do not get the benefit of the doubt or of triviality. The Attorney General is going halfway and saying that in relation to a warrant and dragging him to court. But then the Attorney General is giving him a leave pass to get back out in the community. If the Attorney General really wants to act tough, rather than just talk tough, he should treat a breach as a breach and the consequences follow. The Attorney General has chosen not to do that. We are not voting no on this clause, and we will see what happens when this legislation comes into place. We will see how many dangerous sex offenders stay behind bars, which is where they should stay.

Clause put and passed.

Clauses 21 and 22 put and passed.

Clause 23: Section 33 amended —

Mr P.A. KATSAMBANIS: This is the last opportunity for government members to vote in favour of their election policy on dangerous sex offenders and what the Labor Party told the public of Western Australia it would do when it ran for election. The Attorney General told us we should do this last year when we were previously amending this legislation. The Labor Party told us we should do it, and government members happily held up their little red book of Labor's law and order priorities. The Premier and the Attorney General told us a few short months ago that they would do that when they brought this legislation to this place. Unfortunately, it has fallen short. Again, in clause 23, we deal with the issue of substantial compliance with standard conditions or compliance with all conditions. The Labor government told the public that it would introduce a bill that forced dangerous sex offenders to prove to the court that they would comply with all of their conditions before they would be released. The Attorney General came in with a half-baked bill today allowing only for substantial compliance with standard conditions, of which there are only seven when there could have been 40, 50 or 60 other conditions. The Attorney General has failed at the first hurdle. I am giving him one last opportunity today to actually support his

own election policy and show the public of Western Australia that on an issue as important as dangerous sexual offenders, he does not backflip or go half-baked, and that when he promises something, he delivers it. I move —

Page 15, line 14 — To delete "substantially comply with the standard conditions" and substitute —

comply with the conditions

We have ventilated this topic so I will not bore the house with it anymore. This is the government's chance to vote for its own election policy and commitments, and the things it promised the people of Western Australia.

Mr J.R. QUIGLEY: We promised the people of Western Australia that we would bring in the toughest dangerous sexual offenders laws in Australia. We have done that with the Dangerous Sexual Offenders Legislation Amendment Bill 2017. For the first time, the onus of proof shifts to the offender who must satisfy the court that, on the balance of probabilities, he will substantially comply with the standard conditions.

I recall that last year, when the concept of placing the onus of proof upon the offender was first canvassed, the government of the day voted it down because it said it was too complicated to have a shifting burden and that it was simply not required. The member for Scarborough, who was lead speaker for the government on that occasion, said that she had been advised by the then Attorney General that to introduce the concept of placing the onus of proof upon the offender to prove something on the balance of probabilities was, for this legislation, unnecessary and would complicate the legislation, and the government voted it down.

We stand by our proposition that moving the onus to the offender to prove, on the balance of probabilities—the standard we have always had—that they will substantially comply with the standard conditions is a first in Australia. The opposition says, "A condition is a condition, and if it is breached, detention should follow as a matter of course." When I explained to the chamber, in response to the opposition's previous amendment, that a person could get stuck on the freeway in a traffic emergency—a circumstance in which police have closed passage across the freeway and they become stuck in a line of traffic for a couple of hours —

Mr P.A. Katsambanis: When has a dangerous sexual offender had that excuse? When has that ever happened?

Mr J.R. QUIGLEY: I am saying if that happens. If a person is late for an appointment because of an intervening circumstance beyond their control, it might be regarded as a minor matter. The opposition is criticising us for saying, "We've taken away the facility of summons. We're going to get this chap, arrest him and take him up to the Supreme Court." Too right, we are. At the Supreme Court his excuse will be fully tested and it will be up to the court to decide whether such a minor matter warrants a further two years' detention before reconsideration for release. If it is the more substantial matter of one of those seven important conditions—so important that this Parliament has laid them out as mandatory conditions—that is a different matter. We have to be able to take into account an unforeseen circumstance of a minor matter before we lock someone up for two years and take away the court's discretion to weigh it. We trust the court to be able to read this legislation. We hope it becomes legislation; we do not know what the Liberals will do in the upper house. Last time this was in the Legislative Assembly the Liberal Party defeated our attempts to put an onus of proof upon the offender. We do not know what they will do in the upper house, but here it is, before this chamber for the first time in Australia, moving the burden of proof across to the offender to convince the court that, on the balance of probabilities, there will be substantial compliance. We reject the opposition's amendment.

Mr P.A. KATSAMBANIS: I point out to the Attorney General that we actually support the change on the onus of proof. Since he has raised constitutionality, has he received advice about whether this change on the onus of proof would be deemed constitutional and survive any High Court challenge? I ask that advisedly, because we know that we tiptoe around a lot of this area because of previous High Court rulings about what can be done with people once they have actually served the sentence they have been delivered by a court. I do not ask the Attorney General for his opinion, his impression or his idea; I am asking whether he has received legal advice about whether his reversal of the onus of proof would stand up to a High Court challenge and whether he is prepared to table that legal advice for us to see.

Mr J.R. QUIGLEY: Yes, and no.

Mr P.A. KATSAMBANIS: Who was that advice from?

Mr J.R. QUIGLEY: The Solicitor-General.

Mr P.A. KATSAMBANIS: So why will the Attorney General not release it? He has not been backward in releasing other advice from the Solicitor-General, as we have pointed out. He has been happy to waive legal professional privilege in other matters. Why will he not release information in relation to such an important matter to satisfy the public of Western Australia that his tough new laws, as he describes them—the toughest in Australia, as he describes them—will survive a High Court challenge? We can have that debate; I have left that completely out of this debate for a very good reason. If he wants us to take him at his word, we can. Unfortunately, his word seems to change a lot. If, as he has indicated, he has received advice from the Solicitor-General that this will stand

up to a constitutional challenge, he is welcome to table it; and, if he will not, can he give us a cogent explanation that goes beyond legal professional privilege?

Division

Amendment put and a division taken, the Acting Speaker (Mr S.J. Price) casting his vote with the noes, with the following result —

Ayes (14)

Mr C.J. Barnett	Mr Z.R.F. Kirkup	Mr W.R. Marmion	Mr D.T. Redman
Mr I.C. Blayney	Mr A. Krsticevic	Dr M.D. Nahan	Ms L. Mettam *(Teller)*
Mrs L.M. Harvey	Mr S.K. L'Estrange	Mr D.C. Nalder	
Mr P. Katsambanis	Mr R.S. Love	Mr K. O'Donnell	

Noes (37)

Ms L.L. Baker	Mr M. Hughes	Mr S.J. Price	Mr D.A. Templeman
Dr A.D. Buti	Mr W.J. Johnston	Mr D.T. Punch	Mr P.C. Tinley
Mr J.N. Carey	Mr F.M. Logan	Mr J.R. Quigley	Mr B. Urban
Mrs R.M.J. Clarke	Mr M. McGowan	Ms M.M. Quirk	Mr R.R. Whitby
Mr R.H. Cook	Ms S.F. McGurk	Mrs M.H. Roberts	Ms S.E. Winton
Ms J. Farrer	Mr K.J.J. Michel	Ms C.M. Rowe	Mr B.S. Wyatt
Mr M.J. Folkard	Mr S.A. Millman	Ms R. Saffioti	Mr D.R. Michael *(Teller)*
Ms J.M. Freeman	Mr Y. Mubarakai	Ms J.J. Shaw	
Ms E. Hamilton	Mrs L.M. O'Malley	Mrs J.M.C. Stojkovski	
Mr T.J. Healy	Mr P. Papalia	Mr C.J. Tallentire	

Pair

Mr P.J. Rundle	Mr D.J. Kelly

Amendment thus negatived.

Clause put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MR J.R. QUIGLEY (Butler — Attorney General) [4.45 pm]: I move —

That the bill be now read a third time.

MR P.A. KATSAMBANIS (Hillarys) [4.45 pm]: As we said at the outset, the opposition does not oppose the Dangerous Sexual Offenders Legislation Amendment Bill 2017; in fact, we support it. We accept that the changes that are being made will make the provisions for dangerous sexual offenders slightly tougher than they were prior to the passing of this bill. However, we need to express our disappointment on a number of issues. First, we must express our disappointment that this government will not keep its own word just six months into its term. It will not introduce the tough laws that it said it would introduce in its own election policy—the laws it beseeched the former government to introduce last year and which the Attorney General told us only a few short weeks ago would have kept DAL behind bars. That is unfortunate. It is disappointing to not just us but also the people of Western Australia. When it comes to dangerous sex offenders and being tough on crime, this government only talks a tough game. When it comes to the house, it blinks and introduces legislation that even it has acknowledged in the past is less than good enough. We are also disappointed that the Attorney General has chosen not to provide the house and the public of Western Australia with the legal advice he has received on the constitutionality of aspects of proposed changes to the Bail Act or of his reversal of the onus of proof. That is disappointing. The public of Western Australia seek reassurance that any laws that we pass in this area are going to work. The last thing we want is to pass laws in good faith and for someone—a bad person, a dangerous sex offender—to decide to challenge them in the High Court and win and get out. That is disappointing.

As I said in my contribution to the second reading debate, I am not the type of person who is going to go out and personally blame any members of the government if this legislation fails to live up to its expectations—if we see more DALs, TJDs and the like released into our community despite public outcry that they should remain behind bars. The government has promised that this legislation will mean that those events will become rare and hopefully will be completely unlikely in the future. We will hold the government to account. We will see how this goes. We gave government members the opportunity to support their own policy and they walked away from it at a million miles an hour. We gave the Attorney General the opportunity to provide us with the legal advice he received,

which would offer some comfort that these laws are going to work, and he has walked away from that, too. Everyone—not just the opposition, the other side or the National Party—wants to see dangerous sex offenders kept behind bars for as long as humanly possible. We are not going to delay the passage of this bill.

Several members interjected.

Mr P.A. KATSAMBANIS: I would not laugh! Their Attorney General spoke for an hour in summarising and did not answer the questions that were put to him in the second reading debate, so we had to have another go, to be told no in the consideration in detail stage. I would not laugh at all.

Examining legislation to make sure it works is the job of this place and it is the job of all the members who laugh. They should do their job, not laugh. They should do their job on behalf of the people of Western Australia. If they do not, they should walk away, because there are plenty of people waiting to take their positions. We need to scrutinise this legislation. Not only have we scrutinised it, we have exposed the very fact that the government is not even prepared to turn its policies into legislation

Unfortunately, this bill is not as tough as it ought to be. It is not as tough as the government promised it would be before it introduced it. It promised it at the election and after the election. With the government ramming it through on its numbers, this is the bill the public of Western Australia is going to get. We hope that it provides the protections that the public of Western Australia want us to provide through the passage of this bill. If it does not, it will be a failure of government. As I said, if it does not, I will condemn the government for that. I will not stoop to the level of smearing individual members who in good faith followed the advice of their Attorney General, as flawed as it may be.

DR M.D. NAHAN (Riverton — Leader of the Opposition) [4.51 pm]: I wish to make a few remarks on the third reading of the Dangerous Sexual Offenders Legislation Amendment Bill 2017. It is not just an irony but increasingly an illustration of the nature of this government that over the past few weeks in this Parliament, the government has been demanding that the opposition help it break its promises. It demands that we pass legislation for increased payroll tax and royalties, which it went to the election promising not to do. We saw it again in question time—the government demanding that we contribute to it breaking its promises. The same thing applied to electricity and other fees and charges a few months ago. The government promised to keep them at the forward estimates, and broke that promise. It promised to spend a large amount of capital, and we can see that the government is breaking that promise.

One of the key campaign commitments of the McGowan government was to do certain specific things to amend this act. On 14 June this year, the Attorney General and the Premier announced to the public that cabinet had agreed to certain amendments, and they are not here. Here we are with the Premier and the Attorney General going to the media and demanding that we pass this legislation with urgency, without scrutiny or discussion; we have a bill that amends an act, although the amendments are not the ones that the government took to the election and announced on 14 June. What is the mob on the other side coming to? They won an overwhelming victory. They are very explicit about that—repeatedly. They campaigned vigorously in the community on this issue, and all we did today was take, almost verbatim, the amendments that they put to the Western Australian public as their commitments, that the Attorney General put to Parliament when in opposition, and rejected them. We have spent today, with four divisions, watching the people on the other side vote against their own amendments. When we asked why they were doing that, the Attorney General said it was done on legal advice. We asked for the legal advice, and we were told no; it was refused.

The only thing we can take away from this process is that we should not believe a word the government says. Do not believe a word the government says. We will not be a rubber stamp for the government to effectively lie to the public of Western Australia by breaking one promise after another. It has only been six months, and the government won a landslide victory, but if we see this continuing, it will bring into question the very character and ethics of the government. We will pass this legislation, and we will, as the member for Hillarys said, hold the Attorney General to account if it does not do what he said it would—stop serial paedophiles getting out inappropriately into the community and reoffending. He said it would stop that. Well, let us see. We will hold him to account as vigorously as he held us to account. I suspect, unfortunately, because there is sickness in the community of this type—they are out there, unfortunately, and we cannot stop that—that, from the Attorney General's own words, this bill does not address many of the core issues and put in the safeguards that he said were needed. Using his own words, it will not do what he claims it needs to do and will do. We will be back here in this Parliament pointing at the Attorney General's failure in the future. Members opposite are all culpable, because they voted against their own amendments.

MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition) [4.56 pm]: I, too, rise to make some concluding remarks on the Dangerous Sexual Offenders Legislation Amendment Bill 2017. What we have learnt through this process, in my view, is quite interesting. For new members in this place, declaring a bill urgent is an unusual process of Parliament, and it is used in rare circumstances. The bill before us today, which has been declared an urgent bill, in the Attorney General's own words, is one of the toughest pieces of legislation in Australia. We have been asked, as an opposition, to rubberstamp this through Parliament because of the urgency

of the matter and, in doing so, we find that the legislation that we have been asked to rush through Parliament today does not actually achieve or do what the Attorney General and the Premier said, on the steps of Parliament House, it would do. That is what we have been asked to do today. The Attorney General and the Premier, on the steps of Parliament, in June 2017, said that cabinet had been given approval to draft legislation that would remove the court's discretion to release an offender on bail during proceedings relating to the breach of a supervision order. That is what the Attorney General and the Premier said this legislation would do, and it does not do it.

We would think that, if the Attorney General had legal advice as to why that cannot be achieved, he would table it, but the Attorney General has proved today that he is quite happy to selectively release legal advice that he has received if it is politically expedient for him to do so and it suits his political purposes. However, if it actually explains to the Parliament and the community why he has said that legislation would achieve something and then not brought legislation that would do that—by his own admission legislation that he could not bring forward because it would be unconstitutional—he refuses to release that advice. That is the calibre of the Attorney General in this government. He will selectively release legal advice he received if it is politically expedient for him to labour a point, but if it is legal advice that will explain a serious constitutional flaw in a commitment he made to the people of Western Australia that got him and his team elected, he will not release it. That is who he is.

When the amendment went through Parliament in 2015, and I was representing the Attorney General at the time, the advice we had was that the amendments would not achieve what the then shadow Attorney General said they would achieve. That was some of the advice that we had at the time, and that is what we said in this chamber. We will wait and see. The proof of the pudding of this legislation will be in the eating, and we will see whether it does actually keep dangerous sex offenders behind bars as the Attorney General said it would. It is unfortunate that this was not given a higher priority in that drafting and that we were not debating it on 8 August, because then the legislation would have been through this Parliament before DAL's hearing and he might have been kept behind bars.

The Attorney General did not prioritise that to the level that was required, so here we are debating the Dangerous Sexual Offenders Legislation Amendment Bill as an urgency motion to get the legislation through the house. We have cooperated with that, but it is very disappointing for all members of Parliament—especially new members—who have prepared their address-in-reply speeches. They wanted to present their information to Parliament about what the state budget was going to do for their electorates, including local electorate commitments that were achieved. They have been denied that opportunity because of the incompetence of this Attorney General. They have been denied the opportunity to speak to the election commitments that have been achieved because of the requirement to bring bill on in an urgent manner, and that is disappointing for all new members. They are all the remarks I have to make on this. We will see whether the legislation does what the Attorney General has said it will do because the performance of this individual to date has been very disappointing. We doubt that the legislation would have had one iota of an effect on the release of DAL, but when the next dangerous sex offender comes before the courts, we will see whether it does what the Attorney General has said it will do.

MR C.J. BARNETT (Cottesloe) [5.01 pm]: I can see that I am more of an observer than a participant these days; however, it is a convention in this house that all members of Parliament get a fair opportunity to address the budget however they wish. Very occasionally, a bill may be given special priority, and that is usually a fairly minor matter, and quite often it is a financial matter. To the opposition's credit—I am not party to the decisions—we agreed to allow time for the Dangerous Sexual Offenders Legislation Amendment Bill to go through. In all the years I have been here, in the week following the budget, I cannot remember when that has been allowed and so much time has been given. The expectation was that debate on the bill would have been finished earlier today so that members would at least have a reasonable opportunity to respond to the budget. That has now been effectively denied to them.

Several members interjected.

Mr C.J. BARNETT: If members opposite want to get up and speak, please do. However —

Mr D.A. Templeman interjected.

The SPEAKER: Leader of the House, let the member for Cottesloe have his say; you have had yours.

Mr C.J. BARNETT: I think particularly the member for Hillarys, who handled the bill for the opposition and made his points. In the second reading debate, there were only three speakers from this side of the house. Each of them addressed the issues and none of them went on at great length ad nauseam.

Ms S.F. McGurk interjected.

Mr C.J. BARNETT: The member was not even here. I was, and I listened to the whole debate. The expectation was that we would be finished with this legislation in the early afternoon. Yes, the member for Hillarys used his time; he was the main speaker on legal matters. Others—the Leader and the Deputy Leader of the Opposition—

spoke quite briefly on this bill. However, when we got to the end of the second reading, the Attorney General then spent—I do not know whether it was 45 minutes or an hour responding to the debate. He could have made his comments of substance—there were a few—in about 10 minutes. He spent the best part of an hour just using up the time and he chose to play politics and attack the opposition. The Premier came in and totally incorrectly accused the opposition of delaying debate. I do not think I have ever seen an opposition, whether it be Liberal or Labor, be so generous in the week after the delivery of a budget to allow a government to get a bill through and spend so much time on it. It was unfortunate behaviour by the Attorney General and disrespectful behaviour to the opposition by the Premier. End of story.

MR J.R. QUIGLEY (Butler — Attorney General) [5.04 pm] — in reply: I will be brief in my third reading reply. I took Parliament through the major issues during my second reading speech, but I am very encouraged by what the Leader of the Opposition said on behalf of the opposition, which was that the opposition will support the Dangerous Sexual Offenders Legislation Amendment Bill. I am very encouraged by the Leader of the Opposition and the member for Scarborough saying that this bill will become legislation. I do not want to take any longer because we want to get the bill to the other house. The opposition has said it will support it, so let us get the job done.

Question put and passed.

Bill read a third time and transmitted to the Council.