DANGEROUS SEXUAL OFFENDERS LEGISLATION AMENDMENT BILL 2017

Second Reading

Resumed from an earlier stage of the sitting.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [5.12 pm]: I was engaged in the exercise of recounting a bit of the history of how the Dangerous Sexual Offenders Legislation Amendment Bill 2017 came into being, and some of the elements that one would have thought ought to be covered by this bill if it was to make good on the then opposition's rhetoric over the last several years about community safety, and to set the scene for the amendments that the current opposition proposes be passed in order to, as the then opposition put it, strengthen the legislation.

I already covered a number of assertions by the then shadow Attorney General, now the Attorney General, John Quigley, in which he contended that any sex offender who was released ought to undergo chemical castration, that the Director of Public Prosecutions ought to be instructed by the Attorney General of the day how to approach these individual cases, and how, back in 2014, now Premier McGowan contended that the problem that underlay the release of dangerous sex offenders on supervision orders under the legislation that had been put in place, and indeed was initiated by the Labor government in the Gallop days, resulted from the availability of GPS tracking and monitoring, which allowed judges to release offenders that otherwise ought to remain in detention. He contended that it was the Barnett government's fault for introducing a measure such as GPS tracking and that judges would not ordinarily release these people if it were not for the availability of GPS tracking. Back in 2014, around the same time, not to be outdone by the then Leader of the Opposition, on 20 March, John Quigley went on the ABC *Mornings* program with Geoff Hutchison. Apparently, someone under a supervision order had allegedly breached the order and, because the police regarded the breach as relatively trivial or at least of a low level, the offender was released on lockup bail. John Quigley opined that the police sergeant at the lockup would have made the decision to release the offender and that it was not a contested bail hearing. He said the offender had already breached the undertaking he had given to the Supreme Court judge a week before and what ought to happen was that the Minister for Police should have been on the phone to the commissioner that morning to say she wanted an application to be brought on for revocation of bail. John Quigley opined that two things had gone wrong, and he added ominously that he had seen it happen before. He decided he would have a go at me—at the time I was a prosecutor with the DPP—claiming I had been instructed to oppose someone being released on conditions, and that halfway through the hearing I "caved in and changed my mind" to consent to him being released. I do not know how he knew what my instructions were and he appears to have not understood the mechanics of that case, but if he was suggesting some form of unprofessional conduct, I urge him to take it up with the appropriate authorities. As usual, he did not have a clue what he was talking about. He simply wanted to have a go.

I am fully cognisant of what my responsibilities were, and one of them, as a prosecutor—all prosecutors understand this—is that you do not push untenable arguments when you are representing the state of Western Australia. You are there to assist the court, not to simply obey the instructions of those who are clueless, as John Quigley appears to have been. I do not understand what he thought my instructions were and why he thought I had "caved in and changed my mind". He does not give even enough information to be able to identify the case, but, as usual, as one has learnt to expect from this member of Parliament, he says anything that gets him a headline, and has little regard for the truth. In any event, he instructively thought that what ought happen was that the then Minister for Police should be meeting with the Premier and I should have said, as Attorney General, what they would then be doing to get a contested bail hearing before a magistrate on that day. Again, it appears to be political interference with the justice system and the responsibilities of the police at an operational level, and with the Director of Public Prosecutions at an operational level, which is an interesting position to take for someone who claims to have some understanding of the law. I would have thought that even a first-year law student would know better than that, but this man is now in charge of the Office of the Director of Public Prosecutions, as well as the other organs of government that fall under the Department of Justice. It is a disturbing thought that someone with that level of understanding of the appropriateness of how to behave has been put in a position of responsibility like that.

Nevertheless, it is interesting that none of this seems to have been translated into the legislation that the Attorney General has now put before this place. If he were serious about it, rather than just trying to show off and pretend to know better, why he has not introduced these important reforms to the scheme under the Dangerous Sexual Offenders Act? I have no doubt that the Leader of the House will be able to help us out here.

Then on 26 March we had the person who actually introduced this legislation back in 2004, Hon Jim McGinty, on the 6PR *Drivetime* program, offering his opinion on how the legislation should work. He did not accept the idea that had been put forward by the then Director of Public Prosecutions, Mr Joe McGrath, SC, now a justice of the Supreme Court, and quoted by interviewer Paul Murray that, according to the transcript —

> …'Any suggestion that the Attorney-General should take over the matter misunderstands that the justice system has an independent prosecutor and the role of prosecutor. The Attorney-General cannot decide on his own initiative to give directions to me —

That is, Mr McGrath —

> in a particular case—that would be an interference that is not allowed'.

So said Joe McGrath, the then Director of Public Prosecutions.

Jim McGinty who, as I understand it, never practised law let alone prosecuted, had a different view. He claimed, according to the transcript —

> … it's a bit of a sophistry by the DPP. Nobody's talking about the Attorney-General issuing direction for the DPP —

I digress for a moment to point out that that is not quite the way Mark McGowan saw it, but McGinty accepted that it was prohibited by the Director of Public Prosecutions Act —

> … so it would be silly to even think in those terms... so... sure, can't issue a direction, but surely the two senior legal officers, the Attorney-General and the DPP... I think the public would expect that they would, sit down and talk about issues, they'd discuss them... questions would be asked... the.., the Attorney-General would be alerted to a major controversy that's looming… in this area.
>
> Now I think all of those sort of things are reasonable and that's not what Joe McGrath is addressing, he's addressing something which is blatantly obvious and that is the DPP cannot be directed in a particular case by the Attorney-General.

Perhaps the Leader of the House can explain to us the current Attorney General's view on all that and whether the Premier agrees, because they seem to have had a very different view and were authoritatively telling the public about it, all those years ago, and where we can find it in this legislation that is going to be such a great, essential and overdue reform.

Paul Murray, as equally learned in the law as Mark McGowan, then said, according to the transcript —

> When you took that Dangerous Sexual Offenders Act to the Parliament it had a specific section in it, Section-6, which says, 'The Attorney-General may perform the functions of the DPP'. What was the reason for putting that in the Act?

McGinty said, according to the transcript —

> Oh, very clearly that... from time to time in the public interest the Attorney-General might come to a different conclusion than the DPP when dealing with a dangerous sexual offender and we wanted to place beyond any doubt whatsoever that it was then the duty of the Attorney-General of the day to act and that he had… concurrent powers, the same powers as the DPP to make any application to the court to keep a dangerous sex… sexual offender in jail or any other related application. But basically it was... to make sure that the D... the Attorney-General of the day knew that he had the power and couldn't hide behind public statements about inappropriateness of him becoming involved in these matters.
>
> So it's clearly the case in Section-6 of the Dangerous Sexual Offenders Act that the Attorney-General should get involved in these matters.

The position seems to have been that the draftsperson of the legislation—although I think it was really pretty much copied from the Queensland legislation—considered that not only do we have the Director of Public Prosecutions acting on behalf of the state and making decisions, but also, if the Attorney General of the day does not like a decision, he ought to make his own decision, so we have the state being represented by two people with conflicting views, and one presumably overrides the other.

I note that this also was contended by shadow Attorney General Quigley in his contributions to debates on this subject last year, but he seems to have resiled from that point of view in the debate on the legislation before us, and I look forward to the Leader of the House explaining that to us. I find it rather baffling that the Attorney General can set up two alternative points of view. He derided the position I tried at length to explain last year, but he now accepts it and claims that it is in fact the case, but without admitting that he was wrong. Perhaps that is in the nature of the man. Perhaps the Leader of the House will be able to help us out by explaining what the true position is.

If the law is, as intended, that the Director of Public Prosecutions is responsible for representing the state and making decisions on behalf of the state, but we can also have the Attorney General of the day making contrary decisions on behalf of the state and there is a residual power involved, why has the Attorney General not appealed the last few decisions? Why has he not exercised that power and run appeals? I am sure that he will say something like, "The legal advice I got was that I can't—that an appeal wouldn't succeed." But that did not stop him a few

years ago from contending that there ought to be appeals and that either the Minister for Police or the Attorney General should be able to tell the DPP or the police what to do. What has changed? Maybe it is because he is finally in government. Dissembling and deceiving the public worked very well for him in opposition, but he does not need to do that now. He is faced with the stark reality of being responsible for doing things that he previously considered, for political advantage, ought not to be done or to be done differently.

Again, if he believed that that was the way to go and that that was an appropriate power to have, and if he thought that the former government's legislation of last year introduced some legal impediment to that power, why has he not addressed it in the current legislation? Why has he not fixed it so that he can get in there, get stuck in amongst it, make the decisions himself, and interfere when he thinks that the Director of Public Prosecutions has got it wrong or is being too indecisive or inactive? As we have been repeatedly told by Premier McGowan, this is an activist Attorney General. This is a man who reforms and fixes problems.

With a view to improving this legislation, I would welcome the Leader of the House introducing amendments to correct this problem and to allow the law to fit in with the way the then shadow Attorney General Quigley and Leader of the Opposition McGowan thought the legislation should work, backed up by former Attorney General McGinty's views on the way in which the law ought to be, all in the interest of community safety. I am sure that the Leader of the House will be able to tell us why that is not being done.

She can also perhaps explain what is meant by these little—not quite instructions—chats between the political first law officer of this state and the independent statutory authority responsible for making these decisions. The Director of Public Prosecutions by law cannot be instructed, but ought to be telling the Attorney General as these cases come up where there might be controversy, so that they can sit down and have a bit of a yarn about it; not quite instructing, but perhaps shaping each other's thinking in a way that does not have to be reported under the Director of Public Prosecutions Act. Once again, perhaps the Leader of the House can explain how these things are done under a Labor government and whether these things are done in other cases involving independent statutory officers. I would like to know on how many occasions since Attorney General Quigley took office he has been informed by the director of these sorts of cases and on how many occasions he has fulfilled the expectations of his mentor, Jim McGinty, and had these little fireside chats with the Director of Public Prosecutions to run over a few things and have a chat about controversial cases and how they ought to be handled. I look forward to hearing how these things are done and on how many occasions these meetings have taken place. I make it quite plain that I am not talking about consultation with the director to be informed about the manner in which the DPP's office is functioning or about issues that may be coming up. I am talking about the sort of chat that Jim McGinty has in mind in which the director says, "There might be something coming up that'll be embarrassing to the government. Can we have a yarn about it so I can get your views on it, Mr Attorney General?" Jim McGinty presumably would sit down with the director and exchange views, and there would not be so much of a direction or an instruction—that would be wholly improper—but plainly some kind of influence that falls a little bit under that. However it is conducted, I am interested to know how many chats there have been with the DPP about dangerous sex offender applications since this government took office. Surely, there must have been some because a couple of dangerous sex offender cases have come up in the news, and the way that Jim McGinty saw it happening is presumably the way that Attorney General Quigley has been doing it; and, if he has not, perhaps Jim McGinty might have a word in his ear about how he sees the office of Attorney General being run.

The 6PR transcript continues, and McGinty said that when there is a different conclusion from the DPP —

> …we wanted to place beyond any doubt whatsoever that it was then the duty of the Attorney-General of the day to act and that he had … concurrent powers …

There is further discussion and Jim McGinty opines further as to how he framed the legislation. Paul Murray said —

> Well Jim, Michael Mischin has said of this case … of TJD, he doesn't agree with Commissioner Kevin Sleight …

I had said that I probably would have come to a different decision, which is accepting, I should point out, the independence of the judiciary in these matters, but I did not believe that TJD should be back on the streets. The transcript continues —

> Does he have an ability to use Section-6 now?

Then we get the insight from Jim McGinty, who said —

> Well he's compromised now … for this reason, Paul, clearly the Attorney-General can make any application that the DPP could … for instance he could appeal against the decision to release TJD, because that's really what it's all about and … I think everyone except the judge and the DPP thinks it was a bad decision.

> Now what … the Attorney-General could do would be to lodge an appeal, but the first question that the Court of Appeal would ask is, 'well, how you can appeal if the DPP agreed with the order … to release him'. … at this stage of the whole thing … the DPP and the Attorney General are completely compromised, but the … Act … certainly does make a provision for Michael Mischin as the Attorney-General, regardless of the view of the DPP, to make an application to keep this person behind bars, to appeal, to do a whole range of things and that's exactly what was envisaged.

I would like the assistance of the Leader of the House on that interpretation of the way the legislation is meant to function, because as I read it, the DPP makes decisions on behalf of the state. The way McGinty sees it happening is that if the Attorney General comes to a different view, he can, and should, do entirely the contrary of the DPP. Even Jim McGinty does not seem to understand how the difficulty of inconsistent decisions is resolved, and he certainly has not explained it, but I am sure that the Leader of the House, with the assistance of the Attorney General, will be able to explain that for us, because this is important. For all the criticism that was levelled at me and our government over the last several years relating to the manner in which this legislation operated, here is an opportunity for this government to fix the problem in the public interest, but I have not seen anything in the bill that does that. The proposals being argued for last year by the then opposition to strengthen the legislation—which were so essential to improve it and were rejected for reasons that the opposition did not accept—and that, according to the Attorney General, have led to the release of further sex offenders, are not being addressed. I think that we are entitled to know why. Is it because the Labor Party got it wrong last year? Is it because at the time it was convenient to upset the public and prey on their fears and concerns to get political advantage, something that it does not want to do now, or is it because of some other reason? Perhaps the political opportunism that was so attractive over the past couple years is less attractive now that Labor is in government and has to make it work within the framework of the law, constitutional entitlements and the like. But that did not stop it last year. What level of hypocrisy are we looking at with this government?

On the question of these high-level chats and how I was then being encouraged to have a chat with the DPP, presumably not just to shoot the breeze but to decide what ought to be done in this particular case without getting so far as to instruct or influence the DPP in the exercise of his independent statutory discretion—exercised, I should add, with a far greater knowledge of the law than Jim McGinty and with an understanding of prosecutorial ethics and guidelines and the responsibilities of the state—Jim McGinty had no problem with it, and said —

> Well I think he's wrong and I think he's letting the public down by adopting that attitude. It's … not the way the things were done,

The mind boggles as to what was done under McGinty's regime. It continues —

> it's not the way things were envisaged to be done by the legislation itself that expressly gives them … treats the two of them, the DPP and the Attorney-General as equals.

Of course, Paul Murray picks up on that and states —

> This is the bloke who wrote the legislation, he should know what it was meant to do, and what it's meant to do is protect the community, and that should be a cooperative effort between the Attorney General and the DPP not sort of some arcane debate going on about who has more power and who has more independence. That's bloody ridiculous.

I hope that the Leader of the House will be able to clarify it for us definitively. How many of these discussions has John Quigley had with the Director of Public Prosecutions in the exercise of the director's responsibilities to deal with cases as an independent statutory authority? Did he have any discussions about these cases before they came to court? Why in the case of the last one did he only find out several days afterwards about the decision? Surely, he was keeping track of this. I would be astonished if in the light of this counsel, the man who drafted the legislation, that John Quigley has been falling down on the job. But maybe he does not need to do this now, because he realises that there are no points to be gained and he realises that the reason that there are independent statutory authorities that are supposed to be free from political interference is that they can get about doing their jobs according to law. Maybe it is just laziness or maybe it is just incompetence, but the Leader of the House can help us out there.

Anyway, the debate kept going. There were still lots of opportunities to be milked. One article that I particularly enjoyed at the time, and it gave an idea of the hysteria that was being built up by the ALP, was one that appeared on ABC online on Sunday, 18 October 2015 titled "Labor MP Peter Tinley organises rally over possible release of sex offender Alwyn Brown into Coolbellup". I quote —

> **West Australian Labor MP Peter Tinley has demanded the State Government confirm whether a dangerous paedophile has been released into his electorate, claiming his constituents have a right to know so they can keep their children safe.**

As I recall, with the last dangerous sexual offender who was released, Attorney General Quigley said that he was not above the law and he could not tell the public where a dangerous sexual offender would be released if the court said there was a suppression of the location. At one stage, John Quigley actually used parliamentary privilege to reveal certain information about a dangerous sexual offender. Peter Tinley, as I recall, is still a member of Parliament. Oddly enough, I have not seen him out and about calling up John Quigley and demanding that he reveal the whereabouts dangerous sexual offenders being released, but he certainly did at the time. The article continues —

> Mr Tinley used social media to organise a protest rally in the southern Perth suburb of Coolbellup today, where at least one media outlet —

So, it is a rumour —

> has reported the convicted sex offender has been released.
>
> On Facebook, Mr Tinley wrote: "FLASH MOB NEEDED: Right here is your call to action folks."

A flash mob! When I raised this last year during the debate on the bill then before the house, Hon Adele Farina could not tell me what a flash mob was, but perhaps with the ability to talk amongst her colleagues she has since found out what Mr Tinley thought was a flash mob. The Leader of the House will be able to help us, and I will not take, "You will have to ask him" as an answer. It seems pretty important for public safety, when the public has a right to know certain things, like Mr Tinley said, that people be told this information. I look forward to the Leader of the House explaining where in this legislation the public's right to know is entrenched so that poor Mr Tinley does not have to go to the trouble of calling out flash mobs and calling people to action to get information that a judge has thought should not be put in the public domain. It would certainly assist the Attorney General, John Quigley, so he does not have to feel that he is above the law in revealing this important information to Mr Tinley and his constituents.

Hon Rick Mazza: What is a flash mob?

Hon MICHAEL MISCHIN: I do not know what a flash mob is. I think it is sort of a rent-a-crowd that Labor MPs can call on from time to time. They are like spontaneous demonstrations. Remember the spontaneous demonstrations that used to happen in the Soviet Union or what happens in North Korea when they want to protest something? They have a mob of people who suddenly appear on the streets bearing placards.

Hon Sue Ellery: Do you know what a flash mob really is?

Hon MICHAEL MISCHIN: I am looking forward to finding out what a flash mob is, Leader of the House, but they seem to be available at the beck and call of certain Labor MPs when there is a public issue that they want to raise against the government of the day. Members on the other side might perhaps also explain why over these last two dangerous sexual offender cases there has been no flash mob. Are people in the community safe in their collective beds at night? Are they not worried? Are Mr Tinley's constituents not worried about dangerous sexual offenders? I got the impression that the reason this legislation was being introduced was to allay community fears, but we have not seen any flash mobs being called over the last several weeks or months. If they are genuinely grassroots community movements, what has happened to them? Where is Mr Tinley's flash mob when we need it? Anyway, the article continues —

> About 50 residents gathered to hear from the Member for Willagee and to sign a petition demanding more information about the offender's release.

That is easily fixed. Attorney General Quigley can improve this legislation by introducing an entitlement, can he not, to save people the trouble of having to petition to demand more information about the offender's release and simply provide it or legislate to enable people in the community to find out. The Leader of the House will no doubt explain why that is not being done. The government has the ability. It has the numbers down in the Assembly to get anything it likes through, and I would be happy to support legislation of this character if it gets the support of the other place and fulfils Labor Party commitments to the community. I look forward to an amendment. The article continues —

> On Thursday, a Supreme Court judge approved the release of Alwyn Wayne Brown under a five-year supervision order.
>
> Brown was declared a dangerous sex offender in 2010 after committing a string of offences against young girls, including the attempted rape of a six-year-old.
>
> His release is subject to 51 conditions.
>
> Mr Tinley told residents if its confirmed that Brown is living in Coolbellup, it is a "very dangerous situation".

> "We've got to get a better sense of what's going on so we can secure our own kids and our own community," he said.
>
> "We do need a better response from this government, it's very, very unfortunate; it's a very dangerous situation and we've got to stop it."
>
> Mr Tinley urged people not to take the law in to their own hands and to be moderate in their responses.
>
> WA Attorney-General Michael Mischin called Mr Tinely's actions "disturbing", accusing him of "opportunistically inciting fear ... for political purposes".

I stand by that comment —

> "He is being irresponsible or ignorant or both if he is telling his constituents that the Government is able to 'intervene' to override a judge's decision," he said in a statement.

I stand by that comment. Indeed, I was interested to learn from Attorney General Quigley in respect of the last case that he did not feel that he could override a judge's decision either. There is a turn-up for the books! The article continues —

> "Even Mr Tinley should know that courts do not 'consult' with the community before they make orders according to law; nor can a government ignore a court order pending some sort of 'consultation'."

I look forward to the government, now that it has the opportunity, to fix that problem or to explain—perhaps Mr Tinley can explain to his constituents—why it is not fixing the problem. Why is Mr Tinley not honouring the work of the flash mob of 50 concerned citizens by ensuring that his party, now that it is in government, is fixing the problem that was of such great concern to him back then and which has been repeated since then under this government's watch?

A study was commissioned into the Dangerous Sexual Offenders Act. Mr Deputy President, you may recall that a couple of years before some work had been done to tighten up some definitions and expand its operation in a number of ways. I may be wrong here—perhaps the Leader of the House will be able to help me out and disabuse me of this—but at the stage of those amendments being considered by this or the other place, I do not recall any of this being raised by the then Labor opposition. I recall it was supportive of proposed amendments, but there was nothing to suggest that they should have gone further and that there were defects in the legislation. That was until Messrs McGowan and Quigley, joined by Mr McGinty and others, made it an issue and decided that the legislation was not working as it should have been because people classified as dangerous sexual offenders were being released under supervision orders.

The outrage continued. A quite lengthy review of the legislation was undertaken and a lot of work done on it, including analysing the patterns involved in the consideration of these cases and the improvements that could be made. There was considerable consultation with not only the courts but also police and other authorities responsible for the management of these offenders such as the Department of Corrective Services. The review concluded that the act was operating in an essentially sound fashion; however, a number of amendments were proposed that could improve and tighten it up. They were foreshadowed and introduced.

I will not go into the details of those amendments because they were the subject of considerable debate last year, but the importance of the public debate at the time was to try to reassure the public that although we were dealing with very serious, odious offenders—offenders whom one would have no sympathy for—there were limits to the way a government could operate in the field of preventive detention. Rather than simply prescribe that no person can be released after they have completed their sentence and take away the courts' discretion in being able to assess the merits of detention as against the ability to control an offender who has served out his or her sentence under a supervision order in the community with stringent conditions, it had to be dealt with properly. It had to be dealt with carefully. The amendments proposed last year went a considerable way in plugging gaps and addressing certain problems, and also strengthened the legislation in that regard. They were apparently of no value at all according to now Attorney General Quigley. Some of the debate came up about an offender by the name of Comeagain, and also one called Lyddieth.

At the time of the announcement of the legislation being introduced an article stated —

> The State Opposition said it would back government amendments to strengthen the Dangerous Sex Offenders Act, but said the changes did not go far enough.
>
> Shadow attorney-general John Quigley said Mr Mischin promised to meet public expectations in the handling of sex offenders released from prison.
>
> But he said the proposed changes, including allowing court's assessing an offender to consider submissions from victims, fell short of public concerns.

> "What the Attorney-General has announced today concerning serious dangerous sex offenders legislation is a fizzer," he said.
>
> "No more than window dressing."

So apparently it had no effect at all and would have made no difference. Revealingly, though, the article continued —

> Labor has so far refused to set out in detail how it would change the act, but Mr Quigley had flagged Labor amendments that would require prisoners to convince the court they were no longer at risk of re-offending.

I will come to those in due course. The article continued —

> "Then the prisoner should have a responsibility, should have an onus, of telling the community, through the court, that they are no longer a serious danger of reoffending," he said.

The window-dressing amendments so easily dismissed as being of no consequence—crafted after consultation with the Director of Public Prosecutions, the Department of Corrective Services, WA Police, the Commissioner for Victims of Crime and courts and others—involved, amongst other things, doubling the length of time for which a dangerous sexual offender can be detained between the periodic reviews prescribed under the act from one year to two years, allowing for courts to consider in their decision-making process offences committed in other jurisdictions by the person accused of a dangerous sexual offence, and introducing a minimum 21-day delay on the release of the offenders so that strict supervision arrangements could be put in place. Part of that was to facilitate any community notification that needed to occur. The amendments would also allow courts to restrict media or public comment by dangerous sexual offenders about victims of their serious sexual offending. Members will recall that there was an offender at the time who wanted to publicly apologise to one of his victims, and went on TV to achieve that end. That caused distress amongst the victims and others. The amendments allowed victims to make a written submission to the court about conditions for their protection, including any supervision order that may be made. I would have thought that was a pretty good idea, but apparently it was a fizzer—just window dressing, according to our legal paragon in the other place. They also allowed for a wider range of expert reports to be ordered by the court relating to the offender so that the court was more properly informed of the risks and could make an assessment accordingly; that apparently was window dressing and a fizzer. The amendments applied the legislation even if the person likely to be charged would be mentally unfit to stand trial, and facilitate the exchange of information between agencies. That was all around the idea of victim safety, but at the same time was trying to ensure that the legislation worked as it was intended to. For the first time, as members will be aware, the act provided that the needs of victims be considered.

Given that electronic monitoring was a very useful tool in strictly supervising these sorts of offenders while they were out in the community, we retained that opportunity and ability, although I am sure that, given the trenchant comments criticising that, this government would be now only too eager to ensure that that was not a factor that could be used in any way for the release of these offenders. The leader can tell us what is being done about that. But then shadow Attorney General Quigley said —

> "There is nothing in the Attorney-General's announcement today that would assuage the community's concerns about the release of some of these serious dangerous sex offenders," …

Shadow Attorney General Quigley also —

> … suggested that Labor's proposed changes to the laws, which were yet to be drafted, would put the onus on offenders to convince a court they were suitable for release.

There was an opinion piece by one Liam Bartlett in *The Sunday Times* of 3 July 2016, where he got into it, trenchantly criticised the government for not doing enough and spoke in glowing terms of Labor's proposals back then. I quote —

> Labor wants dangerous sex offenders to prove they are no longer at risk of reoffending before being released.
>
> Mr Quigley is demanding that every single condition listed on these orders is treated with equal importance. One sniff of a breach of any of them and the DSO goes directly to jail until it can be tested. His changes to this madness are the only thing that makes sense.

Sitting suspended from 6.00 to 7.30 pm

Hon MICHAEL MISCHIN: I will continue going through the expectations that were raised by the then Labor opposition about how this legislation ought to operate with a bit of comparison with what we have been presented with. I will suggest how it might be "improved", for want of a better term, in order to meet the expectations that have been raised for it, now that the McGowan Labor government is in a position to do what it promised the public. Before the dinner break I quoted from the sort of comment that one was tending to read in the popular press in the year or so leading up to the last state election. I think it is worth recapping that comment by Mr Liam Bartlett. He

drew comfort from the assurances that the then shadow Attorney General Quigley was giving regarding what Labor would do if only it had the opportunity. He stated —

> Labor wants dangerous sex offenders to prove they are no longer at risk of reoffending before being released.
>
> Mr Quigley is demanding that every single condition listed on these orders is treated with equal importance. One sniff of a breach of any of them and the DSO goes directly to jail until it can be tested. His changes to this madness are the only thing that makes sense.

We will see how that was translated into Labor Party policy before the last election and whether, indeed, it matches up with the legislation that has been presented to this place and has already been dealt with by the other as part of the great reforms, or whether it comes short of the expectations that had been raised.

Before doing that, I also want to mention the work that had been undertaken by the last government. A review into the Dangerous Sexual Offenders Act 2006 was being conducted. It took quite some time, but it was a thorough review of the operation of the legislation, with a canvassing of possibilities as to how it could be improved and an identification of the potential defects of the legislation as it was then operating, particularly in light of the public concern that had been expressed regarding the release of offenders such as TJD and others. As I have mentioned, the public's concern was quite legitimate, but it was being exploited by the then Labor opposition to achieve political opportunities and to criticise the government on a matter of public safety.

On 20 October 2015, a motion was moved in the other place by the then Leader of the Opposition, Mark McGowan. He moved —

> That this house calls on the government to urgently release the 2014 review of the Dangerous Sexual Offenders Act and immediately introduce amendments to the act, which the government promised would be introduced a year ago in the spring session of 2014.

The then Leader of the Opposition, Mark McGowan, acknowledged that —

> The current laws, passed by Jim McGinty as Attorney General back in 2006, —

I think I was saying 2004, but it was 2006 —

> were a significant improvement on the situation prior to then. However, with the expiry of nine years since that period, the time has come to perhaps repair the flaws and deal with the situation the state has confronted since at least 2012: the release of people who everyone in the community knew would be a danger to the community, despite the good intent of these laws.

The laws that the Labor government had passed in 2006 were apparently working quite fine, thank you very much, until 2012, when the Labor Party decided there was a political opportunity to be taken by criticising the way they were operating by allowing the very people that the laws were meant to control to be released into the community on strict supervision orders. Apparently, until that time, any offenders who had been released—certainly while Labor was in government—were unobjectionable and met community expectations. Apparently, those were not people who everyone in the community knew would be a danger to the community and their release prompted no effort on the part of the then Labor government to remedy the way the laws were operating. Around 2012, because the opportunity arose to exploit public fears, after nine years suddenly the laws were flawed and needed some work. The then Leader of the Opposition demanded —

> We are saying to Parliament: release the review now. That is the least it can do.
>
> …
>
> We are saying: release the review, and change the laws.

That was supported by the then shadow Attorney General, John Quigley, who, amongst other things, said —

> This report that has been hidden and secreted from the public of Western Australia has to be tabled today.
>
> …
>
> What is happening here is just insane.

He was talking about the release of people who had been classified by the courts as serious dangers to the community, which is the threshold test for having them declared a dangerous sexual offender. That is the label that is applied to people who meet that threshold test. He continued —

> What is happening here is just insane. The only way we are going to get to the bottom of it is for this Parliament to unanimously vote this afternoon for the release of that report, and no-one in the community would oppose that.

I should add that Mr Tinley of Willagee, of flash mob fame, joined in with that. Reasons were given by the Minister for Police about the work that had been put into the report. Some elements of it were confidential, but

work was being done to pursue the recommendations with appropriate consultation and careful drafting and crafting to produce some significant amendments, which were ultimately presented to this place and passed last year. Those amendments were described as "fizzers" and simply "window dressing". Nevertheless, on 28 June 2016, I tabled the review. I explained the reasons why, what was proposed and what had been done as part of the review. In doing so, I said —

> In tabling the DSO review, I note that the government has sought and obtained legal advice on the release of information contained in the DSO review.
>
> Based on legal advice, material that is subject to legal professional privilege or is cabinet-in-confidence has been redacted from the DSO review now tabled. This means that some parts of the document are heavily redacted and may therefore be difficult to follow. However, within these limits, the tabled document seeks to expose the reasoning and recommendations that lie behind the amendments proposed in the Dangerous Sexual Offenders Legislation Amendment Bill 2015.

That met with the response from, amongst others, the then shadow Attorney General, who, on 28 June, complained about the nature of the review report, and said —

> The government has tabled its heavily redacted review of the DSO act. I will hold that up for the cameras in case anyone wants to get a screenshot of it.

He is quite the showman. He continued —

> That is the government's report. Mr Acting Speaker can see how this government does not want this Parliament even to see the details of its own review!

Further on, he said —

> What will concern —

The community, amongst other things —

> if it ever gets reported, is that the minister has come into this chamber —

That is, the Legislative Assembly —

> on behalf of the government to surrender the government's authority under section 6 of the legislation —

I have already touched on the way the Labor Party thought that ought to work —

> to seek a revocation order of a supervision order. It is surrendering the government's authority to go to the Supreme Court to appeal an order. The government is doing this because it does not want to embarrass the Director of Public Prosecutions. The minister will tell us on how many occasions the DPP has consented to orders.

Perhaps the Leader of the House will be able to tell us what the government has been doing about it, and what the Attorney General has been doing about it, now that he is in a position of authority, and is able to do what he claims should have been done. He complained about the time it took to table the report, and goes on to say —

> He —

Meaning me —

> would not operate in a bipartisan way.

I do not recall being consulted about any of these amendments either, but leaving that aside, the shadow Attorney General continued —

> He would not provide a copy of the review to the opposition. That is a bit how this government operates— how the Minister for Police and the Attorney General operate. Other governments have not operated in that way when it comes to matters of community safety.

A number of matters of community safety have been dealt with by this government, and there has been no cooperation of that character that I can see either, but perhaps the then shadow Attorney General was simply vaporing rather than meaning what he said. He complained that the report was redacted, contained insufficient information and the like. The redacted report, some elements of which were confidential because they had been provided on that basis, that informed the recommendations underlying the amendments crafted last year, is now available to the Parliament. The unredacted report is available to the Attorney General. So, if we are wrong about that, I call upon the Leader of the House in due course to table the unredacted version of the report, and see how much of that supports the propositions that have been advanced in this legislation, and whether the report says anything about the concept of the reversal of the onus of proof and whether it would make any material difference

to the operation of the legislation, as had been claimed by the Labor Party over the last couple of years and has been asserted in the second reading speech supporting this bill. If it were proper to table the unredacted version of the report, I am sure that that would be remedied by the Leader of the House on behalf of the Attorney General, who now has access to that document.

Otherwise, as was usual, up until that point there had been complaints about whether the bill before the house in the view of the then opposition addressed community concerns that it had helped to generate and fuel. Hon Adele Farina had a bit to say about it when the bill was being considered in this house. At page 1500 of *Hansard* of 22 March 2016, she said —

> The bill seeks to strengthen the legislation and the opposition acknowledges that the bill does go some way towards achieving that.

So it is not an absolute fizzer, and only just window dressing, it appears. She continued —

> Members will know that the shadow Attorney General, John Quigley, MLA, is on the public record stating that the opposition will support the government's amendments to the Dangerous Sexual Offenders Act, but is of the view that the changes do not go far enough in addressing the community's concerns. WA Labor proposes a number of amendments to strengthen the bill to better address the concerns of the community, and it is my task in this place to advance those proposed amendments on behalf of the shadow Attorney General and WA Labor. I will do my best to adequately acquit this task, in light of a minister who very rarely accepts any amendments from the opposition to his legislation —

I suppose that means me —

> and a government that holds the numbers in this house to do as it will, rather than listen to sound argument and consider sound amendments to its legislation.

Among those sound amendments are those that are canvassed at page 1502, where Hon Adele Farina stated —

> The opposition is concerned about the ability of the court to amend a supervision order in response to a breach of the order. Most in the community are of the view that courts are too lenient on breaches of supervision order conditions by choosing to consider a number of breaches as only minor or technical breaches. Many in the community are of the view that any breach of a strict supervision order should result in the offender being returned to custody. WA Labor understands community concerns and will propose an amendment to the bill to further strengthen community protection in this area. I foreshadow that we intend to do that at the committee stage and I call on the Attorney General to explain the government's intention with this provision.

She went on to talk about one of those amendments. Again, she states, at page 1503 —

> Clause 17 also clarifies that the court that is hearing an application of an offender subject to a supervision order can only make a further supervision order and cannot make a continuing detention order. The opposition does not think these amendments go far enough, and I foreshadow that in committee the opposition will be moving an amendment that puts an explicit onus on the offender to satisfy the court that he will comply with the conditions stated in the order. Our amendment will require that a court will be able to make a supervision order only if it is satisfied that the offender will comply with the conditions, and that the onus to satisfy the court rests with the offender. Anyone who has read any cases in this area of law will know that when offenders who have breached supervision orders come before the courts, the explanation they give is usually that the condition was too ambiguous, they did not understand it or it was just an oversight on this one occasion. I think there is an onus on the court to be satisfied that the offender really does understand the conditions of a supervision order and that the offender will satisfy those conditions.

Further, she states —

> The opposition also believes it is necessary to make explicit that when a court is deciding whether to make an order under section 17(1)(b), it must disregard the fact that the person will be subject to electronic monitoring if an order under subsection (1)(b) is made. I have been told that since the introduction of electronic monitoring devices there has been an increase in the release of dangerous sexual offenders on supervision orders.

At page 1504 she states —

> The opposition also proposes an amendment to section 21 to effectively delete the option to summons an offender. The opposition is of the view that if an offender on a supervision order breaches an order, they should not be released on bail pending the hearing and they should not be able to be summonsed to appear at a hearing on that breach and in the meantime be left at large in the community; they should be brought

> back into detention under a warrant until that matter is heard. We believe that would provide greater protection for the community.

All of that was supported by other members of the then opposition, including the now Leader of the House.

Amendments were moved to that effect and to others and defeated on the basis that they did not add materially to the regime then in place and would not achieve the ends that were being sought. Now the government has the opportunity to put those forward, and it has done so to a degree, but nowhere near the robust level that it claimed ought to have been done at the time. What has been formulated in the supplementary notice paper is a series of amendments aimed at doing what the then Labor opposition claimed should have been done and giving the now government the opportunity to fulfil its election commitments in that regard.

Among other things in the course of the debate, then shadow Attorney General Quigley complained about the release of offenders into the community. Again, I say that the matters of alerting the community to the whereabouts of where offenders are to reside and ensuring that the courts do not make orders that protect an offender from having his whereabouts known are not addressed by this legislation. If there is any doubt about the vehemence with which he pursued the question of community safety, one need look only at his submissions in the *Hansard* of the Assembly on 28 June. When people expressed concerns to him, he would direct them to the government. In respect of an offender called Lyddieth, he claimed —

> The women asked me, "What can we do? What can you do?" I told them that I am the shadow Attorney General and that I can do nothing, but they can go to the Attorney General and ask him to act under section 6 of the legislation and institute an appeal. If the case is so serious that the honourable Minister for Police thinks that Lyddieth should still be in prison, go to the Attorney General and ask him to institute an appeal under section 6. That horrified the Attorney General and he said that he did not have power to do that, but it states in the act that he does have that power.

Again, I would like to hear the Leader of the House's explanation of why this Attorney General has not exercised that power under section 6 and, if he feels that it is not clear enough now that he has this power, why he has not amended the legislation to give him that opportunity to right these dreadful wrongs and to protect community safety. Why is it that, for all the talk, there is no action in this respect? He then went into his usual personal attack on me and then he started to go into the merits of the amendments proposed by the then Labor opposition to the bill then before the house. At page 4147 of *Hansard* of 28 June 2016, he mentioned the case of Wimbridge, who was remanded in custody for a breach, and he said —

> This goes to one of the other amendments. One of Labor's amendments provides that a sexual offender charged with any breach of a supervision order must not be offered bail; he must be held in custody. The Attorney General sought to dismiss this amendment, stating that people could not be kept in custody on the mere suspicion that they have breached an order.

That is not quite what I was saying, but accuracy is never an impediment to Mr Quigley —

> The Attorney General is wrong not only in his constitutional approach to reserve powers, but also in relation to this. A person cannot be arrested on mere suspicion. A search warrant can be obtained on the suspicion that something will be detected on premises that offers evidence towards an offence, but someone cannot be arrested on mere suspicion. There must be a reasonable belief that can be objectively tested against known facts that a person has committed an offence before that person can be arrested. The Attorney General was wrong, and we will come to that in consideration of our amendment later.

It is apparent that, as a consequence of that arrest, the proposition was being put that they ought not to be allowed any bail on being arrested and until the breach was determined. We will see how the current amendments match up to that proposition. A couple of other comments about powers and the like that may be of relevance are on page 4176 —

> So we come back to the Dangerous Sexual Offenders Legislation Amendment Bill 2015.

He got a little diverted, once again, into simple slander, but at least it kept him off the streets —

> The notion that proposed section 7A expresses only a reserve power that has always been with the Attorney General, and that what we are doing by changing the legislation to say that anything the Director of Public Prosecutions does is done in the name of Western Australia merely cleans up that reserve power, is 100 per cent wrong. It is not a reserve power; for the reasons previously given, it is a power conferred upon both the Attorney General and the Director of Public Prosecutions by the legislation to protect us from situations such as what happened on Saturday night, with Wimbridge raping another victim. It is to protect us in situations in which no less than the Minister for Police comes out and says, "I'd throw away the key"—referring to Lyddieth—and then comes into this Parliament and says, "We totally surrender the authority to seek a cancellation of the supervision order or to appeal the supervision order."

She did not say that —

> I stress that these are not prosecutions; these are administrative actions undertaken by the DPP. The Director of Public Prosecutions recognised that there was some tension between the Dangerous Sexual Offenders Act and his office, and he said so in his submissions to the review of the DSO legislation. The way that the government has tried to resolve this is to just hop in and surrender all authority to the DPP.

Again, if that is the case and he fears that is what the consequence of any amendments were back in 2016, no doubt the Leader of the House will be able to explain why that is not being remedied to give the Attorney General the clear ability to take a different view from the DPP and to appeal or to overturn the decisions of the DPP and remedy the problems in his desire to achieve community safety.

A couple of other ideas were floated in the other place on the same occasion, one by the now Minister for Police, who commented on the amendments proposed by the government after its review. She asked —

> Does this legislation go far enough? I do not think so. Is it strong enough? I do not think so. Does it go anywhere close to what the Minister for Police alleges she supports? No, it does not.

She proposed that rather than have two-year review periods, it should be reviewed every five years. No doubt the Leader of the House can tell us why that is not being fixed up. Why are we not having five-year reviews while fixing the problems with the legislation by this activist Attorney General? She continued —

> I certainly think this can be toughened up, because I personally believe that the community has a right to say that those people who pose a serious risk of harming us—me, our children, our wives and our mothers—who are not rehabilitated enough, who have raped and in a degrading way sexually assaulted little children and women, and done it not just once, twice or three times, but many times over in the most obscene way, should be locked up and we should throw away the key. That is my view. To say that we do not have a right as a community to do that is just wrong.

That is what the current Minister for Police said. She continued —

> I do not think toughening this up more is prevented by the Constitution. If it were, we should change the Constitution because I think it is wrong.

I look forward to the Leader of the House telling us why that is not being done. Let us change the Constitution and fix it the way that the Minister for Police reckons it ought to be done. She continued —

> I think that the victims and potential victims' concerns need to be put first here.

She goes on in that vein for a little longer, and continues —

> The balance has to be in favour of the victim. The balance has to be in favour of all the little children going to school in this good state. Why should they be put at risk because it may or may not be in the interests of an offender?

That is not the whole point of the legislation, but leaving the rhetoric aside, it continues —

> If we can make a law to have the death penalty for some crimes, certainly we can make a law to impose life imprisonment.

I do not know whether she just does not understand the legislation, which is probably right, or is simply just talking for the sake of it, which is probably right too. But, again, here is the government's opportunity to fix that and present the fully unredacted report, to see what it has to say, and to see what it was the government of the day was allegedly hiding and to craft amendments accordingly.

One Paul Papalia complains about GPS tracking, saying that he thinks it just stands to reason that one of the consequences of introducing GPS trackers is an increased number of dangerous sexual offenders on the streets of Western Australia. That can be fixed, can it not? The government can introduce an amendment to ensure that that is not taken into account, like it did last year, and insist that it was only right and proper. He goes on to state at page 4183 —

> … all these years later, all this time later, what we get is not a toughening of legislation, not a tightening of restriction on the release of dangerous sex offenders, but an effort by the Attorney General to avoid responsibility, to move himself out of the frame and to avoid being put in the frame to challenge the release of these dangerous sex offenders. It is clear, as has been outlined by the shadow Attorney General, that currently the Attorney General has that power. He has the authority to intervene.
>
> …
>
> He has the authority under the current legislation.

That means that Attorney General Quigley has the power under the current legislation. If he feels that some change has affected that, let him fix it in the public interest. I will continue to read from page 4206. I do not pretend that this is exhaustive of the various references, but it just got too boring to read the same stuff over and again.

Hon Alannah MacTiernan: That is a very —

Hon MICHAEL MISCHIN: I note that, Hon Alannah MacTiernan. I am sure that it is dull for you.

Hon Sue Ellery: Not just her.

Hon MICHAEL MISCHIN: But I pity those who had to listen to this in the other place.

Hon Alannah MacTiernan: The walking Mogadon!

Hon MICHAEL MISCHIN: You do not have to stay!

Hon Alannah MacTiernan: I just have to see it.

The ACTING PRESIDENT (Hon Robin Chapple): Okay, members.

Hon MICHAEL MISCHIN: The member might learn something.

The ACTING PRESIDENT: Hon Michael Mischin has the call.

Hon MICHAEL MISCHIN: At page 4206 it Mr J.R. Quigley states —

> What is wrong with requiring the accused to satisfy the court of his sincerity of resolve to comply with every condition of the order?

I stress "every condition of the order", which is what was being proposed at that time by the Labor opposition. It continues —

> Why should an offender not come before the court and express his sincere resolve to comply with all the conditions of a supervision order and express his sincere resolve to the extent of satisfying the judge to a high degree of probability —

I stress "a high degree of possibility", not just the balance of probabilities —

> that he will not offend again? … That is what the community expects.

He went on —

> I challenge members on the government benches: is there anyone who thinks that it is unreasonable to expect an offender before the court for review to provide the court with evidence to satisfy it to a high degree of probability that, if released, they will not commit further offences or break the conditions of their supervision order? Is there anyone on the government side sitting over there who thinks that is unreasonable? They are all silent. No-one is challenging me.

I think Hon Alannah MacTiernan would probably agree that they were probably all asleep at that time —

> Does the member for Balcatta want to challenge me on that? Does he think that is reasonable?

Then he challenges the member for Balcatta —

> When an offender is coming up for review, is it unreasonable for the offender to be required to convince the court that he will obey the conditions of the supervision order?

It continues —

> They should be compelled to try to convince the court that they will comply with all their obligations.

All their obligations, Mr Acting President. It continues —

> I cannot believe that the member for Balcatta could not understand that.

Hon Alannah MacTiernan interjected.

Hon MICHAEL MISCHIN: I am sure that I will hear a contribution to the debate from Hon Alannah MacTiernan, who will explain some of the things —

Hon Alannah MacTiernan: I do not object to you making these points, but you are going over and over the same ground.

Hon MICHAEL MISCHIN: I certainly will.

The ACTING PRESIDENT: All right, members. Hon Michael Mischin has the call; I am sure we will progress quickly if there are not too many interjections.

Hon MICHAEL MISCHIN: Thank you; I will take as long as I need. At page 4212, then shadow Attorney General Quigley spoke about the proposed amendments that the Labor Party thought were essential at that stage to meet community safety requirements. He said —

> Under this new clause, the person who is the subject of the supervision order can be brought before the court only by way of a warrant for arrest; and, if he is brought before the court on a charge of breaching the supervision order, he will be detained in custody until the matter is determined by the court, and bail will not apply.

At page 4213, he continued —

> The government says that to hold these offenders in custody while these allegations of breaching the supervision order are outstanding would be too onerous, —

That is not what the government was saying at all. But, as I say, Mr Quigley and accuracy are not exactly well acquainted with each other —

> yet the government is prepared to hold people such as Ms Dhu in prison for an unpaid parking fine, and she died in prison.

Just to show members his level of knowledge, she was not in jail for an unpaid parking fine; she was fined for some assaults, I think, on public officers. I am not sure whether anyone is in prison for a parking fine. Mr Quigley then alleged that the member for Eyre, at that time, was open to criticism. He said —

> The member for Eyre is going to support releasing those people on bail. I am surprised that he does not take an independent stand. He is going to line up here, because he has been told to, and say that it is okay by him that serious sex offenders charged with breaching their supervision orders go out on bail. It is outrageous.

Talking again about moving some amendments that were pertinent to the ones on the supplementary notice paper and tied in with what was being proposed by the government in its amendments, on page 4215, Mr Quigley said —

> In moving our amendment, we say that if the court is satisfied on the balance of probabilities that the person who is the subject of the supervision order is contravening or has contravened a condition of the supervision order, the court shall make a continuing detention order in relation to that person. This will considerably stiffen up the government's bill in favour of victims. It provides that if there is a breach of the conditions of the supervision order, there will be a detention order. It makes it clear to offenders: "If there's a breach, you will go back inside. There will not be an amendment, an extension or otherwise of the supervision order. A breach of its terms will see you back in jail."

There "must" be imprisonment. That translated into a document dated January 2017 titled, "WA Labor Law Reform Initiatives: A Fresh Approach for WA". A passage on page 6 of that edifying document under the heading, "Introduce changes to the dangerous sex offender laws to protect the community" states —

> WA Labor will strengthen the Dangerous Sex Offender laws to better protect the community by reversing the onus of proof which will require dangerous sex offenders to satisfy the Court that on the balance of probabilities —

Not to a high degree of probability —

> they will comply with each and every condition stipulated by the Supreme Court as part of a community supervision order.

Each and every condition. The document continues —

> The problem with the current system is that a dangerous sex offender can seek to avoid conviction by pleading not guilty and never admitting the offence, a constitutional right, however, after conviction the dangerous sex offender is not required to participate in any rehabilitation programs, nor admit the offence as a first step on the path to rehabilitation and a dangerous sex offender can sit and serve a full term of imprisonment.

That is right, but that is what the dangerous sex offender legislation is for: to ensure that if they are a continuing danger one of the factors that would be taken into account would be the level of acknowledgement that their behaviour needs addressing, apart from other things. The document continues —

> - **A McGowan Labor Government will introduce changes to the dangerous sex offender's laws to protect the community.**
>
> At the expiration of the term the Director of Public Prosecutions may seek a Community Supervision Order or continuing detention. If offered a Community Supervision Order a dangerous sex offender is not required to demonstrate any understanding of abhorrent behaviour, nor convince the Court of any resolve to abide by the conditions of any Community Supervision Order.

That is not right. Before a court can release someone under a supervision order, it has to be satisfied, bearing in mind the paramountcy of community safety as a consideration, that they can be controlled in the community by compliance with those orders. Nevertheless, on the WA Labor understanding of the law, it formulated this particular policy to reassure the community that if it got elected, any problems would be fixed. The document continues —

> Perpetrators who break the conditions of a supervision order are regularly re-released into the community on bail pending the Court's investigation of an alleged breach and a further determination by the Supreme Court.

Far be it from me to suggest to lawyers such as Mark McGowan and John Quigley that they may be wrong, but courts do not investigate matters; they deal with evidence before them. In any event, Labor goes on to state —

> WA Labor will cease the immediate re-release into the community by providing that there will be no bail applicable to dangerous sex offenders against whom there is a credible allegation they have breached a Community Supervision Order. This means they will remain in custody until the allegation of breach has been dealt with by the Supreme Court.

Tough stuff indeed. What happened? Labor was elected in March this year and since then a number of sex offender matters have come before the Supreme Court and offenders have been released under supervision orders. No action was taken by this government to tighten up the legislation until June, when a media release announced —

> Mark McGowan's cabinet has given the go ahead for legislation to be drafted which will strengthen WA's dangerous sex offender laws.

As is usual, John Quigley came out and made some large claims about what would happen in that legislation. The media release from 14 June 2017 reports that the spokesperson for Attorney General Quigley stated —

> "These changes will address the problems in dangerous sex offender legislation raised by WA Labor in opposition," —

The release continues —

> Measures to be included in the soon-to-be-drafted legislation will mean prisoners will have to "bear the burden" of satisfying the courts they will comply with any supervision order conditions.
>
> Removing the court's discretion to release an offender on bail during proceedings relating to a supervision order breach, until those proceedings conclude, will also be included.

This is robust stuff and consistent with Labor's policy in January, before the state election. It comes after WAtoday revealed on Saturday that yet another dangerous sex offender would soon be released back into the community. This one was Macker Joseph Dinah, who had a long history of sexual offending, having been convicted of rape in 1984, indecent assault in 1987 and aggravated sexual assaults in February 1990 and May 1990, and had served lengthy terms of imprisonment. Fifty conditions were attached to his supervision order. Offenders have to satisfy the court that they will comply with any supervision order conditions and, if there is a breach, they stay in jail with no bail until that is resolved.

Then we get to the year before, on 29 June, and back to a character named Wimbridge again. John Quigley was seeking changes that would ensure sex offenders accused of breaching their supervision orders were locked up and did not get bail. The Labor Party planned to put a greater onus on them to prove they were no longer at risk of reoffending. So far, so good.

There is much talk about how this legislation will fix the problem and comply with the Labor Party's commitments before the election. Then a problem arose. Another dangerous sex offender was released and there was still no legislation, until September. I think the week before this announcement, a judge of the Supreme Court had made an order that this offender be released under a strict supervision order with 50-odd conditions. However, the government had to endure the sort of outrage that it was quite happy to direct at the last government. It went into what is commonly called damage control. That was dealt with in the usual fashion by way of a media release. It was said on 5 September 2017 —

> The McGowan Labor Government will this week introduce changes to the dangerous sex offender laws to better protect the community.
>
> The Bill amends the Dangerous Sexual Offenders Act 2006 (WA) and the Bail Act 1982 (WA) to fulfil one of the McGowan Labor Government's key law and order election commitments.

Mark McGowan went on to say —

> "We made a promise to the people of WA to make it tougher for dangerous sex offenders to be released into the community, which we are honouring.

> "The system for dangerous sex offenders as it currently stands is failing the community and it requires reform.
>
> "This was demonstrated time and time again under the former Liberal National government.
>
> "Unlike the previous government, we have moved swiftly to introduce significant reforms to toughen up these laws and to bring them more in line with community expectations."

That move was taken only in June, if we believe the media releases. Why should it have taken that long, given that the legislation had already been drafted last year to fix the problems? After all, the amendments that were introduced last year by the Labor Party and which it insisted should have been passed, were already available. The Labor Party has suddenly been hoist on its own petard. A few dangerous sex offenders have been released and people have noticed and remembered what Labor had to say about it. These comments were attributed to Attorney General, John Quigley —

> "These amendments seek to strengthen the overall dangerous sex offender regime in WA.

These are the usual motherhood statements. He continues —

> "The amendments include reversing the onus of proof so that prisoners will bear the burden of satisfying the court that they will substantially comply with all the standard conditions of any Community Supervision Order.

What happened to complying with all the conditions? What happens if an offender does not comply with all the conditions? Is it "back in jail, sunshine"? No. The Labor Party is going to toughen up the legislation so that offenders have to satisfy the court that they will substantially comply with all the standard conditions. Given that dangerous sex offenders have already been found to pose a serious danger to the community, it is only right in cases when the court is not satisfied that they will comply with conditions allowing them to be supervised in the community that they should remain in custody. That is no different from what is currently the case. The court has to be satisfied that, having regard to the safety of the community as a paramount consideration, the risk can be managed satisfactorily in the community before an offender can be released. A positive obligation would be satisfied of that but no doubt the Leader of the House will explain how it will make a material difference.

The Attorney General continues —

> "We are also introducing a presumption against bail for dangerous sexual offenders who are charged with breaching a dangerous sexual offender supervision order.

That is a change. The way I read it, what ought to have been done, what was most important and what was repeated during debates in the other place, in public rhetoric and in the Labor Party's law reform agenda policy document, was that there would be no bail at all, not just a presumption against it, and the offender would stay in custody until the case was determined. He continues —

> "These individuals will remain in custody until the matter has been dealt with by the court unless there are exceptional reasons why they should be granted bail.
>
> "The third key amendment is to provide for interim supervision orders, which may be required under a range of different scenarios.

That is it. Whatever happened to ensuring that the Attorney General of the day would not be able to hide from his or her responsibilities? Whatever happened to the idea that before someone is released, they need to satisfy the court to a high level of probability that they will comply with each and every condition? Whatever happened to the idea that if they are charged with having breached a supervision order, they will immediately be arrested by warrant and go to jail and stay there until their case is determined? No doubt the Leader of the House will be able to help us out there. It is absolutely, patently clear that the bill before the house falls way short of that very large talk over the last several years. The WA McGowan Labor government has perpetrated a fraud on the public. Once again, as I say, it has created an issue, raised expectations and then snuck away from them.

On 7 September a report appeared on page 9 of *The West Australian* with the headline "City's fury over release of sex fiend", about the same offender who prompted action. It states —

> The State Government is pondering how communities can be more adequately warned when a dangerous sex offender is released into the neighbourhood after residents in Geraldton were blindsided by news a paedophile with a 40-year offending history is coming to live near their schools.
>
> Community anger and political name-calling increased yesterday as the release of the 67-year-old repeat sex offender sparked an emotional response.

The article goes into some of his offending, and continues —

> With the man due to be driven by prison van to his new home next week, Attorney-General John Quigley said he was not satisfied the community was best protected by the decision, as the Opposition demanded the decision be appealed.

The boot is on the other foot, and Mr Quigley now has the opportunity to right this wrong and to interfere, to appeal and to deal with the problem in his robust activist fashion—do what he said I had been neglectful of doing. With a man of action like him, I am sure that he immediately took advice on the subject and lodged an appeal, or, if the Director of Public Prosecutions was not prepared to do it, he overrode the DPP with the reserve powers at his disposal. But look —

> Mr Quigley said his legal advice was an appeal was unwinnable.
>
> Instead, he turned the table on the Liberals, claiming their denial of proposed amendments to the law while in office last year had led to the WA Supreme Court decision.
>
> He also confirmed that a review of protocols around how communities could be better informed about such a decision was on the cards.

"On the cards"? Is it going to happen or not? What does "on the cards" mean—thinking about it; tossing a coin? It continues —

> The Department of Education said it was not required to be notified about such releases, saying "the WA Police's responsibility for dealing … with potential threats to community safety". I don't know the detail of why the Geraldton community weren't informed. I don't know and I will get to the bottom of that," Mr Quigley said.

We still have not heard anything more on that. In fact, he was on the radio about a week later, and was asked the simple question of whether this person would be on the community sex offender register, and he could not even answer that question. He said that he would look into it. As usual, we end up with a comment from Gary Adshead that, sadly, is inaccurate but once again affirms that some sort of action by someone ought to be taken on these issues.

The level of handballing of responsibility is interesting. Once again, Attorney General Quigley is incapable of taking responsibility, having been very vocal about how these matters ought to be dealt with by government. What does he say about it? Media comment in *The West Australian* of 6 September, headed "Sex offender will live close to school", states —

> Quizzed on the man's release, Mr Quigley said it had occurred "because his case was decided under the slack laws of the Liberal Party".
>
> "The test used to be, could he be managed in the community," he said. "The new test will be, has he convinced the Supreme Court under his burden, his onus, that he will not commit another sex offence.
>
> "I can't imagine a person like (him) being able to convince any court that he'll never commit another sex offence."

No doubt the Leader of the House will point us to bits in the legislation that make that assurance and how it is different from the current test under which a court has to be satisfied that community safety can be preserved, notwithstanding a release into the community. Indeed, the only reason a court can release someone under a supervision order into the community is if it is satisfied, having regard to the paramountcy of the safety of the community, that he can be adequately managed. Another question I would like the leader's assistance on in due course is the allegation that somehow the "slack laws of the Liberal Party" were the cause of the case being decided the way it was. I presume what is meant by that is that if the amendments proposed by the Labor Party last year had been implemented, this would not have happened. But, then, what we have been presented with this year is nowhere near what the Labor Party proposed last year. Which particular set of laws will ensure that this never happens again and would not have happened in the case under consideration—the one decided by Justice Archer most recently?

When this subject was raised in the other place, the Attorney General refused to explain. I suspect that was because he cannot point to any element of Justice Archer's reasons for decision that in any way depended on a view of the law that would be different under this legislation, if it is passed. Again, he cannot help himself by abrogating responsibility and by blaming someone else for the problems that he is facing. Once this legislation goes through, of course, he will have nowhere to move. I look forward to him trying to explain to the public why any public disquiet has not been remedied by his proposals before us today. Of course, what he is proposing today is different from what he proposed last year, and I will come to that now. His second reading speech, as I have mentioned, falls far short of the Labor Party's rhetoric over the last several years. It tells us that the Dangerous Sexual Offenders Legislation Amendment Bill 2017, and I quote —

> … fulfils a major commitment of the McGowan Labor government's law reform initiatives to strengthen the protections afforded to Western Australians in the Dangerous Sexual Offenders Act 2006. …

> Three central amendments are proposed by this bill. The first amendment is that the court is required to be satisfied on the balance of probabilities that the offender will substantially comply with all of section 18(1) standard conditions imposed on them under a community supervision order. Very importantly, the dangerous sexual offender will bear the onus of proving that they will comply with these conditions.

As has been mentioned, this does not match the January 2017 election platform. There is nothing in there about "substantially complying". There is nothing in there about "substantially complying with only the standard conditions". There is compliance with all the conditions of a community supervision order.

His second reading speech continues —

> Given that dangerous sexual offenders have already been found to pose a serious danger to the community, it is appropriate that legislation clearly indicate that, if the court is not satisfied that they will comply with the standard conditions relating to their supervision in the community, they should remain in custody.

Again, there is no explanation for why it is only the standard conditions and why they have to satisfy the court of only substantial compliance. There is nothing in there about a high level of probability. It is totally different from the rhetoric we heard from the shadow Attorney General over the last several years that unless an offender can satisfy a court to a high level of probability that they will comply with every condition, which are all treated as being of equal weight, they will remain in custody. It is not the fulfilment of a major commitment of the McGowan government and no amount of talk about how these are the toughest laws in Australia can remedy that this is not what was promised. The second reading speech continues —

> The second principal amendment is to introduce a presumption against bail for dangerous sexual offenders who are charged under section 40A of the DSO act with breaching a supervision order. When a dangerous sexual offender is brought before the court on such an allegation, they will be detained in custody until the matter is determined —

So far so good. But then comes the kicker —

> unless the court decides that there are exceptional reasons why they should be granted bail.

Again, there was nothing about that in the platform or in the rhetoric over the past few years. On the contrary, what was being put last year in the amendments proposed in this place and by the opposition in the other place was that if there was a breach, an offender would be held in custody until the case was determined. As Liam Bartlett put it —

> Mr Quigley is demanding that every single condition listed on these orders is treated with equal importance. One sniff of a breach of any of them and the DSO goes directly to jail until it can be tested. His changes to this madness are the only thing that makes sense.

He is not changing it. He is doing a half-change. Then we get on to interim orders. The second reading speech also covers another matter —

> … when a person is suspected of actual or likely contravention of a supervision order, that person is brought to court by a warrant of arrest and not a summons.

That is supposed to be a protection of the community. In that sense, a breach no matter how trivial is treated equally to any other breach. The second reading speech continues —

> This bill implements a major law and order reform commitment of the McGowan Labor government to protect Western Australians from dangerous sexual offenders.

That is a half-truth at best.

The Liberal opposition proposes to help the government meet its election commitments. There is no need for the Leader of the House to thank us. All she needs to do is agree to the amendments. The amendments will achieve the three commitments that the Labor Party promised. They will remove the ability for a dangerous sex offender to be released on bail if he is arrested for a breach until such time as the case is determined by a court. It will require an offender to prove that he or she will comply with all conditions of an order, not only sort of comply or substantially comply or mostly comply with some of the conditions. On a review, the offender has to again satisfy the court that he or she will comply with all conditions of an order. In light of the submissions made by Hon Adele Farina and the Leader of the House last year, I hope that they will support the Liberal Party's proposed amendments. I understand that the Leader of the House may be in a difficult position, but I am interested in her explanation of why her position may have changed on the matter.

Among other things that I would like to know in due course—she may be able to address these in the course of her reply to the second reading debate or at any rate in the course of the Committee of the Whole—are the extent of the consultation that has been conducted on those proposed amendments. As I mentioned, an extensive review of the act was conducted and a report tabled in this place that drew on the experience of the prosecuting agencies,

those responsible for monitoring these offenders in the community—the courts and others. The government has no doubt also consulted on these essential changes that the government says will fix the problem for all time. I am interested to learn the extent of any consultation and with whom and the recommendations that emerged out of that consultation.

As I have mentioned, the Attorney General has claimed that the lax laws we passed last year and, I assume, not accepting his proposed amendments, which he has now qualified to a large extent, were responsible for the release of the offender by Justice Archer. He certainly went out and told the public that and blamed us for it. No doubt he has a basis for that and I look forward to the Leader of the House explaining to us where Justice Archer would have gone differently had these proposed amendments been at her disposal so that we could be satisfied that they will achieve the end that is being put forward for them.

If she cannot put her fingers on the relevant passages, I am quite happy to assist in that exercise and explain them. I am happy to go through that judgement paragraph by paragraph. She might also be able to answer whether the release would have been affected or some other mechanism in the course of that decision. I would like some statistics on the manner in which these cases have been dealt with since Labor got into office and the activist Attorney General took responsibility for administering this area of the law. How often does he consult with the Office of the Director of Public Prosecutions? Does the DPP see him regularly and say, "Hey, a dangerous sex offender application has been brought. Can I get your views on it? What do you think? This is what's happening." How often has that happened? How many dangerous sexual offenders have been released on supervision orders since March this year? How would these amendments have made a difference? How many have been appealed? Why has he not appealed them or does he agree with them? If he feels he cannot appeal or cannot exercise independent judgement, as he said should have been done over the last several years, why not? How can we help him out to give him those sorts of powers?

On that note, I look forward to hearing more about the manner in which this legislation is meant to operate and, hopefully, the Labor Party will accept that the amendments proposed by the Liberal Party will be the sorts of improvements it was striving to achieve last year. We thought they were unnecessary or might cause problems. We were assured to the contrary and now the government with its overwhelming majority in the Assembly, with our support —

Hon Simon O'Brien: A mandate.

Hon MICHAEL MISCHIN: Yes, a mandate. With our support, it can achieve those ends and fulfil the policy that it put in its January manifesto for how this law should be shaped and crafted and operate. I know that there may be some opposition from other members in this place for a variety of reasons and I respect that, but with our support, the Labor Party can do what it promised the people of Western Australia it would do.

HON CHARLES SMITH (East Metropolitan) [8.49 pm]: First of all, it is my duty to advise the house that the crossbench will, reluctantly, support the passage of the Dangerous Sexual Offenders Legislation Amendment Bill 2017. I have spoken in this house before about the Attorney General's crime bills. My assessment is that his endeavours to appear tough on crime are still firmly fixed in the frayed ends of sanity. I have previously described them as wishy-washy and namby-pamby and this bill has not changed my views. I will quickly recap. The meth bill was pointless and deceptive. The no body, no parole bill was pointless and deceptive. And yes, the dangerous sexual offender bill, is pointless and deceptive. I am seriously concerned that the Attorney General has little grasp of the nature of crime in our community or of how little effect his bills will have. Is he cynically introducing crime bills that will have no tangible or measurable effect on society? I guess the next two years will confirm whether that is the case.

On this occasion, Hon Michael Mischin has hit the proverbial nail on the head. I will not tire the house by reiterating some of the issues that he has covered very well and very concisely. However, I will make a few comments on this half-baked bill and its foundations. This bill was declared an urgent bill. What absolute rubbish! I think the Attorney General urgently wanted to make some headlines. I believe that there is already adequate provision in legislation to detain dangerous sexual offenders; it is called a permanent detention order. Supreme Court judges can refuse to release offenders who they deem are too dangerous to be released into the community. Therefore, this bill was not urgent. What is urgent is the spin the Attorney General tried to put on it and the need for our judges to plug into community expectations about releasing people who have been classified as dangerous sexual offenders.

The primary provision of this bill appears to be the reversal of the onus of proof. As we have heard, the burden will shift to the detained prisoner to demonstrate to the court's satisfaction, on the balance of probabilities, that he will not reoffend and commit a further sex offence. This sounds great, but in all practicality this fancy primary provision is next to pointless. No doubt, it sounds impressive to the layman but, again, this crime legislation is all sound and fury, in the end, signifying nothing of consequence. Another provision is that if a dangerous sexual

offender who has been released from custody under a supervision order breaches that supervision order, the bill proposes to proceed by way of a warrant rather than by summons. This legislation allows the issue of an arrest warrant that may be in existence for days, weeks, months or even years. Again, there is no real advantage in this legislation; it just sounds good. In all practicality it is essentially pointless and as my honourable colleague Hon Rick Mazza is prone to tell me, it is just retail cynical politics, which is something that this government excels at.

HON ALISON XAMON (North Metropolitan) [8.54 pm]: I rise as the lead speaker on behalf of the Greens on the Dangerous Sexual Offenders Legislation Amendment Bill 2017. This bill seeks to amend the Dangerous Sexual Offenders Act and the Bail Act. We know that the Dangerous Sexual Offenders Act applies to people who are 16 years old or over, so it also applies to people who are classified as children. The Director of Public Prosecutions or the Attorney General can make the applications to the court, which makes it very different from a lot of other legislation. If the court finds that the person has served time in prison for a serious sexual offence and is still a serious danger to the community, it can order that the person continue to be detained for control, care or treatment, or be under the supervision of a community corrections officer after leaving custody.

At the outset, I have to note that the Greens have been consistently concerned about the constitutional implications in particular and the concerns about indefinite detention around this legislation. Nevertheless, a serious danger to the community, as defined within the act, is an unacceptable risk that, if neither order is made as described in the legislation, there is the concern that the person would commit a serious sexual offence. The standard and optional conditions of supervision orders are in section 18 of the act. I want to make some comments about the standard conditions because they are pertinent to some of the concerns that the Greens hold about what is expected to occur with this piece of legislation. The standard conditions are to report to the community corrections officer at a place and time specified in the order and to advise the officer of current name and address; to report to, and receive visits from, a community corrections officer as directed by the court; to notify a community corrections officer of every change of name, residence and employment at least two days in advance; to be under the supervision of a community corrections officer and comply with their reasonable directions; to stay in or out of WA unless the community corrections officer gives permission otherwise; and, reasonably, not to commit a further sexual offence during the term of the order. They may also be potentially subject to electronic monitoring.

In addition to these standard conditions, the court can also add further conditions that it thinks are appropriate in order to ensure the protection of the community, to facilitate the offender's rehabilitation, and, importantly, to protect the victim. Those conditions might be, for example, limitations on curfews. If an offender breaches a supervision order, there are two options. Section 40A makes a breach without reasonable excuse an offence so that criminal law proceedings can be brought. Being criminal law proceedings, the question of granting or refusing bail arises. Division 4 outlines contravention proceedings such as an application for the order to be changed. If there is an unacceptable risk that the person would commit a serious sexual offence, the supervision could be replaced with a continuing detention order. Those are not criminal law proceedings, so bail does not come into play. The standard of proof is the balance of probabilities.

Part 2 of the bill amends the Bail Act. If breach proceedings are brought under section 40A of the Dangerous Sexual Offenders Act, the offender will be detained in custody and bail will not be granted unless the judiciary or the authorised officer is satisfied that there are exceptional reasons for bail to be granted. Once bail is refused, it will not be considered at a later court date unless the accused satisfies the court either that new facts have been discovered, new circumstances have arisen, or circumstances have changed, or the accused failed to adequately present the case for bail at the time.

Part 3 of the bill will amend the Dangerous Sexual Offenders Act. The court can make or amend a supervision order only if it is satisfied, on the balance of probabilities, that the offender will substantially comply with all the standard conditions. The onus will be put on the offender to prove that that will be the case. If police or a community corrections officer reasonably suspect that a person on a supervision order is likely to contravene, is contravening or has contravened the order, there will be no summons. Instead, the person has to be arrested and detained in custody without bail, unless a court decides that there are exceptional reasons for granting bail, and the court is satisfied, on the balance of probabilities, that the offender will substantially comply with all the standard conditions. Again, the onus of proving this is on the offender. The court may make an interim supervision order if an application is pending, if the person is not in custody and if the court is satisfied that the interim order is appropriate.

I understand that this legislation provokes some very different responses within this chamber, which is unsurprising, considering that this chamber is made up of a wide variety of parties that have very different approaches to issues of offending and the best way to respond to it. I note there are a number of amendments to this legislation on the supplementary notice paper, which were also debated in the other place. Rightfully, they are also able to be debated in this place, as the house of review. I note that the general thrust of the amendments responds to concerns raised by the opposition that the bill does not go far enough. I understand that those concerns

have also been expressed by some other opposition parties, and that the amendments seek to make the bill even more onerous. The Greens have a different position on this approach, and we will undoubtedly have an opportunity to debate those different approaches as the amendments are moved. I need to note from the outset that there are very different opinions about the best way of dealing with dangerous sex offenders, and it is a very difficult balancing act from a law and order perspective. I need to be very clear that the Greens have historically opposed post-sentence detention orders, but we have supported post-sentence supervision orders and also, more significantly, original sentences. We continue to advocate strongly for the greater provision of rehabilitation services, ensuring that people are given whatever tools they need to help them stop offending in the first place.

I note that a review of the Dangerous Sexual Offenders Act 2006, which has been referred to already, was announced in 2014 and tabled on 28 June 2016. The review was conducted by the Department of the Attorney General, in consultation with the Director of Public Prosecutions, the Department of Corrective Services, WA Police and the Commissioner for Victims of Crime, with input from stakeholder written submissions. It would probably have been useful to hear also from the Commissioner for Children and Young People, considering that this legislation can potentially apply to children who have offended. It would have been useful to have heard from that perspective. I note that the review was undertaken in the first place as a result of an outcry over TJD, a dangerous sex offender who was put on a post-sentence detention order in 2011. He was then put on a supervision order in 2012, after the annual review of that order. He contravened that supervision order and was put back on a detention order in 2013, and then was again put on a supervision order in 2014, after an annual review. Within days he had contravened that order. He was fined $300 for that contravention. The review covered various matters but, relevant to this bill, the review concluded that the existing process for contraventions works well and that stakeholders did not identify concerns about the consequences of contravention, penalties or bail. It raises the question about why much of this bill is even being considered right now. I am aware that it is part of an election commitment, but it raises a very real issue for people who are beholden to this place to craft good legislation.

The Greens continue to have a number of issues about facilities for managing complex offending, and we asked a series of questions at the briefing about current services, particularly what facilities and services are available for dangerous sex offenders on supervision orders and continuing detention orders, whether it is working and, importantly, how we assess whether it is working. We received a comprehensive answer, and I appreciate that, but I note that there is still no reply to our questions about the efficacy of these programs and how these programs are being assessed. We have been told only that evaluation is an offender management strategy and development function. I want to express from the outset that that is a concern, because when we are looking at the implementation of these programs and services, we need to know what is working and what is not, and how effective they are.

Part of the reply that I received stated that psychological services provides a range of services in the assessment and management of people subject to DSO orders. Psychologists provide three main types of services: assessments, consultations and psychological interventions. However, we are told that the funding cannot easily be broken down, as they provide services to various cohorts of offenders at different times, depending on the demand and the need. Assessment services include risk assessment reports on prisoners being considered for DSO applications; treatment and management plan reports to assist the court with the identification of relevant supervision, management and intervention strategies for people subject to DSO proceedings; treatment update reports used to provide the court with information about a DSO's treatment progress; and other assessments as requested by the court, such as contravention hearings. Consultation services involve participation in regular risk management meetings with community justice services and WA Police; the provision of advice and support to community justice staff, police or prison staff as required to assist with the management of risk issues or offender behaviour; psychological case management of prisoners or offenders when they are engaged in interventions; and delivery of training on managing high-risk, high-need sex offenders. Psychological intervention services involve individual psychological counselling to address criminogenic needs, and contribution to the development and implementation of systemic interventions for DSOs when necessary.

There are also some contracted services, particularly for DSO supported accommodation, and that is a particularly important area that needs to be looked at, because we know that there has been an ongoing problem for people who are trying to receive appropriate rehabilitation and get on with their lives in the community, and how that has been generally responded to in the community. There is what is called a first service contract, and the program supports DSOs who have accommodation placements only, either through private accommodation or through three accommodation units provided by the Department of Communities and head-leased to a service provider. The service provider supports up to six clients at any one time for a minimum of six months pre-release, and for a post-release period determined between the department and the service provider, based on the client's needs.

I note that referral to the DSO program is made by adult community corrections in the department, and upon referral the service provider initiates contact with the DSO client, and interagency support stakeholders to accommodate and support the client to meet their release order requirements and all other mandated or lawful

orders and requirements. The service provider ensures that collaborative working relationships are developed and maintained with key internal and external agencies and that these relationships are given the highest priority to optimise public safety. It sounds good. Of course, I do not know whether it is meeting the need, whether it is sufficient or whether, with the introduction of this legislation, it will be able to deal with any increased demand that might eventuate. I note also that there is a second service contract and, through the DSO program, supported accommodation. The service provider supports up to eight DSO clients in the metropolitan area at any one time through both supplied housing and private rental arrangements, and referral to the DSO program is exactly the same as for the previous contract.

There is also a specialist re-entry link program that provides pre and post-release support to prisoners with life and indeterminate sentences and sex offenders, and that is to enhance the ability of offenders to assist with their reintegration into the community. Through the program, the service provider provides pre-release and transitional planning and support, facilitation of group-based life skills programs, financial counselling, support with short and medium-term to permanent accommodation, assistance with seeking and maintaining employment or training and education, assistance with reconnecting with community and family, assistance and advice on health matters and medication. A range of issues relating to assistance have been identified. Once again, the degree to which this is meeting the current demand is not clear. It is good to be made aware that these types of programs are available, but it is very unclear to me whether this even comes close to meeting the demand, and this is something that I will certainly pursue beyond the scope of this legislation.

I also need to make some comment about the overlap between people who are identified as dangerous sex offenders and the Criminal Law (Mentally Impaired Accused) Act and, generally, people with mental impairment. We know that a number of people who will be identified as dangerous sex offenders may also live with various types of cognitive impairment, including impairments that have been caused by foetal alcohol spectrum disorder, and issues of impulsivity. That is a very big issue, as are issues around mental illness. We need to recognise that we are talking about people who, by their very behaviour, have demonstrated that they are dangerous, which is why they are classified as dangerous sex offenders. But if we are looking at issues of indefinite detention, we need to ensure that there are appropriate facilities for people who may potentially be caught up under regimes around, for example, custody orders. I have spoken before about justice centres and the need for long-term appropriate facilities for people who may not be able to be released into the community safely. I note it is a very complex area and one that we will have to get a lot better at dealing with. It will be interesting to see whether, with the review of CLMIAA and without the threat of indefinite detention, more people are picked up who otherwise might have been caught under the dangerous sex offender legislation.

One of the questions that this legislation raises is: what is the nature of the problem that we are trying to resolve, considering the outcome of the review that was undertaken; what mischief is the bill trying to address, apart from the issue of public fear? I understand from the briefing that I received, and I thank the government for being quite generous with its briefings —

The ACTING PRESIDENT: Member, some members in the house are struggling to hear you, so perhaps you could speak up.

Hon ALISON XAMON: I will do my best. I do not have a big booming voice. I apologise for that; I get told that a lot.

One of the questions that this bill raises is: bearing in mind the outcome of the review, which did not identify that huge systemic problems needed to be resolved, what is the nature of the problem that we are trying to resolve; what are the concerns that we are trying to resolve? I am concerned that we are trying to address issues that are based simply on public fear rather than a genuine concern about existing legislation. I understand from the briefing that as at 4 September 2017, there were 45 registered dangerous sex offenders, 19 of whom were on supervision orders and 26 in custody. There were 20 on detention orders and six were related to other offences. No particulars were available about whether these were offences under the act or whether they were other offences. There were no bail figures. There had been 28 section 40A offences since 1 January 2017. I note that that is not 28 people, because one person may have multiple offences. Four of those people were dismissed or acquitted, one received no punishment, 12 were fined, four received suspended prison sentences and seven resulted in subsequent imprisonment. In 2016, there was a total of 29 section 40A offences—again, that is the number of offences, not people. Since the regime began, one DSO has committed a serious sexual offence. That was in 2017 and of course the name of the offender is subject to a suppression order.

The additional information I have received since the briefing indicates that as of 26 October this year, there were no juvenile DSOs, but there were 46 adult DSOs, 27 of whom were on supervision orders, five in custody and 19 on detention orders. There have been a wide range of charges under section 40A, including failing to attend supervision, psychological or police appointments or urinalysis testing as directed; returning a positive urinalysis,

including a breathalyser test, to illicit substances or alcohol; GPS noncompliance, including breach of curfew, breach of exclusion zone, failing to charge devices, failing to carry handheld units or respond to the phone in relation to violations; possession of prohibited materials, including child images and pornography, and I think we all agree that that is a pretty serious breach; attending prohibited locations or events; and a breach of order conditions or written lawful instructions, such as changing address without prior approval or noncompliance with anti-libidinal medication.

Astoundingly, the Greens' question asking for the number of cases in which a continuing detention order had been sought but not granted by the court was not able to be answered. The relevant database indicates only whether a continuing detention order was made, not whether one was sought. There does not appear to be any evidence that the court is failing to make continuing detention orders when such an order is considered appropriate by the Director of Public Prosecutions. We cannot see the evidence that there is a problem. Apart from the proposed introduction of interim orders, which seems sensible, it is difficult to see what existing problem will be addressed by this bill.

Again, the review by the former Department of the Attorney General that was tabled in 2016 concluded that the existing process for contraventions works well and that stakeholders did not identify concerns about the consequences of contravention, penalties or bail. As already stated, this review was undertaken by DOTAG in consultation with the DPP, the former Department of Corrective Services, the police, the Commissioner for Victims of Crime and stakeholders. This group is not known to be soft on dangerous sexual offenders. We could in no way say that this was any sort of biased report, yet they did not see a problem that needed to be resolved in this manner.

I am going to come back to the bill and to the presumption against bail, which is part 2 of the bill. Part 2 of the bill comes very close to being mandatory detention for adults and children aged 16 years and over. The only thing that stops it from becoming mandatory is the exceptional reasons provision. The Greens' opposition to mandatory detention and the ousting of judicial discretion, particularly for children when detention for children is supposed to be a last resort and for the shortest possible time, has been discussed at length previously in this Parliament, in the previous Parliament and in Parliaments before, and it looks as though I will have to continue talking about it. I want to say that it should not need to be repeated, but I feel as though it still needs to be. Removal of judicial discretion is never good law and does not result in just outcomes. The wording in proposed clause 3D of schedule 1 part C is similar to that of bail for an accused who has been charged with murder. In this case the Greens agreed to that provision after being satisfied during debate that exceptional circumstances would in an appropriate case include a victim of family violence, for example, who murdered the perpetrator of the violence and when that person posed no risk to any other person. However, the relevant charge here is the contravention of section 40A relating to a supervision order. We are concerned that the range of seriousness is very great. Obviously, the most extreme is of the utmost seriousness. In that case we are talking about committing a further sexual assault; there is no question at all that that is profoundly serious. But the other extreme is an act that would not be an offence if it was committed by any other person or in any other circumstances. The sort of thing we are thinking about, for example, is if someone is late attending a meeting with a community corrections officer, which is in no way akin to murder, obviously; but, if convicted, the penalty may not be imprisonment at all or at least not imprisonment for as long as the person spent in custody without bail, pending trial. The bill is proposing that a person on a supervision order may be charged with a breach, be detained without bail and then be returned to a supervision order, which we are concerned may severely disrupt the supervision and the person's control, care or treatment. I note that the review itself said that this was neither logical nor fair. The review went into the history of the relationship between the act and bail. Originally there was no bail under the act because there was no offence of contravention. If a person breached a supervision order, the consequence was that proceedings could be brought under division 4 for a change of the order. This process still exists and is used in situations when the nature of the breach indicates an increased risk to the community.

The 2011 amendments to the act introduced an alternative—that is, charging a person with a breach offence under section 40A. This provides a management tool and a consequence for breaches that do not increase risk to the community or require changes to the supervision order. Both section 40A proceedings and division 4 proceedings can be brought simultaneously, in which case, after the person is brought before the court, bail is not available. I note the review says that the DPP considers that this works well. The Greens agree. We also note there are dangerous sex offenders. It is an appropriate for Parliament to require courts considering bail for those people to give the most weight to the safety of the community and to victims. The reasons for granting bail to a dangerous sexual offender should be very, very clear. However, the Greens cannot agree to oust judicial discretion as it is proposed, particularly given that it was not supported by the review. We cannot support this part of the bill.

I refer now to clause 13, which is replacing section 4A, "References to commissioner of a serious sexual offence". It involves a rewording to make it extra clear that the provision relates to a future, not historical, commission of

an offence. In the briefing it was indicated that no other court case has held otherwise, that the government is just being careful by wanting to change this.

Clause 14, which amends section 8, and clause 15 and part of clause 16 consequentially deal with reapplication upon expiry of a current supervision order. Section 8 of the act currently allows for consecutive supervision orders so that as one order approaches its final year the DPP can apply to the Supreme Court for a further supervision order to take effect when the current one expires. The bill is proposing that the DPP has the option of applying for a continuing detention order instead. The Greens cannot support this particular provision. That the person is on the supervision order at all suggests that there has been no successful division for proceedings to change it. In other words, the court, and indeed the DPP, if no application has been brought, consider that this is the most appropriate order. The Greens oppose continuing detention orders on principle and, so, cannot support this part of the bill, the potential effect of which is to increase the number of people who will be subject to them. As I have already said, an increased number of people are going to be subject to this, and it is very unclear whether any additional funds will be made available in the future for the very services and programs that I outlined earlier were needed to assist people to address their offending behaviours so that they can eventually live safely within the community and so that the community can also be safe.

Clause 16, which amends section 17, and clause 17, which amends section 20, deals with the onus of proof on the offender to proof that they will substantially comply with the standard conditions of a supervision order. Clause 16 proposes that a court no longer make a supervision order unless satisfied on the balance of probabilities that the offenders substantially comply with the standard conditions of the order, and the onus of proving this is reversed and lies with the offender. This means that unless the evidence provided by the DPP is sufficient to satisfy the court, the offender will have to adduce the necessary evidence. If the offender fails to do so, the court may in some circumstances infer that the evidence would not have helped them. Similarly, clause 17 proposes that before an offender can apply for a supervision order to be amended, the court must be satisfied that the person will substantially comply with the standard conditions of the amended order. I cannot help but feel as though this is all very *Minority Report*. How are people supposed to demonstrate that they are never going to offend in the future unless they can somehow produce a crystal ball to demonstrate to a court's satisfaction what the future definitely holds?

The offender must already comply with the supervision order conditions or risk facing breach proceedings. The changes are about the duty of the court to predict the likelihood and degree of the offender's compliance with standard conditions before making a supervision order and is not about the offender's duty to comply with all conditions of the order. Sections 17(2) and 22 already require the court to have as its paramount consideration the need to ensure adequate protection of the community. At the briefing it was indicated that the substantial compliance provision follows from reversing the onus; in other words, it shows how to discharge the onus. It was also suggested in the briefing that the court will most likely consider the level of compliance anyway, but the bill will be enshrining that. The bill also ensures that the court considers not only risk-related conditions, but also rehabilitation related conditions. However, one would argue that there is a strong link between rehabilitation and risk. There is no evidence that the court is not already doing this anyway. Clause 17 is perhaps less problematic because in this clause the onus will in any case be on the offender as the applicant. One issue is how an offender who is in prison will obtain the evidence to discharge the onus. A prisoner can say that they will substantially, even strictly, comply, but what other evidence can they get, especially if they have not been on a supervision order before and have not had the opportunity to demonstrate a history of compliance? The Greens asked at the briefing whether any legal aid organisations, especially Legal Aid WA or the Aboriginal Legal Service, have agreed to represent dangerous sex offenders, including arranging and paying for expert reports when appropriate. We did not receive an answer to that question and I would like to know for the record whether any legal aid organisations agreed to represent dangerous sex offenders, including arranging and paying for the expert reports when appropriate. It would appear that if we are going to change the onus of proof, we need to know whether people are able to get some sort of assistance.

Clause 18 amends section 21—that is, mandatory detention likely or actual contravention of conditions of supervision orders under division 4 proceedings. Currently, if police or a community corrections officer reasonably suspects that a person subject to a supervision order is likely to contravene it, is again doing so, or has, then they apply to a magistrate for a summons or a warrant. If the magistrate is satisfied that there are reasonable grounds for the suspicion, in this instance they must—there is no judicial discretion—issue one or the other. Clause 18 changes this so that summons is not an option, only a warrant. This is mandatory detention, which the Greens oppose on principle, as I have said already. It is mandatory detention before a breach has even been established. There is a real risk that it could unhelpfully and inappropriately interrupt careful arrangements that have been set up under a supervision order. For example, the offender could breach standing condition 1(a), which is to report to a community corrections officer at the place and within the time stated in the order and also to advise the corrections officer of the person's current name and address, by attending half an hour late because of an unanticipated transport difficulty. We have to acknowledge that a lot of the people who are going to be on these orders may not have transport and may be reliant on our public transport system. As lucky as we are to have our

public transport system, it is not infallible and it is certainly the case that people can very often be late due to our public transport system. The offender could breach standing condition 1(c), for example, which is to notify a community corrections officer of every change of the person's name, place of residence and place of employment at least two days before the change happens, simply by accepting a job to start the next day. They could breach the standing condition even if they notify the community corrections officer immediately once the job is accepted and they have started work. These are the sorts of breaches that we are talking about and I do not think that these are the sorts of breaches that we are realistically trying to capture, yet this is what the legislation potentially does.

Clause 20, which is amending section 23, deals with orders made in the event of actual or likely contravention of conditions of a supervision order, which placed the onus on the offender to prove that they will substantially comply with standard conditions of the supervision order, under division 4 proceedings. Currently, if the court is satisfied on the balance of probabilities whether the offender is likely to, is or has contravened a condition of the supervision order, it can amend or lengthen the supervision order and make it a continuing detention order if it is satisfied that there is going to be an unacceptable risk that the person would, if possible, commit a serious sexual offence or make no order. In deciding whether to make an order, the court's paramount consideration is the need to ensure adequate protection of the community. The bill is changing this for likely contraventions so that the court cannot leave the supervision order as is. The court must replace that order with a continuing detention order or amend the supervision order and if amending the order, it may also lengthen it. The briefing indicated that there are no cases in which a court has maintained a supervision order as it is while knowing it is likely to be breached. In the briefing it was indicated that the reason for the change is to make sense of the following change: that a court cannot make or affirm a supervision order unless it is satisfied on the balance of probabilities that the person will substantially comply with the standing conditions of the order as amended and the onus is on the offender to prove this compliance. Again, the paramount consideration of community protection will remain. The net effect means that it seems it will no longer be the court on application by the Director of Public Prosecutions to find that a contravention has occurred or is likely to occur and then decide on the most appropriate order that will ensure adequate protection of the community. The bill proposes an added step, in which the court has to consider whether the offender, having been found to have contravened or likely to contravene, has proved or not proved that they will substantially comply in the future. It seems a very convoluted *Yes Minister*-ish way of trying to fix a problem that does not actually exist. It also means that unless the evidence provided by the DPP is sufficient to satisfy the court, the offender will have to adduce the necessary evidence. If the offender fails to do so, the court may, in some circumstances, again infer that the evidence would not have helped them. This raises the question of how the offender can obtain expert or other evidence with which to discharge the onus. The recent review considered the question of reversing the onus in contravention proceedings, and the Office of the Director of Public Prosecutions was the only stakeholder to comment. It advised that the reverse onus would not advantage the prosecution and that if charges were laid, for example under section 40A, that the prosecution would still have to prove the contravention beyond reasonable doubt. For division 4 proceedings, the prosecution would still have to prove via evidence that the community is at increased risk. As already indicated, the review found that the current contravention process works well.

Clause 21 amends section 24A. Pending a hearing, a person can be released from custody only via onus on an offender to prove they will substantially comply with standard conditions of a supervision order. Clause 21 provides for the mandatory detention, pending hearing of the contravention proceedings. The court cannot order the person to be released unless it is both satisfied that this is justified by exceptional circumstances and the offender has proved that they will substantially comply with the standing conditions of the supervision order. The bill is removing the existing provision that allows the court to release the person in circumstances that are not exceptional, but when the DPP consents and the court has already given paramount consideration to the need to ensure adequate protection of the community. Once again, judicial discretion is being removed even when the DPP is already in agreement and the consideration of safety to the community has already been considered.

Clause 22 changes section 27A and deals with interim supervision orders. Pending proceedings for supervision or continuing detention orders, or for an amendment of a supervision order, or for contravention of a supervision order, this clause provides for interim supervision orders to be made by the court against a person who is not in custody and the court is satisfied of the desirability of such an order to ensure adequate protection of the community. This includes when an existing supervision order has or may end before the substantive proceedings are included, a situation that has, in fact, arisen in the past, as has been described. This clause appears to be reasonable.

Clause 23, is section 33 amended, which deals with a review of continuing detention orders and deals with the onus on the offender to prove that they will substantially comply with the standing conditions of a supervision order. Currently, if a person's continuing detention order is being reviewed, the court must rescind the order if it does not find that the person remains a serious danger to the community. Alternatively, if the court finds that the person remains a serious danger to the community, it must either affirm the continuing detention order or replace it with a supervision order. Again, the paramount consideration is ensuring adequate protection of the community. The bill is adding an extra requirement that the court cannot make such a supervision order unless it is satisfied, on the balance of probabilities, that the person will substantially comply with the standard conditions of the order,

the onus of proof once again being on the offender. Again, it is questioned how an offender in custody will be able to obtain any evidence beyond their own undertaking in order to comply.

This legislation is a bit of a mixed bag. As the Greens have indicated, some provisions seem to be fairly innocuous, none of which seem to be a substantive improvement to the current situation and many of which the review has already determined were not necessary and are trying to resolve problems that have not been demonstrated to exist. A number of provisions reverse the rule of law, most known to be judicial discretion, by introducing elements of mandatory sentencing, and they are, and also by reversing the onus of proof without any indication that any additional supports will be made available to allow justice to occur within our courts.

As I have stated previously, the Greens recognise that there are dangerous sex offenders and that we need some very serious solutions, particularly around the intersection with mental impairment, to ensure that the community and victims are kept safe and that people are given every bit of support in order to try to address the offending behaviours. However, we are not convinced that this bill will go any practicable way towards ensuring that the community is safer or ensuring that justice will be served. As such, the Greens will be opposing this legislation. We have considered it very hard and we believe that it is not capable of amendment, except by excising most of it. With the exception of the sensible provision for interim orders, it does not seem to address any problems with the existing processes and it flies in the face of the recent review that considered this very issue. On that note, we have further questions when we go into Committee of the Whole. I look forward to being able to hopefully get some further information around this whole area when we go into committee.

Debate adjourned, on motion by **Hon Sue Ellery (Leader of the House)**.