

**PROHIBITED BEHAVIOUR ORDERS BILL 2010**

*Third Reading*

Resumed from an earlier stage of the sitting.

**MR P. PAPALIA (Warnbro)** [9.46 pm]: Without wishing to be too repetitive, I want to restate my concerns about this legislation. The opposition has opposed and will continue to oppose this legislation. We have provided some degree of scrutiny to the legislation during consideration in detail. I think ultimately the member for Mindarie clearly stated our concerns.

When we distil the essence of this legislation to what the government will actually achieve by introducing it, it becomes clear that there is nothing to be gained by introducing this legislation to Western Australia, other than to indicate to the people of Western Australia that the government is trying to do something. That will be the only real outcome. There will be one other outcome and I will come to that in a moment, but that is the primary motivation of the government. That is what motivates the Attorney General and that is what motivates this government. I understand that prior to the last election the government made what I guess could be called a pledge that it would introduce prohibited behaviour orders. It said it would do that as part of its manifesto, if that is what the document entitled “Protecting our Community — Prohibited Behaviour Orders” is. The document was released prior to the last election. I understand that the government said it would do that. But the justification upon which the government based that move was, as stated in the document —

In towns and communities across the State people rightly perceive that the standards of behaviour which had previously allowed them the quiet enjoyment of their neighbourhoods and which were once taken for granted are now in rapid decline.

The feeling that people are less safe now in their neighbourhoods and going about their daily business is reflective of the fact that in several key areas which immediately concern Western Australian citizens offending has increased dramatically.

Attorney, nothing has changed! This government is two years into its term of office and those two paragraphs could just as easily be applied to the community in Western Australia under this government as it was applied to the government that the then opposition was describing at the time and for which issues he was ascribing responsibility. Of course, the Attorney General is using those issues to justify this legislation now. The Attorney knows that the types of behaviour to which he referred in his document continue to concern people in Western Australia. They continue to be a source of anxiety to the people of Western Australia. They continue to provide people with reason for concern.

Antisocial behaviour has not changed under this term of this government; if it had, one would question why this legislation has been introduced. The whole justification for introducing this legislation is that things were going to hell in a hand basket, and, finally—two years down the track—the Attorney General has gotten to the point of introducing this legislation with a view to suddenly, miraculously, fixing it all. How does the Attorney General intend to do that? He intends to do it by creating a new law—that is all he is doing. No action has been taken and no additional resources are being applied beyond introducing a law. As I suggested to the Attorney General during consideration in detail, that is because he lacks imagination. Being a lawyer and having had his entire life experience revolve around the law—learning it in school and teaching it and then applying in it a courtroom—means that the entire extent of the Attorney General’s imagination when trying to solve a problem comes down to introducing another law. He went away and thought about it for two years and came up with another law that he thinks is going to solve it: “I’ve got a problem. I know what to do; I’ll introduce another law.” That is not in accord with what people traditionally might have considered to be some sort of principle that could be associated with the Liberal Party, but, nevertheless, it complies with the expectation that one would have from looking at the Attorney General’s life experience.

I am not criticising that; I understand that that is what the Attorney General draws upon when he forms his views of the world and his thoughts on how to deal with a problem that he has apparently identified. The problem is that when he is selling this legislation, he is suggesting to people that he is targeting the worst of the worst in the juveniles that the Attorney General wants to name and shame. These juveniles have consistently, repetitively committed these offences, and have revolved through the system over and over and over—the Attorney General suggested 20 to 50 occasions of reoffending. Yet the Attorney General readily acknowledges that the legislation does not state that; this legislation allows its measures to be applied if an individual has committed and has been convicted of a relevant offence, and, during a period of three years after that, is convicted of another relevant offence—so after only two convictions.

But the people the Attorney General is suggesting that this law is targeted at and who will suddenly stop behaving in this manner are—as I have said and the Attorney General has said on a number of occasions—the

most challenging and difficult repeat offenders. I sat in this place last week, after having listened to the Attorney General deliver his second reading speech, and listened to the bill being dealt with in consideration in detail and to the explanation about who was being targeted by this legislation, and so I found it really ironic that late last week the Attorney General announced he was going to can the family intensive team program. The justification for that was that it was not capturing the people it was supposed to be capturing and it was costing more than the Attorney General had anticipated.

**Mr C.C. Porter:** No, no, no—it was underspent in all four years.

**Mr P. PAPALIA:** I beg your pardon?

**Mr C.C. Porter:** It was underspent in every one of the four years.

**Mr P. PAPALIA:** I saw the Attorney General's media release that suggested that it was \$110 000 for each individual, which was too expensive in his view—is that not correct?

**Mr C.C. Porter:** Indeed; but your point was that not enough money was put into it. We actually couldn't find enough people to spend it on.

**Mr P. PAPALIA:** Remember on that radio show when I said, "Don't put words into my mouth"? It is the same thing; I will talk for me and the Attorney General can talk for himself. If the Attorney General is suggesting that I have somehow misquoted him, I was referring to his media release that stated that \$110 000, in his view, was too much and it was not a good return on investment.

**Mr C.C. Porter:** It's clearly not a good return on investment.

**Mr P. PAPALIA:** If the Attorney General takes that program in isolation, I would suggest that that was the single program underway in Western Australia that targeted the individuals the Attorney General is talking about trying to target with this legislation. That was the only program intentionally designed to target the reduction of crime and the reduction of recidivism by those individuals the Attorney General claims are the primary targets of this legislation. It was based on overseas research and 30 years of application overseas and won national awards. The Attorney General has removed the primary tool—outside of prison—available in Western Australia for dealing with these repeat offenders. The Attorney General's response has been to cancel the family intensive team program, and I, again, find it ironic that the Attorney General is doing that at the same time as he is introducing this legislation, which is supposed to target exactly the same individuals. The only thing is, as the Attorney General has clearly indicated, that the only way that this legislation will target those individuals or have any impact on them is if somebody is lucky enough to be sitting in the coffee strip in Fremantle or in Northbridge with his iPad, and is looking at Joe's picture at the same time that Joe, who has a prohibited behaviour order that forbids him from going to that coffee strip, happens to wander past, and that individual gets on the phone fast enough and the police are available because they are not, at that time, engaged in dealing with some serious crime somewhere else, and they get there in time to nab Joe. If all that occurs, and these people are charged with a breach of their PBO and subsequently go to jail, that will be how their activities will be constrained. That is pretty much it, is it not? That is the objective.

The Attorney General has said publicly that his concern about this legislation is that it will not capture enough and not enough people will go to jail.

**Mr C.C. Porter:** No; what I said was that the concern, with the cautious nature and way the legislation has been drafted, is that we may not get enough orders.

**Mr P. PAPALIA:** And subsequent breaches if they continue to offend.

**Mr C.C. Porter:** No, no.

**Mr P. PAPALIA:** Is the Attorney General really contending that if people are given a PBO, they will instantly stop? The threat of jail is a threat, is it not?

**Mr C.C. Porter:** You know I'm not contending that, nor have I ever contended that.

**Mr P. PAPALIA:** The Attorney General's claim is that the current legislation is inadequate to capture these people, otherwise why would he introduce this legislation? The shadow Attorney General disagrees with the Attorney General, but he is suggesting that this legislation is required because the suite of available laws does not capture these people adequately.

**Mr C.C. Porter:** What do you mean by "capture"?

**Mr P. PAPALIA:** The Attorney General's argument is that this is a law enforcement tool to stop these people offending.

**Mr C.C. Porter:** I think "deal with" is a better word than "capture"; "capture" has multiple meanings.

**Mr P. PAPALIA:** Okay, “deal with”.

If they breach their PBOs, what happens to them in the end?

**Mr C.C. Porter:** In the end two things can happen to a subject of a PBO: they can abide by it or not abide by it; and, in that situation, they can get caught or not get caught.

**Mr P. PAPALIA:** What happens to them if they do not abide by it?

**Mr C.C. Porter:** They are either detected or not detected; but, if they are detected, they get caught.

**Mr P. PAPALIA:** If they do not abide by it, they are detected and caught by the police, and they are taken to court and found guilty, what then?

**Mr C.C. Porter:** You’ve got it, member for Warnbro; they go back to court and they are sentenced for the offence of having breached the PBO.

**Mr P. PAPALIA:** What happens to them?

**Mr C.C. Porter:** A number of things can happen to them.

**Mr P. PAPALIA:** What is the worst thing that can happen to them?

**Mr C.C. Porter:** They can go to jail.

**Mr P. PAPALIA:** How much does it cost to incarcerate a juvenile for a year?

**Mr C.C. Porter:** A good deal less than most of the offences are costing on a cumulative basis.

**Mr P. PAPALIA:** How much does it cost in comparison with the family intensive team program?

**Mr C.C. Porter:** Given those 2007–08 figures, it is cheaper to put someone in jail than it was to deal with them through the family intensive team.

**Mr P. PAPALIA:** The Attorney General knows that is not true; it is over \$200 000 an individual a year for juveniles.

**Mr C.C. Porter:** No; that’s not true.

**Mr P. PAPALIA:** That is true.

**Mr C.C. Porter:** No, it’s not.

**Mr P. PAPALIA:** That is true.

**Mr C.C. Porter:** I don’t know what the exact figure is off the top of my head, but that is not it.

**Mr P. PAPALIA:** It is true; it is over \$200 000 a year—it is!

**Mr C.C. Porter:** No, I don’t believe that is the case.

**Mr P. PAPALIA:** It is over \$200 000 a year. That is my point; the Attorney General has removed the family intensive team program, which cost the outrageous figure of \$110 000 a year according to the Attorney General’s quoted figures—not \$110 000 a year; \$110 000 for the program.

**Mr C.C. Porter:** Per person per year.

**Mr P. PAPALIA:** Per individual. The Attorney General has substituted that with the alternative of locking them up in jail at \$200 000 a year.

**Ms R. Saffioti:** Plus the offences they commit.

**Mr P. PAPALIA:** Plus the hurt, pain, anxiety and injury they inflict upon the community.

What happens when they go into juvenile detention? Any guesses?

**Ms R. Saffioti:** They learn how to be better criminals!

**Mr P. PAPALIA:** Yes! They meet real criminals! They learn how to get better at their job. If they continue down the path that is gone down by one-third of all the individuals who go through the front door of a juvenile detention facility, where will they end up? The Attorney General knows the answer to that, because he told me in the answer to my question on notice. They end up in the adult prison system when they get old enough. If they are Aboriginal, as most of the people in juvenile detention are, because 70 to 80 per cent of the guys at Banksia Hill are Aboriginal, one-third of those will end up in the adult prison system. What happens when they get to the adult prison system? How many of them reoffend? The Attorney General knows the answer to that as well, because he told me that also in the answer to my question on notice—up to 69 per cent of them reoffend.

I am not criticising the Attorney General for taking the family intensive team money and putting it into diversion programs at the other end. My contention is that that should happen anyway. However, what the Attorney General has effectively done is remove a weapon that he had at his disposal. I understand that the Attorney General has done that based on an independent report. Is that correct?

**Mr C.C. Porter:** Yes.

**Mr P. PAPALIA:** Who did that report?

**Mr C.C. Porter:** An independent consulting group. I will get that for the member in a moment.

**Mr P. PAPALIA:** Will the Attorney General table that report?

**Mr C.C. Porter:** I will certainly show you a copy of it. I have offered you a briefing on this matter, and if you would like to take that up —

**Mr P. PAPALIA:** I understand that. But I would like to get a copy of the report, if the Attorney General does not mind, the reason being that I wrote to the Attorney's office under freedom of information and was informed that the Attorney did not have a copy. I have that letter from the office.

**Mr C.C. Porter:** That may be the case.

**Mr P. PAPALIA:** Yes, because it may be in the department.

**Mr C.C. Porter:** Indeed.

**Mr P. PAPALIA:** I concede that. But I do want to see that report. I am concerned, because from the nature of the Attorney General's responses to my other questions on notice, which I received this week, I suspect that the department did not really like being engaged in a program that is multi-agency. The family intensive team program was designed to achieve a joined-up response. It brought into play police, corrective services, child protection, NGOs, and other agencies, to work together and focus on the dysfunctional family background, as well as the individual. There is the kid who is causing all the problems, and there is the irresponsible family or the dysfunctional family, and all the different agencies and all the resources are brought together to deal with that. I am not accusing the Attorney General of anything. But I suspect that this started a while ago, when the department decided that it would like all that money to be kept in-house. The department decided that it would like to control all that money itself, without any oversight from other departments, without any engagement with other agencies, and without any consideration of whether, from an external viewpoint, it is doing the right thing.

If, as I suspect, that is what the department wanted to do, how could it eliminate this program that it does not like and shift the money? One thing the department might do is throw the same number of resources at a larger number of people who are supposedly going to be supervised. That is indicated by the answer that the Attorney General has provided to me. That answer suggests that the numbers have increased significantly. The way the Attorney General has put it is that the program has become more efficient, because there are larger numbers, and that means that it has become cheaper per individual. I may be wrong, but I believe there is another way of looking at it. I would suggest that the same figures could be used to conclude that each individual was given less attention, because the resources were diluted across a larger pool of individuals.

**Mr C.C. Porter:** Member, your government started this program, and I think it was a good idea. However, your government thought that far more people would go through it than was ever actually achieved. Your idea now might be to have fewer people go through it, to prevent dilution. But the original concept, and the reason that your government started this program, was to have more people go through the program.

**Mr P. Papalia:** If that were the case, and if we were still in government and we wanted to increase the numbers, what we would do is ramp up the resources allocated to the same task. We would not just say, "Here is our allocation of money. We are going to flat-line that and throw more people at it."

**Mr C.C. Porter:** The problem was not that there was not enough money. It was that there were not enough families who could be engaged in the process.

**Ms R. Saffioti:** Are you saying there were not enough families?

**Mr C.C. Porter:** They have to want to be engaged in the process.

**Mr P. PAPALIA:** There is the problem. If the situation is that there were not enough volunteers, then perhaps the structure that is wrapped around that program needs to be changed. Perhaps we need to look at whether we can compel people to do things.

**Mr C.C. Porter:** Ah!

**Mr P. PAPALIA:** I do not know whether the Attorney General has considered that as an alternative.

**Mr C.C. Porter:** That is the point, though.

**Mr P. PAPALIA:** I would agree with the Attorney. But there is the problem. I am worried, because I think that if the Attorney really considered this, he might think that here is a really good tool that we have just done away with, on advice from the department. That is quite understandable, if we are looking at the rice-bowl mentality that I am led to believe, not having been a minister, may exist in state bureaucracies. I suggest that the department would have seen this lump of money sitting there, and an alternative for the department might have been to say, "Let's get a report that says this is not working. But, before we do that, let's overtax it and make sure that it is not working. Let's get the wrong people into the program, because they are the only ones who we can compel or entice into it at the moment. Let's go out to the Eastern Goldfields and to Geraldton, and let's not give it any more money, even though we have expanded the area of operations significantly to more challenging individuals in more challenging locations, because these are remote communities, and a lot of the people we are talking about might be hours and hours away from the central areas where the office is located. Let's do all of that, and then let's get an 'independent' analysis that determines that it is not worth it." The department said, "Let's forget that this has been based on 30 years of research overseas, and it has achieved reductions in recidivism by the worst offending juveniles of between 25 and 70 per cent. Let's not do that. Let's just determine that it is not the best use of the money, and maybe we can find a better use for that money."

I say this in all fairness to the Attorney General, because I know that he wants to ramp up services to target these young people and try to divert them from the prison system. That is good. It is just the Attorney's rhetoric that I do not like. If he would cut down his rhetoric at the other side, that would be good. It would certainly be a lot more helpful. I know that if the Attorney had been given the option of cancelling this program, based on a report from the department that suggests that it does not work, he might take that option. He might say, "Okay. I can see where there are going to be benefits if we go out the other end and try to capture those guys before they get into the cycle of reoffending." However, the problem with that sort of thinking is that this program was the single tool for targeting that high-end reoffender cohort. That was the single tool outside of the prison gate. The only other tool lies within the prison gate. However, that other tool has demonstrably failed to change the behaviour of these individuals for the better. Regardless of how many more courses the Attorney has managed to fund in the adult prison system, or regardless of whatever increase in the rate of provision of those programs the Attorney has managed to achieve, which is commendable, our recidivism rates are still pretty terrible. As a consequence, we know that the ultimate outcome for these individuals who are going into juvenile detention and subsequently into the adult prison system is that they will reoffend. A large number of these individuals will continue to reoffend throughout their lives. That will cost us an enormous amount of money. When we are costing things such as the family intensive team program, we cannot do that in isolation of the alternative outcome, which is these guys are going to go on causing hurt, pain and cost to Western Australian society for a long, long time. The figures that the Attorney has provided to me with regard to recidivism within the different juvenile detention and adult prison musters indicate just how significant this problem is.

The Attorney General is indicating that, as at 30 June this year, more than 20 per cent of the adults sentenced to prison have reoffended five or more times. A significant cohort ends up going through the revolving door. In the juvenile world it is a smaller number, but it is still significant; 4.3 per cent of juveniles commit more than five offences. Those figures are for offences that have resulted in convictions and sentences. The point is that there is a philosophical debate to be had about where the balance can be achieved. It would be okay if the Attorney General provided a hard response to the offenders who commit the greatest number of offences in the community—that is, the offenders the Attorney General is talking about targeting with this legislation. The Attorney General is very specific about it. The Prohibited Behaviour Orders Bill is a bill for an act to enable courts to make orders that constrain offenders who have a history of antisocial behaviour and for related purposes. This legislation is supposed to do what the family intensive team program did. I suggest that this legislation will not be very effective at doing that job by comparison. If the FIT program needed to be beefed up with the ability to compel people to participate, maybe the Attorney General could have given consideration to that rather than send it off to oblivion forever. The Attorney General would probably get some support for that.

**Mr C.C. Porter:** For compelling families to —

**Mr P. PAPALIA:** Hang on! We have done it at the federal level with regard to quarantining pension and welfare allocations. It is not beyond comprehension that there might be a way of engaging with the federal government to achieve that outcome. The Attorney General knows that we are talking about a very small cohort of families and offenders in Western Australia who are the biggest contributors to offending, as identified by the Auditor General in the report from 2008 that the Attorney General so happily refers to.

**Mr C.C. Porter:** Are you saying that we should withhold their Centrelink payments under the threat of —

**Mr P. PAPALIA:** I do not know; I am just saying that we should see whether there is any way that we can compel people to do it.

**Mr C.C. Porter:** Would you consider that option?

**Mr P. PAPALIA:** We would have to work with the federal government to achieve it.

**Mr C.C. Porter:** That is the first time I have heard you give a specific suggestion, and it is not a bad one. If I can force families to be involved in JJTs on that basis —

**Mr P. PAPALIA:** If there were any other way to get them to do it—I do not know whether there is—I have said that that has been done —

**Mr C.C. Porter:** It has been done with truancy.

**Mr P. PAPALIA:** Yes. These guys would all be truants, would they not? We would not know that now because they are no longer involved with either the Department of Education or the Department for Child Protection, but we would have known under FIT because DCP would have become involved when the juveniles became truants. Part of the problem of removing the responsibility away from a multi-agency approach and moving it to Department of Corrective Services is that the Department of Corrective Services does not know any of that stuff. I suggest that that agency is not likely to engage with many other agencies or tiers of government because that is not its focus.

I would like to consider any option that would prevent the family intensive team program from being consigned to the wastebasket of history with regard to corrective services in Western Australia because I believe that was a very worthwhile program. It targeted a cohort that, without this alternative, had no way of being dealt with other than by imprisonment. Imprisonment is very expensive for juvenile detainees. It costs more than \$200 000 a year per individual. It has not been very successful, according to the recidivism rates and the rate at which individuals go into the system and end up in the adult custodial system. If we measure it by those parameters, it is not a great outcome for those individuals who end up in the prison system. To get there, they have to have offended against the public, committed a crime and created another series of victims and made our community less safe. I commend and support anything that can be done to reconsider the FIT program, or a variant of it.

With regard to this legislation, I have not been moved and remain completely unmoved by any argument the Attorney General has presented for publishing the details of juveniles on the web. It is absolute nonsense to suggest that when the prohibited behaviour order is finished, the government will remove the individual's details and the person will never be affected as a consequence of having his photograph, his name and the suburb in which he lives published on that site and on as many other sites that can possibly be generated on the web. The Attorney General knows that is nonsense and we know it is nonsense. The government is labelling individuals for the rest of their lives. That will undoubtedly hamper an offender's ability for rehabilitation. If the government's stated objection is to prevent juveniles from reoffending, publishing a 16-year-old juvenile's profile, name and photograph and the suburb in which he lives will not help; it will only make matters worse. Apart from the likelihood of vilification, harassment and those sorts of things that may occur, any employer in the future who might be looking to seek to employ the individual and who may not be aware of the person's previous record will be able to google the person's name and that individual will be condemned for the rest of his life as a consequence.

**MR C.C. PORTER (Bateman — Attorney General)** [10.16 pm] — in reply: As part of my response to the third reading of the Prohibited Behaviour Orders Bill 2010, I will deal with some of the issues raised by the member for Warnbro regarding juvenile justice and the family intensive teams. I accept that some of the individuals who appeared on the list of the 20 worst juveniles are the types of people who this government is trying to target and who the previous government was trying to target under the family intensive teams. I will make a couple of comments about the member's observation about that program and the way in which the government is dealing with that cohort of offenders and juveniles who come into contact with the justice system generally. The member accused me of lacking imagination. He implied that all the government's responses to juvenile justice, juvenile rates of offending and juveniles at risk are somehow unimaginative and not novel and, in the member's words, that the government had provided "no new resources". I do not believe that the member gives fair credit to this government. There is a bit of comparative history here. The member and I are relatively new members to this place and it irks me when we argue about who was right and who was wrong regarding a GST agreement that was signed 10-plus years ago. However, there is a valid reason to argue that if one side of politics says that it can do better because it has better ideas and can produce better results, we should look at each performance on a comparative analytical basis using measurable comparisons. In reply to the accusation that there are no new resources and that we have tried nothing new or novel I say to the member that we have devoted \$49.7 million to expand juvenile justice teams up north. I will come back to that in a moment.

**Mr P. Papalia:** Youth justice centres were a Labor initiative. That isn't new.

**Mr C.C. PORTER:** I agree with the member that these are not necessarily new, although there are new features to them, which I will come back to in a moment. Would the member not agree that, although we are arguing

about \$2.2 million for the family intensive teams, \$49.7 million is a massive expansion, and it was not money that the previous government had planned to expend? Is that not a positive development?

**Mr P. Papalia:** We lost office two years ago. How would you know what we would have assigned in the way of expenditure two years down the track?

**Mr C.C. PORTER:** There was no policy going into the election for this from the member's side. Would the previous government have done this?

**Mr P. Papalia:** We did it in Geraldton. We created the concept. It was a pilot program and we then funded it for the eastern Goldfields. Don't you think we would have continued to expand it if we thought it worked?

**Mr C.C. PORTER:** Maybe the former government would have, maybe not! The member for Warnbro would have to concede that the accusation that there is no new resourcing in this area is unfair.

**Mr P. Papalia:** You are using the same tools that we used. Yes, you put more money into it, but it is the same tool.

**Mr C.C. PORTER:** The words that the member for Warnbro spoke a moment ago were "no new resources", with specific reference to the area of juvenile justice. I know that the member uses language loosely at times, but that is so loose as to be a quite unfair analysis of this government's expenditure: \$49.7 million for the expansion of the JJTs; \$13.9 million for English language tuition for temporary 457 visa holders from non-English speaking backgrounds —

**Mr P. Papalia** interjected.

**Mr C.C. PORTER:** Another two very important ones are \$42.5 million through Child Protection for support and protection services for children and young people, support for individuals at risk or in crisis and additional child protection staff, increased funding for non-government services; and \$27.9 million for responsible parenting in regional areas. The sorts of individuals that those programs through DCP —

**Mr P. Papalia:** These are all Labor initiatives that you are continuing to roll out; that is good!

**Mr C.C. PORTER:** In essence, the member is a reasonable person, but he would have to agree that that is a substantial amount of funding. In excess of \$150 million has been spent to target precisely the people that the member says need to be targeted.

**Mr P. Papalia:** I commended the Attorney for rolling them out, but they are not new initiatives. What I am talking about was potentially the only tool in that field.

**Mr C.C. PORTER:** They are new initiatives, because under the former government we saw, particularly with respect to Child Protection, a department in real crisis through underfunding after eight years.

**Mr P. Papalia:** That is not true!

**Mr C.C. PORTER:** It is true.

**Mr P. Papalia:** We massively increased Child Protection funding.

**The SPEAKER:** Member for Warnbro, I make the observation that although the Attorney General did not entirely hear you in silence —

**Mr P. Papalia:** We had an exchange.

**The SPEAKER:** He did not entirely hear you in silence, member for Warnbro; he did take some interjections and dealt with those. However, I make the observations that four minutes into the Attorney General's response, I have listed eight interjections that you have made. If you want this to progress, I am going to suggest fewer interjections. If the Attorney General wants to take them, that is fine, but I am interested in hearing some continuity from the Attorney General.

**Mr C.C. PORTER:** Thank you, Mr Speaker, I might give up taking interjections because it is not very productive.

What we have done as a government is spend more in this space of time on juvenile justice than any government in the state's history—more than the previous Labor government by a massive amount—yet the criticism comes that somehow enough is not being done, so some comparative analysis has to be brought to bear on the performance of the previous government in this area. What the Auditor General's report said about the previous government's performance in this area was that it was at a point near collapse. The Auditor General said that if juvenile justice teams are established, we must ensure that the juvenile justice team worker goes out and visits the child who has been referred to the juvenile justice team inside the benchmark of six weeks; otherwise, there is no point in having a juvenile justice team. The previous government managed to hit that six-week benchmark in metropolitan regions in 32 per cent of cases, but it did not keep figures for the regions! We actually do not

know how ordinary it was in the regions. In two short years as a government we have been able to raise that six-week benchmark up to 72 per cent. It is more than double. The member for Warnbro can talk big about the juvenile justice base, but performing is difficult. One of the things in response to the member for Warnbro's well-meaning comments is that he has a view that it is a little bit easier than it is. Another interjection was to the effect that there is no shortage of families who need assistance. Unquestionably, that is the case, but the point of the family intensive teams was that the family had to wish and want to engage. They had to meet with clinicians on a one-to-one basis in the family home environment several times a week for a period of at least four months.

**Ms R. Saffioti:** Now you just ignore them!

**Mr C.C. PORTER:** The problem was they were ignoring us! I do not think that the member for West Swan has any comprehension of this. The interjection that there was no shortage of families came from the member for West Swan. I agree with the member on that, but the idea that just because we devote funds to assist in a certain intensive way and that everyone agrees or is willing to engage in that way simply is not the case.

**Ms R. Saffioti:** So you give up and walk away!

**Mr C.C. PORTER:** Not at all! We are redirecting funds from that area to an area in which we know we are having measurable success. Governments change from time to time and members opposite might make decisions to redirect funds inside programs, but we are measuring programs, trying to work out which ones work and redirecting funds to them.

The member for Warnbro made an important point. He said if we cannot get voluntary engagement from the families in something like an FIT, maybe we need to compel them to do that. I suggest that for a person who makes a lots of comments but very few specific ones, that is actually a specific comment on which I agree with the member. But developing such a plan is not going to happen swiftly. The pitfalls in this are enormous, and we would not do it inside this program, which, at the moment unfortunately, is failing. I am well and truly of the view that we may have to come down to some kind of cooperative arrangement with the federal government to withhold entitlements and other benefits from families to get them to engage in these sorts of programs. I agree with the member for Warnbro. But, at the moment, the fact that we have not been able to do that means that notwithstanding the good intentions and money that was spent, we have not been able to engage the families we wanted to engage. The point is that when we look at the way in which this program had money allocated to it, keeping in mind that we are spending in excess of \$100 million on these families in crisis above and beyond what the previous government spent—we are talking about \$2.2 million that has been redirected here—in each of the years 2004–05, 2005–06, 2006–07, 2007–08 and 2008–09 there was a significant underspend for this program simply because we could not find the families that we needed to engage. To be more precise, we could find them, but we could not get them to engage with the teams in this program. To me, that speaks of a need to redirect the funds into something that I absolutely know is working and, indeed, to rethink the way in which we would go about this type of intensive supervision. That is going to take some rather stern, compulsory measures.

**Mr P. Papalia:** Would you not acknowledge the irony of this legislation that you are introducing to target the exact same individuals with a law that will ultimately only throw them into jail?

**Mr C.C. PORTER:** I am keen to have the member for Warnbro go to a briefing on this. The point is that the FIT program was established to target, by way of intensive engagement, the families of the worst offenders. Unfortunately, we could not get them in anywhere near the numbers that we needed to engage. So the types of people we were engaging were the sorts of people we were engaging with more effectively and in a more cost-effective fashion through the JJT. That is the bottom line with that program.

**Mr P. Papalia:** So you have taken that tool, binned it and replaced it with a law.

**Mr C.C. PORTER:** It may be that something similar in that intensive space is not going to work without compulsion, as the member pointed out might be the case. That is the drawing board that I am going back to at the moment. In the meantime, I am not going to waste \$3 million when that money could produce better results for the same people that are being affected at the moment from another program.

**Mr P. Papalia:** Are you not concerned that we will lose expertise associated with the program?

**Mr C.C. PORTER:** Expertise can be brought on with new programs at any given point in time.

**Mr P. Papalia:** This was the only jurisdiction in Australia where it was initiated.

**Mr C.C. PORTER:** In any event, under the former government the number of referrals hitting the benchmarking decreased, whereas under this government it has increased. The member talks big about juveniles, but the number of inactive files —

**Mr P. Papalia:** It won a national crime prevention award.

**Mr C.C. PORTER:** Under the previous government, in over half the instances of juveniles referred to the JJTs, no person inside the department was allocated to a file. Under this government, it is zero. That is promoting the welfare of the individuals inside the juvenile justice team. I can say to the member for Warnbro that there is not a single comparative measure in which this government is not significantly beating the record of the former government, and this is in a very hard area where things do not occur easily. That having been said, the money having been spent by this government and results having been achieved does not mean we, as a government, can turn a blind eye to the fact that there is a hard core of offenders who repeatedly commit a low-grade rate of offences such that communities approximate to those individuals are being damaged.

**Mr P. Papalia:** You don't get the irony of that inconsistency then.

**Mr C.C. PORTER:** The member for Warnbro and Alanis Morrisette do not understand the meaning of the word "irony". They just do not get it.

**Mr P. Papalia:** I get it. You're saying it's all so good now that you need to introduce this other tough law to somehow rectify how bad things are.

**Mr C.C. PORTER:** I am saying that targeting repeat offenders with firm responses is not a policy that is mutually exclusive to helping people, particularly juveniles at risk. We are doing both better than the member for Warnbro's government did.

**Mr P. Papalia:** Shut down the FIT program. I can't see the justification for it.

**Mr C.C. PORTER:** I think we have established that. I told the member about that last week. With this legislation we are identifying a hard-core group of offenders who are making life a misery for members of the community—people who have committed graffiti and assaults on a recidivist basis and who are making prisoners of their neighbours. We have identified that there is no tool presently available to allow either the courts or the police to properly control these individuals. On that point, the member for Mindarie indicated that, in his view, nothing is in the existing suite of orders that could not effect the same sorts of restrictions of civil liberty that we are trying to restrict here.

**Mr J.R. Quigley:** That's not quite right. I said if there was an inadequacy, you could deal with that in the Sentencing Act.

**Mr C.C. PORTER:** In fairness, the member is right. His position changed as the argument went along. It is interesting that when a paedophile recently moved next door to his victim and who was given a conditional suspended term of imprisonment he was quoted in *The West Australian* in terms of "Criminal lawyers and the shadow Attorney General, John Quigley, have questioned whether existing legislation allowed courts to impose residential requirements as part of a conditional suspended jail term." Indeed; I must say the member for Mindarie is probably right. Conditional suspended imprisonment includes that precise formula of words that we argued about earlier: the court can give any directions it decides are necessary to secure the good behaviour of the offender.

The member for Mindarie clearly identified a couple of weeks before this debate ensued that there are real, definable and clear limits to what we can do by way of restricting someone's civil liberties by virtue of what is presently in the Sentencing Act. I agree with him. We are presenting a legislative response that will allow the court a much broader term of reference and legislative basis to restrict the civil liberties of people who have reached the stage of offending at which the court determines they are a clear, present and ongoing danger to the safety of the community.

The member for Warnbro's statement that two offences get them across the line—a PBO can be for two offences—ignores, as the member has done again and again, the way in which this legislation is drafted. It provides that, having committed two offences and been convicted of an antisocial behaviour offence in the relevant period, is a necessary, not a sufficient, condition. That is the starting point. After that the court must consider a whole range of things. Most notably, the court must make an assessment of whether the individual who has committed the two offences is likely to reoffend and then whether community safety, being a primary consideration, needs to be protected by restraint, and whether the restraint is appropriate in all the circumstances. Will it hit upon that target group of recidivist offenders? I expect that it will target them very specifically. Again, the concern I raised during consideration in detail is not that the legislation has been drafted so broadly that it will give rise to behaviour orders prohibiting and restricting people against too many people, but against too few. That is because it has been drafted in a very conservative way.

Helping juveniles, and indeed adults, who find themselves at repeat offender stage is not mutually exclusive to trying to clamp down and modify the behaviour of those same offenders. The sort of people we are targeting here have been through the system of cautions, have more likely than not been through the system of JJTs, have been through fines, have been through no punishments and have been through suspended terms of imprisonment,

yet they continue to offend against the community. I guess a government can determine to do something about that situation or it can do nothing. It can use words such as innovative and holistic and phrases such as whole-of-government approach and say there is some mystical solution on the horizon to deal with these people, but not nominate what it is. As far as we can see, on every available measure, we have done more in this place than the previous government did and we are spending more than the previous government did. At the same time, we are intent on trying to affect the behaviour of those individuals who impact worst on the general community and, at the end of the day, frustrate the general community, which we all feel in our electorates: the people whose businesses have been vandalised on a regular basis, the people too frightened to go to a train station, and the people who do not feel safe. They are the people we are trying to benefit by attempting at least to modify the behaviour of the individuals who make their lives a misery.

I say again to the member for Warnbro, reducing, on the police measure, the overall total reported crime by 12.7 per cent is, I think, an impressive advance on what has occurred over the past eight years. It is very good for all the members of the community. As the member for Warnbro well knows, that measure of total reported crime does not measure every type of crime. There are some very difficult types of crime for any government to handle. Based on the statistics of crimes going through the Magistrates Court, they appear to be road traffic offences, and indeed, so pervasive have those offences become that our community has had to invent a word to describe the offences that are having an impact on their day-to-day lives.

Assaults are the other sticky area of crime, the rate of which is very hard to get down, albeit we have had marginal success over the past year. Low level, antisocial behaviour, disorderly conduct, swearing and so forth are, again, very hard to reduce. Graffiti is another crime that is very hard to reduce, albeit we have had moderate success over the past year. Whilst we have had great success in the major category and cluster of crimes, there are problematic areas of crime that are affecting the community. If we do not do something clear about it, people will go on suffering and will have their confidence in the criminal justice system whittled away.

I will end by saying that last week I watched a television news story about an individual who had been charged with kicking a bouncer in the head while he was on the ground. Some members may have seen it. That offender received a suspended term of imprisonment. As he left the court the offender was interviewed by a reporter from one of the news stations who asked, "Do you think you did anything wrong?" He said no and turned and laughed in her face.

**Mr P. Papalia:** Are you saying this law will stop people behaving like that?

**The SPEAKER:** Member for Warnbro!

**Mr C.C. PORTER:** He literally laughed at the response that occurred by virtue of the present system.

**Mr P. Papalia:** You want to be seen to be trying to do something. That is what this law is all about. It is not actually about doing anything.

**The SPEAKER:** Member for Warnbro, you have had a lot of chances in this debate to put a point of view.

**Mr P. Papalia:** He referred to me by name in his comment.

**The SPEAKER:** That is fine in this place, but I do not think he was seeking further interjection. You have consistently made points that I think the Attorney General has addressed.

**Mr C.C. PORTER:** Thank you Mr Speaker. Not all attempts are successful. I consider that on balance this is an attempt that is likely to add something to the suite of penalties available to the courts in their attempts to modify people's behaviour. It will add something to the ability of the police to catch people before they offend and for those people to meet a meaningful response from the courts. I believe it will do more than add to people's confidence in the criminal justice system. But enhancing people's confidence in the criminal justice system is not a bad result in any event; and if that is part and parcel of what is achieved by legislation such as this, it is a positive result. However, I can say that at the moment we have identified a hardcore group of offenders. Things have not worked with them; they continue to make the community's life a misery. Members can try to do something to effect a change in their behaviour and protect the community, or they can vote against that and have a policy of doing nothing. We have determined to attempt to try to protect the community and modify the behaviour of those who threaten community safety.

Question put and a division taken with the following result —

**Extract from *Hansard***  
[ASSEMBLY - Tuesday, 14 September 2010]  
p6548b-6558a  
Mr Paul Papalia; Mr Christian Porter; Speaker

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Ayes (24)

Mr P. Abetz  
Mr C.J. Barnett  
Mr T.R. Buswell  
Mr G.M. Castrilli  
Mr V.A. Catania  
Dr E. Constable

Mr J.H.D. Day  
Mr J.M. Francis  
Mr B.J. Grylls  
Dr K.D. Hames  
Mrs L.M. Harvey  
Mr A.P. Jacob

Dr G.G. Jacobs  
Mr R.F. Johnson  
Mr A. Krsticevic  
Mr W.R. Marmion  
Mr P.T. Miles  
Dr M.D. Nahan

Mr C.C. Porter  
Mr D.T. Redman  
Mr A.J. Simpson  
Mr M.W. Sutherland  
Mr T.K. Waldron  
Mr J.E. McGrath (*Teller*)

Noes (21)

Ms L.L. Baker  
Ms A.S. Carles  
Ms J.M. Freeman  
Mr J.N. Hyde  
Mr W.J. Johnston  
Mr J.C. Kobelke

Mr F.M. Logan  
Mr M.P. Murray  
Mr A.P. O’Gorman  
Mr P. Papalia  
Mr J.R. Quigley  
Ms M.M. Quirk

Mr E.S. Ripper  
Mrs M.H. Roberts  
Ms R. Saffioti  
Mr T.G. Stephens  
Mr C.J. Tallentire  
Mr P.C. Tinley

Mr M.P. Whitely  
Mr B.S. Wyatt  
Mr D.A. Templeman (*Teller*)

Question thus passed.

Bill read a third time and transmitted to the Council.

*House adjourned at 10.44 pm*

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