SENTENCING LEGISLATION AMENDMENT BILL 2016

Third Reading

Resumed from an earlier stage of the sitting.

MS M.M. QUIRK (Girrawheen) [3.05 pm]: I will just conclude on the remarks that I made before question time. One of the issues that I raised that was not addressed was why the existence of post-sentence supervision orders will not, in some way, relieve officers from the Department of Corrective Services of the obligation to ensure that to the best of their endeavours, programs and training are delivered during the currency of an offender's sentence. I have not really received a satisfactory answer to that. Officers are already stretched in providing programs and it is not uncommon—a number of other members would have had this complaint made to them—for prisoners to be told that a program is not being delivered at their particular prison and that they will have to either be transferred or wait until next year. There is already an issue with getting programs delivered expeditiously so that people can apply for and then be admitted to parole. Now, if people fall through the cracks, we will have the fallback position of a post-sentence supervision order being imposed upon release. I do not think that is overly satisfactory.

I will raise two other issues. The justice system needs to be transparent. Under Attorney General Jim McGinty, the decisions of the Prisoners Review Board were available online and made public, whether they were favourable or unfavourable. Unfavourable decisions are no longer available online, which is important to note because under those circumstances we could see whether someone was not successful in applying for parole because they had not been able to complete a program. That directly reflected on the administration by corrective services and, again, put some pressure on the authorities to ensure that rehabilitative programs were delivered in a timely fashion.

The final issue that I want to talk about is the so-called post-sentence supervision orders that were expressed to be for, for example, violent offenders. One classic example is a person convicted of murder. Those of us who have studied criminology and the criminal justice system for some time will know that the recidivism rate for murder is the lowest of almost all offences. Therefore, the idea of insisting that someone who has been convicted of murder should have a post-sentence supervision order imposed on them because the crime of murder is inherently violent seems to be misplaced. Again, I have some reservations in that regard. A number of criteria are set out in proposed section 74B that we wished to canvass during consideration in detail last night but were denied the opportunity. These criteria include things considerations such as whether the prisoner has participated in the programs, which again may not be possible due to no fault of the prisoner; the behaviour of the prisoner; the likelihood of the prisoner committing a serious violent offence while subject to the PSSO; and the likelihood of the prisoner complying with the standard obligations and so on. Those criteria are included but I would be concerned if these kinds of orders are imposed on a prisoner simply because the offence for which they were serving time was one that was inherently dangerous.

As I said yesterday when referring to the statutory review, by and large the legislation has not proved problematical. I am concerned that this bill does not address all the recommendations of the statutory review; for example, greater flexibility in remote and regional Western Australia, where sentencing alternatives are extremely limited. I think that contributes to the disproportionate rate of Indigenous imprisonment. I also think that the recommendation concerning the ingestion of drugs should no longer be a mitigation factor. It was an extremely good one in the current climate and would act as a further deterrent for would-be meth addicts who offend. But for some reason—we do not know why—it was rejected. As the lead speaker for the opposition said, although we support the bill, it has been introduced in haste. It has been considered and reviewed by the opposition in haste due to that, and this area is simply too important to not give it more deliberative consideration.

One other matter I want to mention relates to the recommendations of the statutory review, and that is the idea of a sentencing council. It seems to me that too often judges are blamed for inadequate sentences. One way to get over that would be to have a sentence council so that the judiciary can see what the standard tariff is for a particular offence. Quite often I say, having many years ago been a practitioner in the criminal justice system, that those criticisms are not well founded and it turns out that certain pieces of evidence or pre-sentence reports or whatever were not in fact produced in court—material that affects the length of a sentence. A sentencing council would have a valuable role in educating the public as well as disseminating information among the judiciary as to appropriate sentences for particular offences.

MR P. PAPALIA (Warnbro) [3.12 pm]: In making my contribution to the third reading of the Sentencing Legislation Amendment Bill, I will start by referring to the member for Butler's valid and completely justified criticism of the government. What happened last night was extraordinary. Last night we stayed until almost midnight debating a lot of the amendments in the bill that are not controversial; in fact, I had occasion to

compliment the government on one of the changes to the legislation that is included in the bill. Yet the one part of the bill that deserved and needed thorough investigation, and that should have been investigated with all the resources, knowledge and experience of a highly qualified lawyer—we had a couple in the chamber—was skimmed over thanks to the member for Bateman who did not even know what he was doing at the time. He knew nothing about the nature of the debate. He had not contributed in any way except for standing and gagging the debate. He prevented what was needed in the form of the opposition saving the government from itself—that opportunity was missed. It was not as though the member for Butler intended to make any great political point out of it, because there is no political gain to be made from saying that this bit of the legislation enables the government to extend its powers over people and retain them in detention or incarceration longer than their sentence, or impose other restrictions on them post the completion of their sentence. The opposition stood to gain nothing from exposing the failures of the government in its legal drafting and the likelihood of the legislation falling over the moment it is challenged, if it is ever implemented. There is nothing in that politically.

The ACTING SPEAKER: Members, just keep it down to a dull roar.

Mr P. PAPALIA: There is nothing in that politically for the opposition. The member for Butler was attempting to assist the government to avoid it embarrassing itself, in much the same way as it did with the Bell litigation. In fact, that was the example that the member for Butler repeatedly employed to explain the justification for hoping that the government would listen to his argument. Unfortunately, we did not even get to the point of hearing the member for Butler on that particular clause. It was a pointless, silly and ridiculous stance by the government and it did no-one any good. It did no-one in the state any good because it avoided proper scrutiny of what is—according to people who are far more learned than me, the minister and the member for Bateman—flawed legislation that will fail the moment it is challenged, create unnecessary waste, and cost and prevent the government from achieving its stated objective. All the government had to do was enable the member for Butler to convey his argument and listen to it. If the government did not want to accept his argument because it was determined to be pigheaded and would push on regardless, that would have been fine. It had the numbers and in the event that there was a division, it would have won anyway. Instead of allowing that process, the government chose to shut down the whole debate, which is just bizarre. The government deserves to be criticised for that. The member for Bateman's participation and role in that deserves to be highlighted and criticised. I do not think he bothered to find out what he was being used for.

Mr J.R. Quigley: The only words he spoke on this bill were to move the gag; he made no other contribution at all except to disfigure democracy!

Mr P. PAPALIA: That is right. That is my observation and that is why it deserves to be highlighted.

Mr M.H. Taylor interjected.

Mr P. PAPALIA: The member for Bateman did not even know what he was doing. He thought it was a little bit late at night, and for the first time in months the Leader of the House allowed the debate to go until the scheduled time of the evening when Parliament is supposed to sit. He was not here last night, which is why it extended beyond 9.30 pm. The member for Bateman's only contribution to the debate, which he made without considering what he was doing, was to shut it down when we wanted to discuss the one clause that was worthy of deep investigation. That was very poor. I look forward to his contribution.

Several members interjected.

The ACTING SPEAKER: Member for Butler, you do not have the call so kindly keep quiet. Member for Warnbro, you do have the call.

Mr P. PAPALIA: His actions deserve to be exposed. He deserves to be exposed for his lack of interest in the debate last night and for the role he played as minion and puppet of the minister. That behaviour deserves to be highlighted and revealed in *Hansard*.

Mr P.T. Miles: Five minutes' worth of reveal.

Mr P. PAPALIA: That is right; and thoroughly deserving of it, minister.

I want to talk about other clauses. As I said, I had reason last night to acknowledge that the government had done a good thing. It is not very often that I do that. It struck me as extraordinary that the Attorney General had, firstly, done something and, secondly, had done something good. That has not occurred on many occasions since he became the Attorney General. When did he become the Attorney General? I think it was 2010 or a bit later. It was extraordinary to find during the course of the debate last night that the government had moved to deal with a pre-1996 sentencing anomaly. We learnt from the minister that there are some 40 such prisoners in the system. I have met some of these people. I would not advocate on behalf of all of them. These offenders have done very serious crimes. I have met some who have lamented and regretted their actions every single day subsequently for, in some cases, decades. Prior to the legislation going through with that amendment being made and the

change being enacted, they were unable, really, to ever be eligible for release. As I understand it, this legislation will make them eligible for prerelease socialisation and rehabilitation programs that they have been denied prior to now. Like an individual who committed the same heinous crime post-1996, they will be eligible to prove that they are worthy of being released and that they are worthy of being rehabilitated. Quite often, these crimes are committed in haste, under the influence of mind-altering substances in an impassioned state. People who commit those sorts of crimes did the crime only once, there was only one person involved, and they are incredibly unlikely to repeat the crime if they are ever released. It is no excuse—there is never an excuse for that behaviour—but people who committed those crimes prior to 1996 and were sentenced under those laws languished in our system with no hope. I have met some of them—again, I would not advocate on behalf of all these people; I have no doubt that some will not be released—who have proven to be positive mentors for other prisoners. They are a force for good within the walls of the prison system. Frequently, they act to calm people and act in a responsible and measured fashion in circumstances of heightened stress. They often engage in leadership roles with younger prisoners and seek to actively dissuade them from pursuing a lifetime of crime in the event that they are released. Until now, these individuals—as I said earlier, a number of whom I have met—have languished in a system that gave them no hope. Despite the horrible nature of their initial crimes, their sentences were completely unfair by comparison to someone who was sentenced post-1996. It was unfair that they were not eligible for the same treatment and the same opportunities to prove that they could make a positive contribution to society and go some small way towards recompensing society for the crimes they committed.

Last night, I was quite stunned when I realised that that was what the government had done. I think that the Attorney General deserves to be commended for it. He has not trumpeted it from the rooftops and doubtless it is not something that he will necessarily talk about to the media, but I think he will attract a degree of respect that he might not otherwise have had from the legal profession as a consequence of this amendment. I think he has done a lot of bad things, often through neglect rather than actions he has taken, but this may go a little way towards improving his reputation in the wider community. Similarly, the government has an appalling record in crime and punishment. It has lost control of crime in this state. It has overseen a massive expansion in the use of methamphetamines and, as a consequence, in the crime and pain inflicted on society. The government has done virtually nothing to counter it for much of its eight years and two months in office. The government is now scrambling around to try to look as though it is doing something.

Mrs L.M. Harvey: What's your plan?

Mr P. PAPALIA: We will release ours—as we can, minister. As the minister said earlier, an election campaign is coming and we will release our policies. I can guarantee that our policy will be much better than the minister's.

Several members interjected.

Mr P. PAPALIA: Our plan will be likely to succeed because our responses will be evidence based, unlike the government's, which were driven for eight years and two months by whatever way the wind blew in the morning, or by whatever Sunday morning announcement the government's way-overpaid spin doctors chose to steer the minister of the day. That is how the government determined its policies. As a consequence, we have had nine consecutive months of year-on-year double-digit growth in crime statistics under the provisions of government members. The minister stated that there was an unprecedented crime wave. The government lost control! It had to backflip on its policing model, reinstitute the old policing model and pretend it was not doing that! We all know what is going on out in the suburbs!

Point of Order

Mr P.T. MILES: My point of order goes to the relevance of the third reading debate. This is talking about sentencing.

Several members interjected.

The ACTING SPEAKER (Ms L.L. Baker): Members!

Mr P. Papalia: Which order?

The ACTING SPEAKER: Member for Warnbro, the member is on his feet putting a point of order. Go ahead.

Mr P.T. MILES: Thank you, Madam Acting Speaker. The member is not referring to the sentencing legislation debate at all. I was in here last night. He is talking about all the other —

Mr J.R. Quigley interjected.

The ACTING SPEAKER: Member, if you wish to stay in the chamber, can you please not make noises resembling an animal farm!

Mr J.R. Quigley: I was responding to the member for Wanneroo.

The ACTING SPEAKER: Enough! Member for Wanneroo, I think I have your point of order. I would like to reinforce with the member for Warnbro that we need to stick to issues that were raised in the second reading debate and the consideration in detail stage.

Debate Resumed

Mr P. PAPALIA: Absolutely. I can guarantee Madam Acting Speaker that if she were to check *Hansard*, she would find that I talked about all of this in my contribution to the second reading debate. I know that the Minister for Local Government was not here; he was sleeping somewhere else in Parliament at the time of the debate, like most members from the other side, but that is okay.

Several members interjected.

Mr P. PAPALIA: I understand his physical absence and quite often his absence in intellectual terms.

Several members interjected.

The ACTING SPEAKER: All right; that is enough! Member for Wanneroo, you have been called once; I will call you a second time. I know that you probably want to go home, so just sit —

Mr P.T. Miles: I'm happy to stay.

The ACTING SPEAKER: Just be quiet, please.

Mr P.T. Miles interjected.

The ACTING SPEAKER: Member, you do not have the call. The member for Warnbro is on his feet.

Mr J.R. Quigley: You can't sit there and query the Acting Speaker.

The ACTING SPEAKER: That is enough from everyone. I will make a decision as to whether this is relevant or not. Thank you for your concern. Go ahead, member for Warnbro.

Mr P. PAPALIA: I am talking about the Sentencing Legislation Amendment Bill 2016. A significant component of it deals with how people are dealt with in the community post-release. It is about how people are managed post-release after committing a crime and going to prison. My observations regarding the government's failure to deal with people who have committed crimes, trying to prevent those people from committing crimes and dealing with people post-release are all entirely relevant. Whether government members like it or not, their government has failed. The Barnett government has recorded a massive failure in law and order. No-one in Western Australia feels safer than they did eight years and two months ago—no-one. They all feel poorer, though, because members opposite have blown the state's budget, creating massive debt and unprecedented debt levels. Every single year, $1 billion is spent on Corrective Services but it fails to change the behaviour of the individuals who go into the prison system and the people who are supervised in the community.

Members opposite are failures. They are failing every single day and they are failing in the management of the state's finances. This is a big contributor to that failure. This needs to be stated and these observations need to be made when we are dealing with this legislation. The government is attempting at its death knell, as it takes its last gasping breaths, to look as though it is doing something different on law and order. It needs to be highlighted and assessed, and the observations need to be made that members opposite have failed. People in the community know that the government has failed on law and order. They do not trust the government with crime and punishment in the state because everything that it has done has failed. Our prison system is massively overburdened by overcrowding. Thirty per cent of the adult prison muster have not even been sentenced yet—30 per cent! If members visit Casuarina Prison—the pre-eminent, maximum-security prison in the state—40 per cent of its prison muster has not even been sentenced yet. How many of them are minor offenders who are learning how to be real criminals in the government's crime university system? The government has created a crime university system.

Mr P. Abetz: If they're held on remand, it wouldn't be for petty crime.

Mr P. PAPALIA: They have not been sentenced yet. Every single individual who enters the prison system is classified as a maximum-security prisoner. Where are all the maximum-security beds? They are in maximum-security prisons. Where are all the serious crims? They are in maximum-security prisons. Where are all the guys who might have been in there on their first ever occasion for having possessed, dealt or used drugs?

Point of Order

Mr M.H. TAYLOR: I bring the member's attention to the fact that he needs to be relevant to clauses in the bill and that this is not relevant to the clauses in the bill under the third reading speech.

The ACTING SPEAKER (Ms L.L. Baker): Thank you, member. Members! Member for Mandurah and anyone else who happens to be having a private discussion in the chamber, I will read the definition of the correct contents of a third reading speech. I encourage all members to please stay within this definition, which states —

> At this stage the bill can be reviewed in its final form after the shaping it may have received at the detail stage. When debate takes place, it is confined strictly to the contents of the bill, and is not as wide-ranging as the second reading debate.

In fact, raising issues that have been debated in the second reading debate and not continued on into the final form that the bill takes is questionable. I encourage members to consider that because this is in our standing orders.

Debate Resumed

Mr P. PAPALIA: As I was saying, the Barnett government has absolutely failed on law and order, as evidenced by this legislation. It is attempting to look as though it is responding to that failure. The government is now attempting to go to the election with this bill. With one more day of sitting it has introduced a bill covering a whole raft of areas in which it has failed. The government is hoping that no-one will notice and, therefore, it will be able to claim some sort of capacity to deal with the challenges of crime and punishment. I make specific reference to the part of the bill that I talked about quite extensively during the consideration in detail stage.

Mr D.A. Templeman: Was this before it was guillotined?

Mr P. PAPALIA: This was after the guillotine.

Mr D.A. Templeman: That's what the dill pickle doesn't realise. He gagged the debate, so some of the discussion that could have taken place in consideration in detail didn't take place because dill pickle from wherever he is from sliced it off.

Mr P. PAPALIA: I might have been more motivated to truncate my contribution had that not happened last night but, nevertheless, I am talking about something that happened after the guillotine: the component of the bill that deals with some attempt by the government to respond to the disaster it created with fine defaulters in prison. I happen to have an interest in this matter. As I reminded the house last night, the opposition released a paper in November 2014 noting the ridiculous situation with fine defaulters being incarcerated at the notional rate of paying off their fines of $250 per day, but costing the state $345 per day—so, not actually making any payment—and then coming out of prison, mostly having gone in on a Friday and leaving on a Monday with an average stay being 4.2 days. They come out on Monday with a clean slate and are able to recommence offending again. As I pointed out last night, until I drew the attention of the government to this fact it was not even aware of it. When the government became aware of it and sensed that it was being criticised, its response was to suggest that there was not a problem and that on any one day fine defaulters represent a very small number of prisoners in the prison system. That, of course, is true. But as I demonstrated, using the government's own data, it amounted to around 1 100 prisoners a year for the five years prior to my drawing the government's attention to it and prior to its responding. Once it responded, there was a reduction in the number of fine defaulters in prison but it was still a significant number and way more than in much bigger states than WA. Until that occurred, the government refused to accept that there was a problem.

Now, in its last gasping breaths, the government has introduced a bill that has a couple of clauses that refer to something it might do based on a system that it has heard about in New South Wales, which I think I know a lot more about than the government, having received a thorough briefing on it from the WA Aboriginal Legal Service and having sat down and talked to them. I do not think the government is capable of doing that; it has shown no inclination to do that for the last eight and a half years. It is a good thing that the government has at least acknowledged that there is a major problem with the stupidity of locking up a fine defaulter and letting them sit on their backsides over the weekend and coming out on Monday with a clean slate, not having learned anything about changing their behaviour but costing the system a lot of money and overburdening the prison system. It is a good thing that the government has acknowledged that. What is not entirely reassuring is that when I asked the minister for a few of the details about the system that will be implemented by this legislation, hopefully, to avoid incarcerating fine defaulters, she was not in a position to give me any detail. That is not the minister's fault; the advisers were not in a position to give me too much detail. This is a very thin response. I do not think that there has been much consultation at all with people who know about the issue. I do not think any effort has been made to go to New South Wales to sit down with the people who run the system there and who have not incarcerated a fine defaulter since 1995. I do not think anyone from this government has bothered to go over there and do that. I know that the WA Aboriginal Legal Service has. It has provided a comprehensive paper, which I understand was tabled in the other place by Hon Lynn MacLaren, which essentially provides a blueprint and is probably what Department of the Attorney General officials have grasped upon in an effort to look as though they can respond. Some clauses have been included in this amendment to enable development of that response. However, this government will not do it; nothing will happen before 11 March. I hope the election sees WA Labor elected to office because it will look very closely at the New South Wales model and will probably be very receptive to the suggestion that, as in New South Wales, the Aboriginal Legal Service is partnered with government agencies, NGOs and other service providers in the community to deliver a service that identifies fine defaulters who have accumulated fines through any manner of causes. Thanks to a Western Australian Council

of Social Service report from 2013, we know that something like 53 per cent of individuals who are on community-based orders have a substance abuse problem. The system in New South Wales identifies the fine defaulter, assesses them to determine their problem—whether it is mental health, addiction, needing education or training, or any number of other potential alternative interventions—then uses a certified provider from that person's location to ensure that they get the intervention that is needed. That is deemed to be repayment of their fine. Instead of having someone who goes into the prison system, disrupts that prison system, costs us money and is taught that that is the way to get rid of their fines, and comes out and recommences offending, what we may end up doing is changing someone's behaviour. There may be a manner or a system for identifying people and determining as early as possible that they need assistance. In many cases, providing the assistance and intervention that they need and have not been provided with prior to that time will change their behaviour before they start damaging other people in society, hurting a lot of other people and costing us a lot of money. That is a good thing. It is good that the government has at least included some clauses in this legislation that look to set the groundwork for that sort of response. It is not good that the government has not done much in the way of work in preparation for enacting it, but that is not surprising because this bill is being introduced into this place three days before the end of Parliament and the end of this government. There was never an intent for this bill to do much. This bill was just to fill out the last few days of Parliament. It was to be seen, possibly, as a sop to some interest groups, and perhaps as a means of providing the government with the ability to suggest that it is still acting in government as opposed to what we all know—that it is just campaigning now. It is not campaigning very well, but it is. Maybe that is what it was supposed to do. But whatever it was supposed to do, it was never intended to create some sort of response to the problems of crime and punishment that this government has overseen. The extent of damage done to Western Australia as a consequence of this government's mismanagement in the field of crime and punishment—law and order—is just extraordinary. It is amazing that one department such as the Department of Corrective Services has blown its budget every year by an average of 8.6 per cent and never been brought to heel by the government. It is extraordinary that that same department has been patently a failure in every task it has set in trying to change people's behaviour. There has been a failure of the policing system—that is, a comprehensive failure to respond to the threat of ice in the wider community and all the consequences associated with that drug surge across Western Australia, with use that is twice the national average, and the government has been sleeping through it for years. The only thing that stirs it to some sort of response is the approaching election. That is a sad thing because it means that we have suffered through the pain and damage inflicted by that drug on not only all families who have been victims of crime but also families of perpetrators.

We have also suffered the loss of opportunity costs associated with this inept government occupying the Treasury benches for eight and a half years and failing to respond when it was clearly needed. It was very obvious that what the government was doing was not working; in fact, in many situations, it was making matters worse. That is a cost we will never recoup. It is missed opportunity. I refer to the time that we could have been doing something, particularly when the Treasury benches were flooded with revenue from the biggest boom in history. We could have been doing something to change society for the better. Instead we have the biggest debt known to Western Australia—extraordinary levels of debt, massive deficits, loss of the AAA credit rating and a sense of depression right across Western Australia. Unemployment numbers have doubled. We have the equal highest mortgage areas in the country, there are extraordinary levels of underemployment and there have been cuts to services. All the negativity associated with the transition of the mining and commodities sector from construction to production are being visited on the Western Australian community—magnified by the government's lack of action and lack of preparation for that time. Now, when we most need services to intervene and prevent crime increasing, to prevent damage in society and to shepherd people away from all the normal stresses and pressures associated with job losses and lack of employment, the government has the least capacity available to it to respond. It deserves to be condemned for that. We will say it in here and we have said it during debates earlier. The government deserves to be condemned, and it needs to be repeated every single day all the way to the election because people should not forget that the government being incapable of responding in a greater way—this is apart from the issue of the ineptitude of ministers who have been given serious portfolios—is due to the restriction on the financial ability to respond as a consequence of absolutely disastrous financial management. That is something for which the government deserves to be condemned, and we should continue to repeat it, despite my stretching the bounds of standing orders to do so at the end of my contribution.

The way the member for Butler was prevented from making his contribution on the one clause we had disputed in this bill in an effort to try to avoid embarrassment says it all about this government. It highlighted once again its incapacity to respond to a serious issue, and this is often because someone, such as the member for Bateman, did not know what he was doing.

MR D.J. KELLY (Bassendean) [3.44 pm]: I rise to make a contribution to the third reading of this Sentencing Legislation Amendment Bill 2016. As we have heard, the opposition supports this legislation,

albeit, I suppose we could say, with some reluctance. When we read this bill, we know its drafting is something the government has rushed to bring in before the election. On our second last day of the Legislative Assembly's sitting of this Parliament, this bill is still being debated. The government had eight years to deal with this issue, and here we are trying to rush it through before the election. The opposition has not tried to be difficult with this bill. We have, in fact, tried to assist the government by raising issues that we think may well lead to significant parts of the legislation being found to be unconstitutional, for example. Last night, during the second reading debate, the shadow Attorney General did his level best to assist the minister and the government to see the potential problems with parts of this legislation. As hard as the shadow Attorney General tried to assist the government, he was greeted by a minister who either did not understand or was unwilling to take on board the issues he raised and he was confronted by backbenchers such as the member for Bateman, who was doing as he was told in guillotining the debate. Despite the best efforts of the member for Butler, the shadow Attorney General, to raise these issues, we are left with a bill at the third reading stage that may well be found to have significant portions that are unconstitutional.

The part of the bill the member for Butler tried to remedy is clause 25, which inserts new part 5A, "Post-sentence supervision of certain offenders". If the bill is passed, new part 5A will enable certain categories of offender to be made subject to post-sentence supervision orders. That is not a small issue. In the ordinary course of events, somebody who has been convicted of a crime and served their sentence should be free to resume their position in the community. However, this legislation will enable the state to place people who have done their time on post-sentence supervision orders—orders that restrict their liberty. It is not a small issue, minister. In a liberal democracy in which we respect the rule of law, the idea that someone, after having done their time, can then be subject to a further order for an indefinite period is a very serious issue. However, it is not a notion that is foreign to legislation here in Western Australia. These types of orders exist for dangerous and serious sex offenders—so, of itself, it is not something the opposition takes issue with. In fact, we on this side of the house agree that it is appropriate, for the ongoing protection of the community, that the state has the ability to make offenders who have committed the most serious of crimes subject to a post-sentence supervision order. This is a serious issue. We believe that post-sentence supervision orders are appropriate in certain circumstances. However, if those orders are made, they should be made in a way that is constitutional. The shadow Attorney General made the point very articulately that under this legislation, post-sentence supervision orders will be put in place not by a judge or officer of the court, but by the Prisoners Review Board. We on this side of the house believe that may mean that this legislation will ultimately be found to be unconstitutional. This issue has been raised with the government. I do not understand, therefore, why the government has not taken a conservative view of this legislation and entertained an amendment to ensure that post-sentence supervision orders are exercised only by a judge and not by a public servant. That would ensure two things. It would ensure that these orders are constitutional and are not struck out at a later date. It would also ensure that these orders are imposed by a process that has some transparency. It is not a small thing to impose restrictions on the liberty of a person who has completed their sentence. We do not want these orders to be routine, to be made in secret or to be made through a process that denies people natural justice.

It is not as though the proposition that has been put by members on this side of the house—namely, that these orders should be invoked only by a judge—is not reasonable and well thought out. I understand that is the very same proposition that the federal Liberal–National government has adopted in its terrorism legislation. Under the federal terrorism legislation, orders can be invoked only by a judge. That is the way in which the federal Liberal–National government deals with the issue of terrorists. To be honest, I suspect that the real reason the government is not willing to entertain an amendment from the opposition to ensure that this legislation is constitutionally valid is that if it had to get advice on how to do that, this legislation could not be dealt with in this sitting of Parliament and, therefore, the government would not be able to get it through before the election. I would love it if the minister, in her third reading contribution on behalf of the government, would explain why the government believes that the constitutionality of this bill is not an issue and provide the advice that the government has received. I would love it if the minister would explain also why the government is taking the approach that post-sentence supervision orders should be invoked by a public servant, rather than the approach that the federal Liberal–National government has taken with the federal terrorism law. I suspect the reason the minister is unwilling to move on this is that for the last eight months, the Attorney General has been sitting upstairs doing not much at all, and the government has come to the conclusion that it had better do something on law and order before the election, because its record to date is absolutely miserable.

Mrs L.M. Harvey: Sixteen pieces of legislation!

Mr D.J. KELLY: Sixteen pieces of legislation! The minister is the one who, when I asked her a question in this house about why she had not closed down the drug house in Eden Hill, said we know where the drugs are but unfortunately it can take two years to clean the place out.

Mrs L.M. Harvey: They have actually arrested a couple of those people, member.

Mr D.J. KELLY: That is exactly right, minister. That is after the minister said we know where the drugs are but it can take two years to deal with the issue. Is it not funny that after I stood up and asked a question in this place, the police found enough resources to raid that place and make some arrests? Is that not remarkable?

Mrs L.M. Harvey: They were working on it for a period of time before you raised it, member.

Mr D.J. KELLY: That is right. We had held a public meeting. They have been selling drugs in that place for well over a year.

The ACTING SPEAKER (Ms L.L. Baker): Order! Relevance, member.

Mr D.J. KELLY: I am just taking the interjection from the Minister for Police. In that instance, the minister admitted they know where the drugs are but it can take two years to deal with the issue. People had been complaining to the local police for well over a year about what was going on and absolutely nothing happened.

Mrs L.M. Harvey: I think you should check the *Hansard* and make sure you are quoting me correctly, because that is not what I said. Do not misquote me. Do not mislead the Parliament.

Mr D.J. KELLY: I do not have the *Hansard* here. The minister said it can take two years.

Mrs L.M. Harvey: I did not say that.

Mr D.J. KELLY: I asked a question in Parliament, and, lo and behold, within a couple of weeks the place was raided and the people were charged. Those people are still in that property. They do not come to court until December. I will tell the minister something else. I think I have a couple of minutes left. They are still selling drugs from that property. We can go there any night and cars are toing and froing from that property. The fact that the police have raided that house and charged some people has not stopped them from selling drugs. The minister can take that back to wherever she likes. People are livid. There was a second public meeting on the weekend and 50 people showed up.

The ACTING SPEAKER: Member, I need to remind you about the relevance to this bill.

Mr D.J. KELLY: We are pleased to support this legislation, notwithstanding the issues about constitutionality that we have raised. However, I do not believe this legislation will have a material impact, because even with these enhanced powers, this minister and this government will not be able to get the job done on the ground. Law enforcement is not just about the minister coming into Parliament with a smirk on her face and passing a bit of legislation in the dying days before an election so she can run around and say that she has done something. She said that she had passed 16 bits of legislation; this must be the sixteenth. While she is doing that, crime is out of control in the suburbs—absolutely out of control. The minister says that crime is not out of control. She should go and talk to people in her electorate. She should go and talk to communities. Two tonnes of meth is used in Western Australia every year.

Debate interrupted, pursuant to standing orders.

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