DANGEROUS SEXUAL OFFENDERS LEGISLATION AMENDMENT BILL 2017

Declaration as Urgent

MR J.R. QUIGLEY (Butler — Attorney General) [10.10 am] — without notice: In accordance with standing order 168(2), I move —

That the bill be considered an urgent bill.

I wish to briefly address the chamber about why the Dangerous Sexual Offenders Legislation Amendment Bill 2017 should be declared an urgent bill. This bill was second read into this Parliament before the break. However, well-publicised events have occurred since the second reading speech—most notably, the recent decision to release DAL.

As I explained in my second reading speech, the bill itself contains a number of provisions. It contains the primary provision of the reversal of onus of proof that before a court can make an order for the release on supervision of a person detained under that legislation, the burden will shift to the detained prisoner to demonstrate to the court's satisfaction, on the balance of probabilities, that he, in 99 per cent of cases, or she perhaps in one, will not reoffend by committing a further sexual offence. That is too late, of course, for consideration in DAL's case—perhaps. I add the caveat "perhaps" because other important amendments are in the bill. As I explained in my second reading speech, there are other important facets of this bill. Should a dangerous sexual offender who has been released from custody under a supervision order breach that supervision order, the bill proposes to do away with the facility of issuing the person with a summons to come to court on a future date nominated in the summons to explain or answer the breach. If there are reasonable grounds to believe that there has been a breach of the condition, proceedings will be by way of warrant for arrest to bring the person into custody. There will be an amendment to the Bail Act with the presumption against bail so that bail will be granted only in exceptional circumstances. There is already an amount of case law on what exceptional circumstances are—it is very, very rare, if ever. The person will be held in custody until the alleged breach is dealt with by the Supreme Court. The Supreme Court can make an amendment to the supervision conditions or cancel the order of supervision and leave the person in detention.

I notice that in DAL's case, 47 conditions were attached to the order; five of them, of course, are section 17 conditions, which I call the standard or primary conditions, and 42 others. The government fully expects and demands that the authorities keep an exceptionally close eye on the whereabouts of all DAL's movements et cetera. I have gone into that before; we have the 42 conditions. We want to get this legislation through today, however long it takes, so that this element of the bill—that is, if there is a breach of the conditions, DAL will be arrested and held in custody until he is brought before the court—becomes law today or as soon as the Council can deal with it, and not leave this bill in abeyance until after the estimates hearings. The community is very, very concerned about this. The McGowan government puts community safety at its highest level and that is why we are applying this exceptional circumstance during the budget debate to suspend standing orders to allow this to be considered an urgent bill.

DR M.D. NAHAN (Riverton — Leader of the Opposition) [10.15 am]: The case in front of us is the urgency of the Dangerous Sexual Offenders Legislation Amendment Bill 2017. This is an important issue; it is frightening the hell out of the community and the Attorney General has worked to augment that concern in the community by his actions to date. It is urgent because of the Attorney General's decisions.

First of all, he has had six months to bring this legislation forward, which he has failed to do. He is seeking to make it urgent because DAL has been let out of jail. Let us make it quite clear: DAL applied for release in 2015 and 2016 under the existing legislation and was not allowed out—twice. In 2015 and 2016 he applied and was not let out. Only since this government has come in and made changes and appointments to the court has he been let out. Those are the facts.

The potential for this person to reoffend is overwhelming. I will go through some of the history. DAL began offending in 1975. The victims have included his daughter, his nephew and other children. His history indicates that any time he has been released, he has offended shortly thereafter, hence the urgency of this bill. In 1989, he was released and interfered with his nephew in the car on the way home from prison. As I stated, after his most recent sentence, which expired in 2015, Justice Robert Mitchell decided he should remain in prison for community protection. That was the correct decision. In 2015, it was judged that DAL's propensity to sexually abuse children was very high. That was two years ago. Again in 2016, DAL applied for release from prison, but Justice Andrew Beech had serious reservations, including that the gains DAL claimed to have made in counselling were not genuine. DAL was knocked back again under the existing legislation put in place by the former government. When DAL applied again this year, it was assessed by a psychologist that he was highly unlikely to commit an offence against a child whom he did not have an established relationship with. Justice Gail Archer approved his release

under strict conditions. One of those strict conditions was that he go to Geraldton with his partner. Justice Archer deemed that the relationship with his partner in Geraldton was a protective factor and accepted that termination of that relationship with the partner would be a risk factor. He has not gone to Geraldton; he is somewhere else in the community after being let out recently. He is out there somewhere in the community. That is the reason for the urgency of this legislation, but the legislation is failing, so we will deal with that. It is failing to protect the community on the basis of the now Attorney General's words and arguments. It is failing to implement what he and the Australian Labor Party promised during the election campaign they would do. A paedophile, a serious sexual offender, whose release was twice refused in 2015 and 2016, is out in the community. He is out now and we have to deal with it. We have legislation that the government has been tardy in bringing to this house. It has been brought on only because DAL was let out on the government's watch. We have to deal with it, we agree, but the legislation has not gone through the proper processes because the government has left out two crucial factors that it said, when in opposition, were crucial and committed to deal with before the election.

We will support the Dangerous Sexual Offenders Legislation Amendment Bill 2017, but we will seek to make some very simple amendments. The government already knows them; the Labor Party put them forward last year. They seek to implement two things that the Labor Party argued for and sought and promised to implement prior to the election.

We will support the urgency motion. DAL is a serious sex offender and is out there somewhere in the community. The government has refused to appeal his release, even though in opposition it demanded that the then Attorney General appeal it. The current Attorney General now says that he has a different legal interpretation. He has failed to act as he said he would, and we are going to hold him to account. We support the urgency of this legislation, but we expect the government to do what it said it was going to do and protect the community from DAL.

Question put and passed.

Second Reading

Resumed from 6 September.

DR M.D. NAHAN (Riverton — Leader of the Opposition) [10.20 am]: I am not the lead speaker for the opposition. As I indicated a few minutes ago during discussion on the urgency motion, we will support this bill. We will move a number of important amendments; they should not be controversial and should be supported immediately by the government because they are the amendments that the Labor Party proposed and committed to implement during the last election campaign. My colleague the shadow Minister for Police; Corrective Services will go through them in detail.

Why are we urgently debating this legislation? We had a briefing last week on, I think, the same day that this legislation was read into the house. The day before it was read into the house, the government was still making amendments to it. This legislation is being rushed because a serious serial sex offender has been let out into the community, and I would like to make a few comments about the way that was done and communicated to the community.

The Attorney General has for some time set himself up as a protector of the community against sex offenders and has garnered a large amount of publicity in that regard over the last few years. He came into government promising to make amendments but has failed to take any action. When DAL was let out into the community, the Attorney General basically said on radio and in this Parliament that the opposition had contributed to DAL being let out into the Geraldton community. The member for Geraldton was not here in the chamber. The Attorney General said on radio and in this house that the member for Geraldton —

Mr M.J. Folkard interjected.

THE ACTING SPEAKER (Mr I.C. Blayney): Member for Burns Beach, the Leader of the Opposition is not taking any of your interjections. All you are doing is making it hard for me to hear and hard for Hansard.

Dr M.D. NAHAN: He accused the member for Geraldton of being complicit in DAL being released into the Geraldton community. I will say a couple of things about that. The Attorney General actually breached a suppression order; he should not have said that. Yes, in the ruling by Justice Archer it was clear that DAL was probably going to Geraldton because of the circumstances around certain of the conditions, but the Attorney General stood in this place and communicated to the people of Geraldton that DAL was going there and that they should approach the member for Geraldton. What happened? Five days later the member for Geraldton received a petition with 3 500 signatures on it. Obviously, the people of Geraldton would probably have known where that person was going; it is a small town and they whisper. The Attorney General augmented the passions and concerns of the community of Geraldton, trying to make a cheap political point against the Liberal member for Geraldton. He is the Attorney General. Then we found out yesterday —

Mr M.J. Folkard interjected.

Point of Order

Mr S.K. L'ESTRANGE: The member for Burns Beach is not being invited to interject.

The ACTING SPEAKER: Yes, member for Burns Beach, I will have to call you if you continue to interject.

Debate Resumed

Dr M.D. NAHAN: He is just trying to suppress this view.

Yesterday, we found out that DAL had been let out into the community and this time the Attorney General stood up and said, "Where he is going is suppressed; I can't talk." That hypocrisy is rich. In opposition, in the case of another serious sex offender, the current Attorney General demanded over and over that the then Attorney General, Hon Michael Mischin, appeal the release order. He got that out into the media and set himself up as the defender of the community against serious sex offenders, and he got a lot of publicity. That led to a whole range of activities during the election campaign and it became a major issue before the last election.

He then became Attorney General. That was a bad decision by the government, but he is the Attorney General—the first law officer of our state. He had demanded that the previous Attorney General appeal that earlier release order, but yesterday he said, "I've had a change of legal opinion. I won't do it." He is not just the Attorney General; he is a lawyer of many years' standing. One would have assumed that a person with his background, who had been shadow Attorney General for a long time, would have sought some legal advice prior to making the statements he made when in opposition, but apparently not. He was, again, just going out there, playing politics with the community's fear of serious sex offenders.

The community has a right to be concerned about that, because the damage that serious sex offenders do to children is permanent. That is why we are here; this is a serious issue and cannot be suppressed, so the Attorney General should not suppress it. Now he says that he is not going to appeal. Our concern is that he, as shadow Attorney General during the last election campaign, promised to make amendments to this legislation. We now have the amending legislation, six months later, and it is a rush job because under the Attorney General's watch, a serious sex offender was released. Reading this man's history, there is a great expectation that he will reoffend, because he always has reoffended. I emphasise that the urgency we are facing in this case is due to not necessarily the defects in this legislation, although we are willing to change it, but the decisions that have been made since the change of government.

In 2015 and 2016, DAL applied for release and was correctly turned down under the existing legislation. The judges said no, but since then there has been a new case in which information was put to a new judge appointed by the Attorney General, and we have to rush to fix this because the community is telling us that this person should not be out there.

Mr M.J. Folkard: So let's do it.

Dr M.D. NAHAN: That is what we are doing. Stop trying to inhibit us. That is what the member is trying to do; the member is trying to suppress debate on this important issue.

We are here trying to fix something of the government's making, and doing it in a rush job. It is a rush job because the Attorney General has left out two of the essential amendments that he attempted to move as shadow Attorney General and that the Labor Party promised to put in.

Mr F.M. Logan: You voted against them.

Dr M.D. NAHAN: The government has left them out. We would not be in this position if the Labor Party were not in government; that is clear. Under the existing legislation, this same person, DAL—the person because of whom we are here, urgently debating this legislation—wanted to be released in 2015 and 2016 and was refused. All of this has changed, and the Labor Party is now in government. What has changed? The Attorney General has changed.

Several members interjected.

The ACTING SPEAKER: I will have to start calling people soon if this develops into a rabble.

Dr M.D. NAHAN: The problem is that when in opposition, the Attorney General made political hay out of his stand on sexual offenders. That is what he has done repeatedly. He has put himself forward as a protector of the community but he has worked in the opposite way—he has undermined the community. Saying that DAL would be living in Geraldton was a disgrace and should have been grounds for his dismissal as Attorney General. Why is DAL not going to Geraldton? It is because of the action the Attorney General took. He went out and publicised it. He did so not to

protect the people of Geraldton, but to make cheap comments against a Liberal member of Parliament. That is what it was about. He used the concerns of the community about sexual offenders to make a cheap political point. That is what the Attorney General did. Would members trust him to stand up against sexual offenders? He stands up for them only if they move to a Liberal area. That is not what we want of an Attorney General.

Mr B. Urban: That's a cheap political shot.

Dr M.D. NAHAN: It is a fact.

DAL is out there. A serious sexual offender is out there, and he is dangerous. This has occurred under the Attorney General's watch. The Attorney General is rushing through a series of amendments to the act. We will support those amendments, but he has left out some crucial ones. We know they are crucial because he said that they were crucial. The Labor Party went to the election promising to implement these amendments but they are not in the bill. Why not? Why are they not there? The Labor Party promised that it would rush this legislation through. It said that it would make these amendments. It promised during the election campaign that it would make these amendments but it left them out. Why? The Labor Party said that they were absolutely essential to effectively limit the discretion of the judiciary in certain instances. We now know that those limits on discretion are needed. They are needed now because DAL is out, and that is why we are here. They relate to two things. I will read from the Labor Party's document "Law Reform Initiatives" that it submitted to the public and upon which it was elected. No doubt it was written by the Attorney General. One of those initiatives is to apply a reverse onus of proof. That is in the bill. We support it. The document states —

> ... there will be a requirement or burden upon the dangerous sex offender to satisfy the Court on the lower civil standard, that is, upon the balance of probabilities, that they can be trusted to obey all requirements and provisions of the Community Supervision Order.

What has been left out of the bill is what the Attorney General argued in opposition and told the public would be required; that is, conditions would be applied to substantially meet all conditions—47 conditions in the case of DAL—not just the standard conditions.

Mr P.A. Katsambanis: To fully comply with them.

Dr M.D. NAHAN: To fully comply with them—the Attorney General has left that out. These are really important words. One of the conditions relates to DAL's relationship with his partner, which the judge said—I read this out earlier—is a major risk factor of him reoffending. This was left out. Why? Mr Quigley appeared in the media—on radio and TV—saying that he would reintroduce the amendments that he proposed whilst in opposition, but he has failed to do so. DAL poses a real risk. If we do not carry out what the Attorney General has suggested we should do, DAL might reoffend and he might not be brought back to jail.

I turn to the issue of bail. I quote again from WA Labor's "Law Reform Initiatives" —

> 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.

That is not in the bill. That is what the Attorney General said he would do. That is what he brayed for and complained about and got many inches of columns in the media about, but he has failed to do it. Why? There is no explanation. He is just hiding from it. This is important because the probability of DAL breaching his conditions and seeking bail is extremely high, given his record. Most judges who have looked at this have said the same thing. The Attorney General has left this out of his legislation. Why? The crucial thing is that he has gone to the media, as has the government, demanding that we immediately support this legislation unaltered. He has not told the media that he has left out two amendments that he told the media were crucial. He has not told them that. I think we will hear the Attorney General say that he is a lawyer of high standards and great experience, which he is, and that lawyers have different opinions at different times. When he was in opposition, he had this opinion, and when he tried to get votes in the run-up to the election, he had that same opinion and now he has a different opinion! But he has not told the media. He has not told the community that he has changed his mind and that we do not need to change DAL's bail conditions and fully enforce all the conditions. He has not said that. He has implied that but he has not said that.

We have here a case that has been a failure for the Labor Party over six months. This legislation is urgent because a serious sexual offender with a high probability of reoffending is now out in the community. He has been let out under the Labor Party's watch. We need to tighten the legislation because he has been let out. A judge made a decision that previous judges did not make. Judge Archer decided to let that person out of jail. There have been some alterations to the conditions of his release. He is obviously not going to Geraldton; he is going somewhere else. In my view, that is a ground for appeal. Last year, the Attorney General's view was that that was a ground

for appeal. He has chosen not to do that. He just refuses to do it, so it is a different issue. Now DAL is out there and we need to tighten the discretions in the future for judges of all colours and types when considering whether a serious sexual offender should be allowed to be released into the community.

The Liberal Party is keeping the Labor Party to its word, and in this case its word is right. It should have incorporated these amendments into the bill but it refused to do so. We are trying to keep the Labor Party and the Labor government honest to its word, honest to its commitment to protect the community from serious sexual offenders, and to carry out what it promised to do. It is trying to avoid doing that. It is trying to hide behind a media concern about DAL, which is valid, and a community concern about DAL, which is also valid, and trying to slip through a watered-down piece of legislation.

The Labor Party has the numbers in this house. We will support the amendments. If the legislation goes through and if DAL gets out on bail, even though he breaches some of those conditions, we will hold the Attorney General to account personally and the Labor Party collectively, unless it makes the amendments that we suggest and that it has suggested. We would then expedite the bill passing through this house. It is very simple. There should be no disagreement at all. I repeat that all we are doing is putting forward amendments to the legislation that the Labor Party promised to the public but has chosen to leave out. We support the fact that DAL has been let out. There is a need to tighten the governance of releasing serious sexual offenders. DAL shows the need for that.

MR P.A. KATSAMBANIS (Hillarys) [10.40 am]: I will be the lead speaker for the opposition on the Dangerous Sexual Offenders Legislation Amendment Bill 2017. The public of Western Australia has an expectation that we, as members of Parliament they elect, will keep our community safe from dangerous criminals, particularly predators such as sex offenders. Not only does the public have that expectation, but we have a duty to deliver on that expectation. That expectation that the public places upon us is not a party-political or partisan expectation; it is what they expect of good government and of good members of Parliament delivering that good government. Over the years we have grappled with the concept of what to do with dangerous sexual offenders once they have served the sentence imposed on them by a court of law yet quite clearly remain a danger to our community. Largely, we have grappled with it on a relatively bipartisan basis until the last few years when the person introducing this bill to the house today decided to turn it into a political football. Unfortunately, that shift from bipartisanship to raw parish-pump politics has not served us well.

When I was elected to the other place four years ago I raised the spectre that our laws as they stood at the time—laws that had largely been implemented by Jim McGinty in his term as Attorney General—had not kept up with the times and needed to be addressed. I even gave speeches in the other place that highlighted a series of steps I thought were important to take. The government of the day looked into it, introduced some amendments, and they passed and went into law. At the time the shadow Attorney General, today's Attorney General, said that those amendments did not go far enough. He suggested that the community was exposed because he had an alternative that would have made things even tougher for dangerous sex offenders to be released into the community after they had served their sentences. He introduced a series of amendments in this place and they were introduced in the other place to that effect. My view at that time was that a heap of other things could have been done too, and we will get to those, hopefully, as a community in years to come. However, the amendments that were passed, were passed. They made things tougher, though perhaps not as tough as I wanted things to be made and perhaps not as tough as the current Attorney General wanted them to be made. Always riding over us in this regime is the spectre of the High Court and the constitutionality of what we are doing. We must remember that we are keeping people in protective custody after they have served their sentences, which raises the question that is for another day but one that I want to keep on the agenda of those sentences. If people like DAL, TJD and all those others had received the appropriate sentences at the start, it would have taken a hell of a lot longer before we needed to consider their release into the community. That is something we need to fix.

Mr J.R. Quigley: We'll still get there, though.

Mr P.A. KATSAMBANIS: We might or might not get there; it depends on the sentence and the individual circumstances. I have to say, Attorney General, that when you and I go out into the community and people talk to me about these people, as they often do, particularly when the media highlight cases like DAL, the thing that most members of the community, the average member of the community, says to me is that these people should rot not only in prison but also in hell. That is the community's expectation for these people. The sooner we get to that stage, the better. We cannot deal with the second part of it—that is for someone else to decide—but we can decide on the rotting in prison bit, and we will get there.

Several members interjected.

Mr P.A. KATSAMBANIS: Absolutely. The Labor Party and this Attorney General campaigned at that election on a set of policies that they said would make this problem better for the community. I understand they did not guarantee that these people would stay in prison forever, but they said that they had a plan to make things better,

and, substantially, it was the plan that they brought in here as amendments last year. Last week, the Attorney General horribly and nastily attacked people on this side of the house for not supporting those amendments when they were on that side of the house. They were named and slurred by the Attorney General because, somehow or another, if they had passed those amendments this DAL character would not have got out of jail. We will address that in a minute as well. There are a lot of things to address in this bill.

The first and primary issue is whether this government and the Attorney General can be trusted with two things. The first is keeping their word and doing what they said in opposition, doing what they said in the election campaign and doing what they say to the media and the public when they speak outside this chamber. The way to test that is to examine this bill. Yes, the bill is urgent, and the Leader of the Opposition identified why it is urgent. It is urgent because the government sat on its hands for six months, having said to the people of Western Australia before the election that it had a plan. It sat on that plan for six months and it brought in only half that plan after it knew DAL had been ordered to be released into our community. That is why it is urgent, because the government sat on its hands. The other issue in relation to this government is whether this legislation will actually do what it says it will do. Will it keep people like DAL in prison when they come up for review? Again, I will discuss that in detail during my presentation later today, but the way that can be best answered right now is by the Attorney General tabling the legal advice he received on whether the provisions he is introducing today would have made one iota of difference to the judge's decision in DAL's case. Produce that legal advice. Let us put it on the table. Do not hide behind the cloak of legal professional privilege, because just last week when we were debating the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 the Attorney General waived legal professional privilege when it suited him and tabled the Solicitor-General's advice. He should table that same or other advice he received on this bill and on how these provisions would have made an actual difference to Judge Archer's decision in this case.

These are the tests the government has to be judged by: one, is it living up to its word and the expectations it created in the community about what legislation it would pass in this place; and, two, whether this legislation would have made any difference to DAL and any difference at all to the way other people like DAL are treated in the future. They are questions that the government has not answered, and by its actions so far, by introducing this bill that does not live up to its own words, it has raised questions in the community about whether the government is genuine about this matter or whether it wants to treat it as a cheap headline.

I am genuine about this and I know that the vast majority of members on all sides of this house and in the other place are genuine about this, because we reflect the community expectation that I spoke about earlier. The community expectation is that this Parliament and the government of Western Australia of the day will do everything in their power to protect our community from these vile and evil sexual predators. Live up to those expectations. I have said it in here before, and I will keep saying: I do not want this government to be one that fails. I actually want it to be a government that succeeds. I want every government in the place that I live, the Western Australian government and the federal government, to be the best government it can be, especially in an area as important as community safety. We will hold the government to account. We will examine its legislation and we will shine the light on it to see whether the government is living up to its expectations and to community expectations and whether the legislation that it introduces will deliver what the government says it will or whether, as has, unfortunately, already happened far too often in the short six-month history of this government, the government is being sneaky again, saying one thing and doing another thing—doing only half the things that it promises to do and trying to hide it by embracing all these other issues into it.

This legislation is lengthy and has a lot of legalese. I will try very hard, for the benefit of members and the public, to keep the legalese as short as possible. It substantially does two things. It makes changes to the way that dangerous sex offenders, who are already out in the community and breach the conditions of their release, are treated when they apply for bail once they are brought before the court or an authorised officer and it is shown that they have breached those conditions. That is substantially different from what the Attorney General promised in opposition and what the Labor Party promised in the election campaign. On page 6 of the WA Labor Party's document titled "Law Reform Initiatives", it states —

> 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.

That is what the Attorney General said and it is what Mark McGowan said. They held up this booklet to the cameras and made a promise to the public—that is what they do—the important points being no bail applicable to dangerous sex offenders against whom there is a credible allegation that they have breached a community supervision order.

We come to the bill. Clause 9 introduces proposed section 3D into the Bail Act. The heading is "Bail in cases of offence under Dangerous Sexual Offenders Act 2006", and it states —

> (3) Despite clause 1, 2 or 4 or any other provision of this Act, where this clause applies the judicial officer or (if section 16A does not apply) the authorised officer in whom jurisdiction is vested must refuse to grant bail —

So far, so good. If there was a full stop after that, it would live up to the commitment of the Labor Party when it was campaigning for election as government, it would live up to the commitment of the Attorney General of today, and it would live up to what the Labor Party said in opposition. But there is no full stop there and it continues —

> for the section 40A offence unless the judicial officer or authorised officer —
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> (a) is satisfied that there are exceptional reasons why the accused should not be kept in custody; and
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> (b) is satisfied that bail may properly be granted having regard to the provisions of clauses 1 and 3 or, in the case of a child, clauses 2 and 3.

So, unless and until and whatever. There is the get-out clause.

Mr M.J. Folkard interjected.

The ACTING SPEAKER (Mr I.C. Blayney): I have warned the member for Burns Beach a number of times. If he is not taking your interjection, there is no point in making it. All you are doing is making life difficult for Hansard. If you interject again, I will have to call you.

Mr P.A. KATSAMBANIS: There is the sneakiness right there. It is not a matter of no bail, as the Attorney General called for when he was in opposition. The Labor Party told the community that there will be no bail applicable to dangerous sexual offenders. It did not say, "There will be no bail applicable to dangerous sex offenders, except for A, B, C and D exceptional circumstances, and that you can grant the bail" and all that other stuff. The Labor Party said no bail. It did not deliver; it has not delivered. Today, every member of the government will be given the opportunity to deliver on their own commitment to the public of Western Australia. As an opposition that cares about these things, we want to give the government the opportunity to live up to those high standards that the public of Western Australia has for it, and to live up to its own word, even if the government does not have high standards.

We will give the government that opportunity at the consideration in detail stage and we will move an amendment in that regard. The government will be given the opportunity to live up to its own word. If it votes that provision down, I do not intend to go out there and slur each and every government member and suggest that they are personally responsible for the release of anyone who happens to be released in the future. I will be disappointed, and that may be the inevitable outcome, but I will not do what the Attorney General did last week and slur people in here. The government will be given the opportunity to live up to its own word, and I will let the public judge whether it lives up to its own word. I do not intend to turn this into some sort of political football, slurring each and every government member. Last week, when members opposite were sitting there listening to that diatribe, I hope they were cringing and curling up in their seats, because that was completely and utterly unacceptable, particularly for the first law officer of this state.

Several members interjected.

The ACTING SPEAKER: Thank you, members!

Mr P.A. KATSAMBANIS: The other commitment that the Labor Party made in the election campaign was in relation to —

Several members interjected.

Mr P.A. KATSAMBANIS: I am interested in this conversation, but more interested in what I am saying.

The ACTING SPEAKER: The member might be; I am not. Leader of the Opposition, I am sorry; I have to ask you to be quiet.

Dr M.D. Nahan: Sorry, member.

Mr P.A. KATSAMBANIS: That is all right.

The other Labor Party commitment was about what requirements a dangerous sex offender who had served their term of imprisonment would have to prove to a judge before they were released into the community on a supervision order. There is a history to this. Last year when the then opposition moved a series of amendments to the Dangerous Sexual Offenders Act 2006, it was led in this place by the shadow Attorney General, as he was

then—today's Attorney General—and in the other place by Hon Adele Farina, who was representing the shadow Attorney General.

I will quote from the supplementary notice paper of the Legislative Council of Tuesday, 22 March 2016, because that is the notice paper on the legislation website. At the time, Hon Adele Farina moved —

> (4) A court may only make an order under subsection (1)(b) if the court is satisfied that the offender will comply with the conditions stated in the order.

The important words are "will comply with the conditions stated in the order". The then opposition then went further —

> (5) The offender has the onus of satisfying the court as described in subsection (4) and the court has to be satisfied —
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> (a) by acceptable and cogent evidence; and
>
> (b) to a high degree of probability.

That is what the shadow Attorney General put: "to a high degree of probability". They are the other important words that the shadow Attorney General said should have been introduced last year. He came into this place last week and accused members of this side of the house of having personal responsibility for DAL being released because the members on this side did not support this particular clause. There was one other bit to it about disregarding electronic monitoring, which is a nonsense because electronic monitoring is one of the standard conditions. However, it just goes to show that it was an ill-thought-out clause at the time. The Attorney General came in here last week and accused members on this side who were here at the time of personally being responsible for the release of that individual because they did not vote that an offender ought to satisfy the court that he would comply with the conditions stated in the order and that the test would be a high degree of probability.

We now move to the election campaign. Labor picked up on one of those things and left out another one. I will quote from page six of that same policy document titled "WA Labor Law Reform Initiatives", which states —

> … there will be a requirement or burden upon the dangerous sex offender to satisfy the Court on the lower civil standard, that is, upon the balance of probabilities, that they can be trusted to obey all requirements and provisions of the Community Supervision Order.

The important words there are "all requirements and provisions of the Community Supervision Order". I will get to the balance of probabilities in a minute. Last year we were being urged to have the offender comply with the conditions stated in the order. In the election campaign, the public of Western Australia was told that if it elected a Labor government, these offenders would have to prove to the court that they could be trusted to obey all requirements and provisions of the community supervision order. We come to the Dangerous Sexual Offenders Legislation Amendment Bill 2017 before the house. Does it say any of that? No, it does not. The bill before the house today in clause 16(2) inserts a new replacement clause, section 17(3), into the primary act, which states —

> A court cannot make an order under subsection (1)(b) unless it is satisfied, on the balance of probabilities, that the offender will substantially comply with the standard conditions of the order.

Standard conditions are defined to mean the conditions of the Dangerous Sexual Offenders Act 2006 in section 18(1), which contains seven standard conditions, including that the offender should be subject to electronic monitoring, as I mentioned earlier. There are only seven standard conditions. Gone are the words "will comply with the conditions of the order". They were the words in the amendments moved last year by the Attorney General who told us that those words would have protected the community against the release of DAL—he told us that last week. Gone are the words in the election policy "that they can be trusted to obey all requirements and provisions of the Community Supervision Order"; they are gone, out the window, and replaced with "on the balance of probabilities, that the offender will substantially comply with the standard conditions of the order", not "will comply with all conditions". It is not a firm "you must comply", but "substantially comply", and with only the seven standard conditions, not the other 40 conditions in the case of DAL. I have seen up to 63 conditions in some instances with these cases, there may have been some cases that had more than 63 conditions, but forget about the judge being satisfied or even substantially satisfied about those other conditions. The offender must comply with only those seven standard conditions, which does not live up to the words of this Attorney General when he said last week that the amendments moved last year would have stopped DAL from being released, and he made all members on this side of the house personally responsible for his release. The Attorney General is not even introducing that in this bill. He is hoodwinking the public. He is trying to hoodwink the house, which is why we do not give him carte blanche. We go through the bills that the Attorney General brings in here with a fine-tooth comb. We may miss a few things—we are only human—but we go through them to see if the Attorney General is living up to his own standards and words. The Attorney General is not asking these offenders to comply with all

the conditions of the order in this bill; he is asking them to substantially comply with the standard conditions of the order. He has even defined the standard conditions as being those conditions in section 18(1) of the act.

I come to the word "substantially". What does it mean? Lawyers could probably pay a few years' worth of school fees debating what the word "substantially" means. It means different things in different cases and has been determined by courts for generations. What does in mean in practice? What does it mean when it is applied to the standard conditions of the order? Let us go to the standard condition contained in section 18(1)(f) of the Dangerous Sexual Offenders Act 2006, which states —

> … the order must require that the person —
>
> (f) not commit a sexual offence as defined in the *Evidence Act 1906* section 36A during the period of the order …

How does a person substantially not commit a sexual offence? A person either commits the sexual offence or they do not, or can they do it a little bit? A person cannot substantially comply with that provision; they either comply with it or they do not, and that is what this Attorney General told the house last year. That is the provision he introduced last year. That is what Labor told us it would introduce in its election manifesto, which is not what it is doing today—sneaky, tricky and soft; they talk tough, but legislate soft. The government has pretended to be the he-man looking after the community, but it has snuck in here and not even stuck to its own words. They were not our words, my words, the words of the opposition or even the words of the community. They are the government's words and it is changing them. This is the first opportunity the government has had and it has absolutely dropped ball on this one—big time!

As I read out section 18(1)(f), I will focus on why the standard conditions are not good enough and why a court ought to be satisfied that an offender will comply with all the conditions imposed on them because the condition states that they will "not commit a sexual offence as defined in the Evidence Act 1906, section 36A". Some of the conditions that are imposed by these orders include that an individual not access child pornography. We have seen this in recent cases that relate to sex offenders more generally, not necessarily to people deemed to be dangerous sex offenders. Yes, it is an offence to access child pornography and that would be an important consideration a judge would take into account if they were looking at a dangerous sex offender who has demonstrated a propensity to offend against children. However, that offence—although it is a criminal offence—is not, as I understand it, contained under section 36A of the Evidence Act 1906; it is under the Classification Act. This is just one example. The example of someone being required to remain in a relationship and continue to cohabitate with a person who can help to keep them on the path of the straight and narrow is not a standard condition, but it is an important consideration that Justice Archer, as the Attorney General told us, took into account when considering DAL's application to be released. That was a very important consideration but it is not a standard condition. In that case, we would want a judge to be satisfied to the highest possible test that an offender would comply with that sort of condition. It is not under the legislation brought in by the Attorney General. We were also told by the Attorney General that there are limits to where DAL can go; he cannot visit certain suburbs in the Perth metropolitan area. I would think that is an important condition. Why would a judge or a court impose that sort of condition if they did not think it was important? It is an important condition but it is not one that needs to be taken into account on the reverse onus of proof for a judge to decide whether a person will be released. That is not good enough, Attorney General. That is why—I foreshadow it now—when it comes to consideration in detail, we will give members of the government the opportunity to introduce the words that they themselves said they would introduce when they were campaigning for office. Some of them even put out leaflets in their communities to that effect, saying that is what they were going to do. We will give members opposite the opportunity to do that because it would be a substantial improvement to the legislation that is being introduced today.

The other issue here is the test itself. We have moved from having a "high degree of probability" to a "balance of probabilities". Yes, the onus of proof has to be on the sex offender, and we support that. But why, only last year, did the Attorney General say it would be a "high degree of probability" and this year it is for the "balance of probabilities"?

Mr J.R. Quigley: Briginshaw v Briginshaw.

Mr P.A. KATSAMBANIS: Can the Attorney General explain that to the public?

Dr M.D. Nahan interjected.

Mr P.A. KATSAMBANIS: I think better advice will probably be the out here. He has become Attorney General so he has better advice, and we will get to that in a minute.

Quite clearly, the Attorney General told the public the test should be to a high degree of probability. More importantly, just last week, the Attorney General came into this house and smeared every member on this side

who was here in the last government with the allegation that they did not introduce this test of a higher degree, which he said was why DAL was let out. The Attorney General told us that this is what we should have had in place so that DAL was not let out. Now the Attorney General is walking away from it. He quotes a legal maxim he has now been alerted to. It was not at the front of his mind last year. It is not good enough. We will give the Attorney General the opportunity to replace it. The really important part of the amendment I am foreshadowing is to make sure that the test is that the offender will comply with all the conditions that are put into an order, and that is what the judge will consider on the reverse onus of proof before they can let an offender out. They will not substantially comply with some of the conditions—those being the standard conditions. That is what the Attorney General told us last year was good enough and that is what he told us was good enough in the election campaign. We will hold him to that. Whether the test is the balance of probability or a higher degree of probability highlights the hypocritical nature of what the Attorney General has been doing in the past few weeks. He proposed one test. He said that was the test that would have fixed it but, given the opportunity, it is not the test he will bring in. That is the Attorney General's hypocritical nature.

I come to whether this legislation will stop cases like DAL happening again. Where is the legal advice to suggest that this legislation would have made one iota—one jot—of difference to the decision of Justice Archer? It was a very long and considered decision. The Attorney General will say that it is a higher test and the onus of proof is on the sex offender. The sex offender brought the application. The application was opposed by the Director of Public Prosecutions and the department for child protection, and I think it was also opposed—the Attorney General can correct me if I am wrong—by the Department of Corrective Services. Someone had to convince the judge before this legislation came into force. That someone was not a white knight who flew in; it was the information provided to the court for and on behalf of DAL. He convinced the court. He exercised that onus, no matter how it was expressed—whether it is a positive onus or a reverse onus. The DPP did not sit there saying, "Yes; I'm satisfied"; the Department for Child Protection was not saying, "Yes; I'm satisfied". The judge said, "I've looked at all the evidence and this man and the people advocating on behalf of this man have convinced me." That is what the onus of proof is. Yes, it is an important legal maxim and I have no problem putting it into the legislation to make it clear to everyone that the onus was on this man, but do not pretend that this man had no onus last month when his case again came before the court. He had all the onus because everyone else was lining up saying that he should not be released. If the public had known about the application, a lot more people would have lined up outside the court also saying that this man should not have been released. The onus was on him and he exercised it. Can the Attorney General please provide the legal advice he has that indicates that had this bill he is proposing been enforced last month or last year, it would have made a genuine difference to Justice Archer's decision in this case? I am not asking the Attorney General to get into the mind or the reasoning of the judge; I am asking him to show the legal basis for making such a claim in the first place, because it is a claim that the Attorney General made. As I said earlier, he should not hide behind the cloak of legal professional privilege, because it is a cloak that we have seen him use in this place in his short term as Attorney General. He is happy to waive legal professional privilege when it suits him and he is happy not to waive it when that suits him. He cannot have his cake and eat it too. The public expects better. As the senior law officer of this state, the Attorney General is the public's Attorney General. He is our Attorney General. He gets legal advice on behalf of all of us, so where is it? Let us have a look at it and let us assess it.

A number of important issues have arisen in this debate that need to be ventilated, one of which is the issue of whether the Attorney General has the power to go to court and make an application under this act. In the last term of government, each and every time a dangerous sexual offender was released into the community and it became an issue of public discussion—some were released and it did not become an issue—the then shadow Attorney General, today's Attorney General, sought the cheap headline in the media by saying that if he was Attorney General, he would march up to court and appeal against the judge's decision to release the dangerous sexual offender. He mercilessly smeared and attacked the then Attorney General in the other place, Hon Michael Mischin, for not doing it. He heavily criticised the then Attorney General for not doing it. The then Attorney General said, "Unfortunately, despite the provisions of the act, I have legal advice that says that once a matter has been started by the DPP, I cannot intervene. It is an either/or. Either I commence this action or the DPP commences it—we cannot pick and choose." That is the effect of what Hon Michael Mischin said back then. The shadow Attorney General at the time, the current Attorney General, would not have a bar of it. He accused the then Attorney General up hill and down dale of being soft on these people and all sorts of other things, as is his wont. He has quite a florid turn of phrase. He can make an argument very cogently and give some good media sound bites. But when he is Attorney General, media sound bites are not good enough, as we discovered yesterday. We asked the Attorney General on behalf of the public of Western Australia why he is not doing this in the case of DAL, given all he has said in this area and given all his blast and bombast that he would march up to the court and make an application to appeal the decisions of these soft judges and that he would keep these people behind bars where they belong and where we agree they belong. That is what we asked him yesterday. Why is he not

doing it now? Given all that he has said in the past, we expected an answer along the lines of: "I'm getting the case ready. I'm stuck in Parliament. Stop asking me silly questions. I'll get out of here and go and file the appeal in the Supreme Court." That is what I expected and that is what the public of Western Australia expected, because that is the expectation that the Attorney General raised. Instead, he walked into this place and without any shame at all muttered that he had received legal advice that said that he could not do it. That is what the previous Attorney General told him at the time and he would not accept it. He smeared the man publicly and made horrendous allegations in public about him and about members of the government. But when the Attorney General was given the opportunity to show that he would do what he called on another Attorney General to do, he slinked away and said, "I have legal advice that says that I cannot do it."

Again, the Attorney General should table that legal advice, because he is now hiding behind it. He is using that to excuse his own inaction on something he said he would do. This is not a legislative requirement or a nicety provided to him as Attorney General; this is something he said he would do. The public of Western Australia took him at his word. He should live up to his word or table the advice that says that he cannot do it. Further, given that we are to amend the act that gives him that power, as ill-defined as it may be and as subject to his legal advice as it may be, it gives him that power. It is a power that he said he had and would exercise. He should bring in some amendments based on that legal advice to clarify the power for him to intervene at any stage of the proceedings, which power I think was introduced by Hon Jim McGinty. When it became an issue a couple of years ago, I think Jim McGinty made some public commentary about it and the intention behind it. Be that as it may, this is the Attorney General's chance. He has had some advice that says that this is unclear and that his application may be thrown out. He should bring in the appropriate amendment and let us consider it. I, for one, would welcome it. I cannot draft it because I have not seen the Attorney General's advice and I have not seen where the impediment is. If I did that and brought it in as an amendment without having seen the advice, the Attorney General would accuse me of running off half-cocked. He has the advice, which he has obviously sought, so I give him that much. He has obviously asked whether he can march down there as Attorney General, as he said he would, and lodge an appeal. Clearly, the answer he got was no.

The Attorney General should put together an amendment and let us look at it. Let us see the legal advice behind the amendment and let us pass that amendment. He should fix the act and clarify it so that it gives him the power which he clearly said the Attorney General had when he was in opposition and which he craved and, to use a colloquialism, was hanging out to exercise. He should bring that to the house. He should not slink behind it; otherwise, he will once more expose his sneaky nature as Attorney General and the sneaky nature of this government. He will say anything for a cheap headline, and he would do it in an area of utmost community concern. Members of the community laugh away the cheap headlines about a lot of what we do; we know that. But in this case, they are looking to us as their protector. It is our legislation, as members of Parliament, that keeps these people behind bars and members of the community are looking to us to fix any flaws. That is why we will move the amendments we have sought to introduce.

We accept that the bill that the Attorney General has brought to the house today will make it slightly tougher for dangerous sexual offenders to be granted release on a supervision order than does the current law. But it will not make it as tough for them as it should be, as he suggested while in opposition, in his election material and in his public commentary since he has been Attorney General. That is why we are seeking to amend this Dangerous Sexual Offenders Legislation Amendment Bill. We will not delay its passage but we are seeking to amend it to make it better—to make it as good as the Attorney General told us it ought to be. It does not address the issue of bail appropriately. Although it goes some way towards that, it allows a window of opportunity under ill-defined exceptional circumstances and passes that opportunity down to authorised officers, not just the judicial officer, to make that important decision. Again, all we are saying is that the Attorney General should live up to his own standards and words and the expectations that he created in the community. The Attorney General said there should be no bail; he has not provided for no bail but we are giving the Attorney General and his members a chance to vote for no bail. We are asking the Attorney General to show us his legal advice that, in practice, this will not make a jot of difference in cases such as that of DAL. He should show us his legal advice that he does not have the power to go to the Court of Appeal and appeal Justice Archer's decision on DAL and bring in legislation that will give the Attorney General that power. We are not seeking to stop or hinder this legislation, nor are we seeking to even make it really tough, although we might in future. We are making it as tough as the Attorney General said he would make it because he is not doing that.

MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition) [11.31 am]: I also rise to speak to this legislation. I concur with all the comments made by both the Leader of the Opposition and the member for Hillarys. However, I would like to highlight a few things. The community of Western Australia and, indeed, all members opposite will understand that the rhetoric coming out of that man, the Attorney General, will be significantly different from what we will see in action. This Dangerous Sexual Offenders Legislation Amendment

Bill is being declared an urgent bill now in September because the Attorney General has been caught napping. All we heard every time a dangerous sexual offender was released during the Liberal–National government's time in government was rhetoric from the now Attorney General about what a diabolical failure the previous government was and personal criticism of Hon Michael Mischin, who was the Attorney General in the previous government. However, this Attorney General did not follow up with the action he said he would take. The first hearing this year for DAL's release was on 18 July. We were in Parliament on 8 August. Had this bill been declared urgent on 8 August, by the time of DAL's second hearing on 24 August, this legislation could have been in place, Attorney General, and the provisions you have said would significantly strengthen it would already have been tested in the court around the release of DAL. At this time, we would have been able to ascertain whether the amendments the Attorney General has suggested would have made one iota of difference.

The first hearing was on 18 July. If the Attorney General had been doing his job, he would have known DAL's case for release was coming before the court because the Attorney General said he would make the monitoring and management of dangerous sexual offenders and their imminent release the top priority when he was Attorney General because no other issue was as important for community safety as ensuring DSOs were kept behind bars. He had an opportunity so that between 18 July and 24 August, this legislation could have been passed by both houses of Parliament and DAL may not have been released. Those are the facts. That is why we will support this urgent motion to ensure it goes through both houses of Parliament as quickly as possible. It is unfortunate timing. We may pass it today but the other house will not sit for another couple of weeks, so we will have a further few weeks to wait before this legislation can be debated and passed by the other place, come back here for concurrence and be made law. There will be further delays because the Attorney General was caught napping. His actions are not keeping pace with his rhetoric. Now he is in the hot seat and he is the one responsible for this legislation.

I want to refer to some of the comments the Attorney General made about the release of other sex offenders and the scurrilous accusations he made against former Attorney General Hon Michael Mischin. In 2016, he was backed up on radio by Jim McGinty, the Attorney General at the time, who introduced this legislation in 2006. Jim McGinty said on radio that the Attorney General should have spoken to the Director of Public Prosecutions about the approach the DPP took. He said, and I will quote, because I want this to be accurate.

The ACTING SPEAKER (**Mr R.S. Love**): While you are doing that, members to my right please take your conversation outside or be a bit quieter, please.

Mrs L.M. HARVEY: Former Attorney General Jim McGinty said the following on radio —

> … very clearly ... 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 ... sexual offender in jail or any other related application. But basically it was ... to make sure that the ... 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.

That is what former Attorney General Hon Jim McGinty said and it was backed up by this Attorney General. The advice of Hon Michael Mischin, the previous Attorney General, was that section 6 of the Dangerous Sexual Offenders Act did not empower him to act in that way. He had legal advice and this Attorney General has received the same legal advice but this amending bill contains no amendments clarifying those powers. The Attorney General has not even had the good grace and strength of character to publicly apologise to Hon Michael Mischin. He called him lazy and incompetent and accused him of not understanding his own legislation when, in fact, he received the same legal advice, but he does not have the decency to apologise for the blatantly wrong accusations he levelled at the former Attorney General. I think that is disgraceful. It is a sign of the true character of the man who sits over there as the state's Attorney General.

The other commentary, backed up by the Premier, the member for Warnbro and the Attorney General was when one of these dangerous sexual offenders was released. In an interview with Gary Adshead, the Premier also took the same slant on the Attorney General having the power to intervene. However, he went a bit further and said —

> The only reason this man was able to be released is because Joe Francis, the Minister for Corrective Services, has allowed for this bracelet system by which a bracelet can be put around the offender's ankle, therefore they can be released into the community. Had this bracelet system not been in place, or not been available for dangerous repeat sex offenders, I expect the judge would've said, 'this man should stay in prison'.

That is a completely wrong and inaccurate assertion. The opposition did an analysis of DSOs that had been released and the reverse was true. Since the introduction of GPS tracking bracelets, fewer dangerous sexual offenders had been released by the courts than were released prior to their introduction. Fewer had been released under the regime of the Barnett Liberal government. The GPS bracelets had no impact on ensuring that more dangerous sexual offenders were released.

Did we get a retraction of those comments and an apology to Joe Francis at the time? Of course not, because that is the calibre and the character of the individuals who now have charge of the government of this state.

On the back of those comments, I want to add to the concerns raised by the member for Hillarys. I refer to the amending clauses with regard to the balance of probabilities. Under clause 20, proposed section 23(1B) states —

> A court cannot make an order under subsection (1)(b) or (c) or (1A)(b) unless it is satisfied, on the balance of probabilities, that the person will substantially comply with the standard conditions or amended standard conditions of the supervision order.

This is really important because I want members to understand what the standard conditions are and what the conditions that are not included in this amendment might be. The standard conditions imposed on DAL by the Supreme Court include —

1. Report to a Community Corrections Officer (CCO) at the place and within the time stated in the order and advise the officer of the person's current name and address.
2. Report to, and receive visits from, a CCO as directed by the court.
3. Notify a CCO of every change of the person's name, place of residence, or place of employment at least 2 business days before the change happens.
4. Be under the supervision of a CCO, which includes, complying with any reasonable direction of the officer (including a direction for the purposes of s 19A or s 19B).
5. Not leave, or stay out of, the State of Western Australia without the permission of a CCO.
6. Not commit a sexual offence as defined in the *Evidence Act 1906* s 36A during the period of the Order.
7. Be subject to electronic monitoring under s 19A.

These are sensible, standard conditions. However, let us look at the additional conditions with respect to DAL in the published judgement —

> 10. Any overnight stays, defined as between 10.00 pm and 7.00 am at your permanent place of residence by a third party, must be approved in advance by a CCO.

I put it to members that it is important for a dangerous sexual offender to comply with that condition—not substantially, but absolutely.

There are further reporting requirements —

> 14. Consult and engage with any psychiatrist, psychologist, mentor, support service and/or support person nominated by a CCO, as directed by a CCO.

By definition, dangerous sexual offenders have a mental health issue. I would say that it is absolutely paramount that they comply with a condition to engage with psychiatrists and psychologists, as required, to prevent them from reoffending. Why would we exclude that as a requirement to be absolutely complied with? The conditions continue —

> 15. Comply with the requirements of all programs designed to address your offending behaviour and/or risk of serious sexual re-offending, as directed by a CCO.

Dangerous sexual offenders that we can detain indefinitely, should they be noncompliant, should absolutely have to comply with those requirements.

There are further additional conditions relating to restrictions on contact with victims —

> 23. Have no contact, directly or indirectly, with the victims of your sexual offending, unless such contact is conducted in accordance with agreements made through, or approved by, the Victim–Offender Mediation Unit of the Department of Corrective Services.

I put it to members that a dangerous sexual offender should absolutely comply with having no unauthorised contact with their victims. If they try to contact their victims, they should be straight back in the bin, no questions asked.

Why on earth would we exclude that condition as a requirement for the judge to consider if the offender is seeking release? There is also —

> 27. Not commit any other criminal offence where the maximum penalty for which includes imprisonment, and which involves either violence, threats of violence, or the possession of weapons or offensive instruments.

I would say that a dangerous sexual offender should absolutely comply with that; back in the bin if they break the condition, no questions asked. The judiciary should not have the discretion to allow back in the community a dangerous sexual offender who has managed to take possession of weapons or offensive instruments. Condition 29 refers to criminal conduct —

> 29. Not commit any offence under the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*.

This means that a dangerous sexual offender should absolutely comply with not possessing pornographic material with children involved. There should be no judicial discretion over a dangerous sexual offender who is being managed in the community and is availing themselves of pornographic material. They should go back in the bin for that, absolutely. There should not be any question about whether they should remain in the community if they are starting to feed their bizarre predilections by accessing pornography. There are also conditions relating to curfews; they should absolutely comply with curfews.

We now get to a very important part of these amended conditions, "Prevention of high-risk situations" —

> 36. Not associate with any person known by you to have committed a sexual offence, unless such association is authorised in advance by the CCO.

They should absolutely comply with that. We know that paedophiles find like-minded people with whom to share information and knowledge of victims and vulnerable people who can become future victims. If they break that condition of their order they should go back to jail because they are a risk to our community. The conditions continue —

> 38. Have no contact with any child under the age of 16 years, whether such contact is in person, in writing, by telephone or by electronic means, unless: —

Authorised by a CCO.

They should absolutely comply with that. If there is a dangerous sexual offender who has already created several victims with his offending—children aged 10 or 11 years—and he finds himself accessing children or he is found in the company of children without authorisation and supervision, he should absolutely go back to jail.

Some other conditions are not relevant in the case of DAL, but I have seen them on other supervision orders. There are requirements to not partake in alcohol or illegal drugs such as methamphetamine or cannabis. We know that when a lot of these dangerous sexual offenders start feeling the need to reoffend —

[Member's time extended.]

Mrs L.M. HARVEY: If they start feeling a need to reoffend, they start to drink, smoke cannabis and take methamphetamine. Indeed, they start to avail themselves of alcohol, cannabis and methamphetamine because it gives them an opportunity to bribe their victims and make them incoherent and nullify their resistance. That is a significant precursor to reoffending. If dangerous sexual offenders have additional conditions to not access alcohol, cannabis, methamphetamine or other drugs and to comply with a testing regime to ensure that they are sticking to those conditions, and they break those additional conditions, there should be no questions asked as to whether they go back to jail because they are gearing up to reoffend and they are a risk to the community.

We will be suggesting amendments to this legislation because it needs to be tightened. There is no greater concern to parents in the community than the release of dangerous sexual offenders. We have heard the Attorney General's rhetoric and we have heard it in the community. We have heard the scurrilous accusations he makes against individuals who do not support his commentary. This legislation does not cut the mustard. I put it to members that after the hearing on 24 August, when the court made a decision to release DAL on a supervision order, that is probably when the Attorney General found out that he was caught on the hop. He had to get off his backside and get the legislation to this Parliament. He knew that he had 21 days from that point because our legislation that was amended in 2016 included a provision that stated that once the court has made an order to release a dangerous sexual offender, the offender would be held in custody for a further 21 days of the appeal period. Within that 21-day appeal period, if an appeal is made against the release of the DSO, he is not out of prison and back in prison within that 21-day period. It also gives the police, the Department of Communities, the sex offender management squad—those individuals who have to keep an eye on dangerous sexual offenders and try to stop them from reoffending once they are released—the opportunity to get their action plans in place to ensure that they can

manage these people effectively. It also gives the community the best chance of these offenders not offending again. We put a provision in place stipulating 21 days. Notwithstanding the court saying that an offender can be released, we said that that is fine but that offender will finally have their freedom back 21 days after that and they will need to comply with the conditions.

We will be seeking some amendments to the bill. There were also some amendments to the Bail Act 1982 relating to a dangerous sexual offender who does not comply with all the conditions of their order. The Attorney General flagged that amendments would allow for a dangerous sexual offender who has not complied with the conditions of their order to be remanded in custody, pending their hearing to determine whether they should return to jail for that non-compliance. That is a sensible amendment. That is what the Attorney General said he was going to do. We will hold him to account for that.

As I said, members of this side of the house are supportive of this legislation. That is why we supported the urgency motion. Members should not forget that DAL could well be behind bars and not roaming around the metropolitan area at the moment trying to find another 10 or 11-year-old boy or girl to offend against. He could still be behind bars if this Attorney General had brought the legislation to Parliament on 8 August after the first hearing on 18 July, declared it an urgent bill and got it through both houses of Parliament and it had become law. DAL could have been behind bars, except this Attorney General has been caught napping.

MR J.R. QUIGLEY (Butler — Attorney General) [11.53 am] — in reply: I acknowledge the contributions of the three speakers for the opposition in the second reading debate. I would like to address some of the points that they raised. Firstly, it is unclear from his comments whether the Leader of the Opposition read the decision relating to DAL. The Leader of the Opposition sought to criticise me. In fact, he went so far as to accuse me of breaking the suppression order made by the Supreme Court. On that count, he accused me of being unfit —

Mr A. Krsticevic: You advertised it in here. You advertised it publicly.

Mr J.R. QUIGLEY: There is an interjection that I advertised the placement of the offender, DAL, in Geraldton in this chamber. I did not advertise anything; I made a point in debate. The Leader of the Opposition was saying that I had broken the suppression order and by reason of me being the Attorney General and under parliamentary privilege breaking the suppression order, demanded my resignation from the office of Attorney General. This leads me to wonder whether the Leader of the Opposition has even read the judgement. I am sure that the media and the people —

Several members interjected.

The ACTING SPEAKER: Members!

Mr J.R. QUIGLEY: The people in the media who attended Geraldton —

Mr A. Krsticevic interjected.

The ACTING SPEAKER: Member for Carine.

Mr J.R. QUIGLEY: The people in the media who reported on this before I rose in this Parliament had obviously read the judgement because the body of the judgement describes the exact town, not suppressed —

Dr M.D. Nahan interjected.

The ACTING SPEAKER: Leader of the Opposition, please.

Mr J.R. QUIGLEY: I am not taking interjections.

Several members interjected.

The ACTING SPEAKER: Members. Attorney General, please carry on.

Mr J.R. QUIGLEY: The body of the judgement describes —

Several members interjected.

The ACTING SPEAKER: Members, let the Attorney General make his reply.

Mr J.R. QUIGLEY: The body of the judgement describes exactly the town where the person is going—that is not suppressed—and, moreover, describes roughly where in the town the person is going to. That is a residence adjacent to a school bus stop 400 metres from a school. To come into this chamber and say that the person is going to Geraldton has in no way breached any suppression order of the court. What was suppressed was the street address and no more. I did not break any suppression order or allude to anything that would have led to the breaking of a suppression order. The fact that DAL was intended to be released to Geraldton was already the subject of media attention before I came into this chamber.

The Leader of the Opposition says that this legislation is rushed. It is anything but rushed. It is not quite six months since the government was sworn into office. The opposition was in office for eight and a half years. The Leader of the Opposition, the member for Hillarys and the member for Scarborough, who have been critical of the contents of the bill that is now before the chamber, had eight and a half years to address these matters. They have left us in an invidious position in preparing legislation because they ran down to Parliamentary Counsel's Office. It has been very challenging to get bills drawn up.

Several members interjected.

Mr J.R. QUIGLEY: Can you offer me some protection, Mr Acting Speaker? You can hear the interjections going on. I am now asking for protection.

The ACTING SPEAKER: I am allowing some interjections but I think you have a good presentation going, so keep going.

Mr Z.R.F. Kirkup interjected.

The ACTING SPEAKER: Member for Dawesville.

Mr J.R. QUIGLEY: The government rejects the notion that there has been any delay at all. The cabinet submission for this bill was prepared long before DAL came before the court and had to go to the jurisdictions to get feedback on the content of the bill. I will come to that in a moment. I repeat, going through my notes, that the Leader of the Opposition said that the Attorney General communicated that DAL was going to Geraldton and that the AG broke the suppression order. I did no such thing. It is a false allegation of the Leader of the Opposition. He said that the only thing that has changed since the consideration of DAL for release or otherwise from detention was refused in 2015 and 2016 is the government.

That is not true either. What changed is that there was a change in the decision by an independent Supreme Court. I know that the Leader of the Opposition wants to sneakily seek to impugn the independence of the Supreme Court. He said it in the paper; he should just come out and say what he means and not just sniffle around. He said that there had been no change other than a change in government. No; there was a change in the decision of an independent Supreme Court, and this government will always respect the independence and integrity of the judiciary.

It is said that on this matter—the breakout of all this—there was bipartisanship up until 2016. That is not exactly right either. Of course, the release of any dangerous sex offender inevitably attracts public attention. When TDL was released last year, I remember the then Deputy Premier saying that she would lock him up for life and that he has to be locked up for life. The next day she came into this chamber and said, of course, that would be unconstitutional; we cannot lock them up for life. What she said when she was in front of the media was not right because that would be unconstitutional. She was right in that too—it would be unconstitutional. I said that Labor would introduce tough amendments that would make it very difficult for serious dangerous sex offenders to be released.

Both the Leader of the Opposition and the member for Hillarys made a fundamental flaw in their arguments. It is a very fundamental flaw because it misses entirely the point of this bill. Both of them said that he was refused his application in 2015, he was refused his application in 2016, and when he brought on his application in 2017 there had been a change of government and his application for release was allowed. In fact, the member for Hillarys went on in a flourish, asking where all this had come from. He said that the applicant had been able to convince the court to release him and that that did not just fly into court. The member for Hillarys said that the applicant had been able to convince the court that he should be released and that these amendments and changing the onus of proof and imposing an obligation upon a sex offender to demonstrate on the balance of probabilities that he had substantially complied with the standard conditions introduced nothing new because that is what DAL did. Of course, that is all wrong and fanciful, and it ignores both the legislation and the decision. Under the legislation, DAL did not make an application; there is no capacity for a dangerous sex offender to make an application. Once declared a dangerous sex offender, the person is detained and reviewed by the court and, by operation of the legislation, he comes up for review every 12 months, although last year the then government extended that to two years. I will say more about that in a moment. That is why I question whether the Leader of the Opposition and the member for Hillarys have even read the decision. When we look at the heading on the judgement, the applicant is the state of Western Australia and DAL is the respondent. They have got it the wrong way around and that is why we are reversing the onus of proof. The member for Hillarys then went on to say that the court did not just arrive at this decision; it was not just facts that floated into the court but that the applicant DAL put things before the court that convinced the court that he ought to be released.

Dr M.D. Nahan: He had an onus of proof—exactly.

Mr J.R. QUIGLEY: He did not have an onus of proof.

I will now read paragraph 12, on page 8 of the judgement, under the headline, "The evidence on this review", which states —

> The State tendered, by consent, a book of materials which included an updated report from psychiatrist Dr Wojnarowska, a treatment progress report by psychologist Ms Wilson-Brown, and a community service assessment by Ms Rathmann of the Department of Corrective Services. Those three witnesses gave oral evidence in chief and were cross-examined.

Importantly, paragraph 13 states —

> The respondent elected not to give or adduce any evidence on the review.

The respondent remained silent and did not put anything before the court.

Mr P.A. Katsambanis interjected.

The DEPUTY SPEAKER: Member for Hillarys, I listened to you speak on this subject for some time. I do not think I have heard the Attorney General ask for your interjections. I am sorry, you are just going to have to sit there and listen.

Mr J.R. QUIGLEY: That is quite contrary to what the member from Hillarys was informing the Parliament—that is, that DAL was an applicant and he had put evidence before the judge and had convinced the judge to release him. That is 100 per cent wrong. DAL did not do anything. DAL responded by not giving evidence or adducing any evidence on the review. This is the very point that Labor complained about last year and why we are bringing this legislation on—that is, when sex offenders are brought up for review they can stay mute, which they do. They do not have to convince the court of anything. They do not even have to acknowledge their offence. Some of these people who have pleaded not guilty and denied the offence have never even acknowledged their offence, and when they are brought up for review they sit there mute and a court makes a decision. Labor is saying: that is enough; that has to stop. We tried to do this last year; we were defeated by the then government. Our proposition was quite simple: that a sex offender who is being brought up for review must carry the onus of convincing the court that they will not commit another sex offence; that they will be compliant with the primary conditions.

I now turn to some points made by both the members for Hillarys and Scarborough. The member for Hillarys said that, of course, this person was released on the condition that he would live with a particular woman who would support him and in part support him from committing a further offence and supervise him in this relationship. That once again raises the question: has the member for Hillary's even bothered to read the whole judgement or the conditions? I have the annexure with the conditions here and there is no such condition in the annexure as described by the member for Hillarys—none whatsoever.

Mr P.A. Katsambanis: Yes, there is—to live at that address. Whose address is it? The whole judgement talks about it.

Mr J.R. QUIGLEY: I am sorry? It does not say he has to live —

Mr P.A. Katsambanis: Everything that Gail Archer said was based around that. You know that; I know that.

Mr J.R. QUIGLEY: Madam Deputy Speaker —

The DEPUTY SPEAKER: Attorney General, if you just direct your comments to the Chair, that might be the best way of going.

Mr J.R. QUIGLEY: Quite contrary to what the member for Hillarys said, there is no such condition that he live with this woman. There is a condition that he take up residence at a suppressed address and spend each night there, or at a different address if approved in advance by the community corrections officer. There is no condition in the judgement requiring that he reside with a particular person. It is just not there. The member for Hillarys was misleading this Parliament.

I will continue with the main thrust of the bill. For the first time ever in Western Australia—which was defeated by the previous government—there will be no more of this: "The respondent elected not to give evidence or adduce any evidence on the review and then be released." This bill before the Parliament casts a positive duty—an onus—upon the dangerous sexual offender to satisfy the court, on the balance of probabilities, that he will not break the standard conditions. They are the seven standard conditions set out in section 18 of the legislation. For the first time ever, there is a responsibility upon the respondent. Let us get this straight, it is not the applicant—the opposition got that wrong—it is the respondent who has to do something. They have to convince the court.

It has been said that the Labor Party came in and said, in respect of an offender being released, that an onus will be cast upon the respondent sexual offender to satisfy the court that they are not going to reoffend. It is true that there are seven standard conditions in section 18 of the act. Judges quite often go beyond those standard clauses

and put many other clauses in the conditions. But in relation to the standard conditions, we are seeking to reverse the onus of proof. We are not seeking to wipe out the rest of the conditions or to in any way diminish the consequences of breaking any of the other conditions, as suggested by the member for Scarborough. We are reversing the onus of proof on the seven standard conditions.

I will go to those conditions and why the word "substantial" is included for substantial breach. Firstly, section 18(1)(a) states —

> report to a community corrections officer at the place, and within the time, stated in the order and advise the officer of the person's current name and address; …

We say that if there is a substantial breach, they have to convince the judge, on the balance of probability, that they will substantially comply with that. This has happened in the past: what happens if they are told, "You will report to your community corrections officer at 10.00 am" but the person gets there at 10.20 am? The respondent has to convince the judge, on the balance of probabilities, that they will substantially comply with that requirement to be there at 10.00 am. Section 18(1) continues —

> (b) report to, and receive visits from, a community corrections officer as directed by the court; …

That is fairly plain. There is no room for argument about whether there is substantial or insubstantial compliance with that. It is absolute—to receive visits. It continues —

> (c) notify a community corrections officer of every change of the person's name, place of residence, or place of employment at least 2 days before the change happens; …

They have to substantially comply with that. They have to convince the judge that they can substantially comply with that. The opposition would take the point that if it is two days and four hours, they have not complied. The word "substantial" is there to allow for some minor, trivial time overrun that could get in the way of strict compliance by 10 o'clock, for example. It continues —

> (d) be under the supervision of a community corrections officer, which includes, comply with any reasonable direction of the officer …

It is the responsibility of the sexual offender to convince the judge—for the first time ever in Western Australia and to my knowledge in Australia—bearing the burden of the onus of proof, that they will substantially comply with that requirement. That is the head condition. From that head condition—this is where the member for Scarborough gets a little confused—there are other conditions that the CCO can impose. Some of those are detailed in the annexure. They include —

> not leave, or stay out of, the State of Western Australia without the permission of a community corrections officer; …

That is plain enough. For the first time ever, the offender has to convince the court, on the balance of probabilities, that he will comply with that. That is a strict and absolute term. It continues —

> not commit a sexual offence as defined in the *Evidence Act 1906* section 36A during the period of the order; …

This is the crucial one. Once the Dangerous Sexual Offenders Legislation Amendment Bill 2017 becomes law, this will be the first time ever in Australia that a sexual offender will bear the onus of proving to a court's satisfaction that they will not commit another sex offence. After this bill is passed, they cannot get away with it anymore. As set out at paragraph 13 of the judgement, they will not get away anymore with, "The respondent elected not to give evidence or adduce any evidence on the review." They will not get away with that anymore because they carry a burden of convincing the judge that they will not commit another sexual offence. They have to convince the judge on the balance of probabilities. On the question of the balance of probabilities, as Chief Justice Owen Dixon said, I think, a long while ago —

Mr A. Krsticevic interjected.

The DEPUTY SPEAKER: Attorney General, I think you should direct your comments to the Chair.

Mr J.R. QUIGLEY: I was! I was talking to you directly.

Several members interjected.

The DEPUTY SPEAKER: Members, that is enough! Go ahead.

Mr J.R. QUIGLEY: For the first time ever, the sexual offender —

Mr A. Krsticevic interjected.

The DEPUTY SPEAKER: Member for Carine, do you want to be called?

Mr J.R. QUIGLEY: For the first time ever, the sexual offender will carry that onus; that burden of satisfying that on the balance of probabilities.

I will speak briefly on the question of the balance of probabilities. As the High Court said in Briginshaw v Briginshaw and repeated many times since, the balance of probabilities is a sliding balance. The court must be satisfied, on the balance of probabilities, in the context of the seriousness of the matter before it. That is why I have said it will be to a higher standard, because the matter before it is the release of a serious dangerous sexual offender. It is not "beyond reasonable doubt". The court will never be able to be satisfied beyond reasonable doubt. This is always about risk management, but for the first time in Australia, the sex offender will carry the onus of satisfying the court, and not being in the situation of DAL, being told, "It's your time son; you come up to the court today, because under the legislation we've got to review your position"; he sits mute, and nothing is said by him, and no step is taken by him, but he is still released.

We are not reversing the onus of proof in relation to all subsequent conditions, and for very good reasons. The court must take extra care with the standing conditions that a person will not commit another sex offence. All the rest of the conditions are discretionary—the court may wish to impose them. The member for Scarborough said she had seen some orders with 63 conditions, and this one has 47. The problem is that if we are to reverse the onus on every condition, these are conditions the court does not have to impose. There could be situations in which the court will say "Enough; we have the reverse onus on the first seven conditions but how many more conditions can we examine and test against the proposition of a reverse onus of proof?"

I turn now to the member for Scarborough's concern with condition 29, which was to not commit an offence under the Classification (Publications, Films and Computer Games) Enforcement Act 1996. She also referred to condition 27, which was to not commit any other criminal offence, the maximum penalty for which includes imprisonment, and which involves violence, threats of violence or possession of weapons or offensive instruments. The member for Scarborough said that if an offender does those things, he should go back in, no question. We do not argue with that, but the proposition about the standard conditions and the rest of the conditions does not entail that. It entails a reversal of the onus of proof in relation to the seven heads of conditions, known as the standard conditions, set out in section 18 of the act.

Would the community not be satisfied if the person never committed another sexual offence? That is what concerns the community—that they might. We can never guarantee that, unless we keep a person in for life, and the member for Scarborough has said that that is unconstitutional. We agree with that, but what is the next step? The next step is for the offender to convince the court that they will never do it. That is a big responsibility for the judge, who must make a positive finding that the sex offender, for the first time ever, has satisfied the judge that he will not commit another offence. He may commit an offence, but that would be the end of it, would it not? He would never get out again in his life, because he could never convince a judge again that he could be trusted, because he has already broken that trust once.

In relation to bail, we must look at this in its context. Look what happened with the offender Ugle. He committed very serious sexual offences against the victim, who has come out publicly. I will not name her today, but she has come out publicly and stood outside the Parliament. You might remember, Madam Deputy Speaker, from the debates last year, that Ugle held a knife at his victim's throat and repeatedly sexually assaulted her while the children were sleeping in the next bedroom. She was somewhat compliant, because she did not want the children to wake up in the middle of this horrendous episode. In his plea in mitigation in the court he said that he had lost his way and become disinhibited by the consumption of cannabis, and because of his consumption of cannabis his resolve was broken down, and he committed the offence. He was subsequently released on a conditional supervision order. The way in which he breached the supervision order was that he failed a drug test; he was back using cannabis. Understandably, the victim was very upset, because this was the very thing that the offender himself identified as leading him to commit the offence. He was then immediately put to bail on that, and the victim became very distressed. He said that he had sexually assaulted the woman because he was using cannabis; he was released on a supervision order; and he has used the drug again. That is the very precipitating factor that he identifies as causing the offence, and then he goes straight out on bail. We said, no more bail in those circumstances.

We have looked at the constitutionality of no bail. We will be rejecting the opposition's amendment, and the constitutionality of that, and the regime we came up with is to make the degree of difficulty in obtaining bail the same as in a murder case. We have come up with a regime that makes it as hard for a person to get bail in the circumstances as it would be for a person charged with murder. We all know that people charged with murder are denied bail, except in the most exceptional circumstances. Huggins was one of those, I believe. He was an 88-year-old man with advanced dementia, charged with murdering his wife. He did not know where he was or what he was doing, and he was mentally impaired. Even the children who were recently charged with the horrific murder of Mr Slater down near Elizabeth Quay could not get bail. They were held for a very long time in custody

pending trial. They could not get bail. The provision that we are introducing makes it as hard for a dangerous sex offender charged with breaching conditions as it would be if he had taken a gun and shot someone in the Hay Street Mall. He has mine and Buckley's. That is how hard we are making it. An exceptional circumstance may apply if a person is, say, suffering terminal cancer and is in a terminal cancer ward. Who knows? The bail amendment would put Ugle, who was detected with cannabis in his urine, in the same position as a murderer, vis-a-vis the position of bail—he cannot get it, unless there is a pressing, compelling, exceptional circumstance, as set out in the Bail Act.

We do not believe and we will not accept that that is a breach of faith with the public. It is no more so than when the member for Scarborough said to the press that TDL should be locked up for life, and then came back the next day and said it was unconstitutional and she was misleading the public. We have tried to make this as tough constitutionally as we can constitutionally allow. If DAL breaches any one of these orders and is brought back before the court, he will have same chance as a wilful murderer of being released on bail. It will be as difficult as that.

Mr P.A. Katsambanis interjected.

Mr J.R. QUIGLEY: That is in the legislation, my friend. This is important to get through because —

Several members interjected.

The DEPUTY SPEAKER: Members! The Attorney General is attempting to deliver his reply to the second reading debate. Can you not interject at each other across the chamber, please.

Mr J.R. QUIGLEY: It is important to get this legislation through because DAL is out there and he is not subject to these conditions at the moment. Once this bill passes as an urgent bill, if he breaks any of these orders, he will be arrested. That is the other thing this legislation will do; we are requiring not to proceed by summons but to proceed by a warrant to bring him into custody and take him before the court, and at that stage the court can decide whether he could get bail on the same basis as a wilful murderer. We all know that that is next to impossible! No recent case comes to mind in which a person charged with that offence—murder—has been granted bail. That this why we will stick with the amendment that we have on the bill, and will not accept the opposition's amendment.

To talk about something rushed, I read this bill into Parliament some weeks ago before the break and the amendment is not on the notice paper. The opposition could have put an amendment on the notice paper in the last three weeks. The opposition criticises us for drawing this bill and bringing it before Parliament within the first six months. This notice paper was prepared yesterday, on 13 September. Talk about something that is a last-minute thought! This is a very rushed, last-minute job. The opposition had eight and a half years to bring in amendments and it chose to bring in some last year, but it did not bring in any of these last year. This amendment is a quick reaction to the Labor government's policies, which were announced before the election and introduced in a very timely manner. Within six months of getting into office, with all the other legislation that has had to be prepared by the Parliamentary Counsel's Office —

Dr M.D. Nahan: What legislation!

Mr J.R. QUIGLEY: The Leader of the Opposition sneers. He does not know what is on their plate or what they have. Regrettably and unfortunately —

Dr M.D. Nahan: We haven't seen much; I'll tell you that!

Mr J.R. QUIGLEY: I will take the Leader of the Opposition's interjection. He said, "We haven't seen much." The complaint of the Parliamentary Counsel's Office is that because of the Leader of the Opposition's policies when he was Treasurer on the workforce replacement policy, when people left the Parliamentary Counsel's Office, they could not employ experienced drafters. The McGowan Labor government has had to recruit retired drafters from both Western Australia and interstate to help get the bills done because the Parliamentary Counsel's Office was left understaffed. It was not a concern of the former Treasurer to exclude it as a frontline service on his workforce replacement policy. We have worked hard and the Parliamentary Counsel's Office is working particularly hard with drafters who we have had to bring in from interstate, and with retired drafters contributing as well. We are very proud to have been able to bring this legislation forward in such a short time. We have given priority to law and order legislation—this bill being one. We brought in the no body, no parole laws that every member of this chamber wanted to rise and support, despite the fact that members opposite opposed it in government last year. Despite our best efforts to bring that legislation forward quickly, it will be held up; we cannot get it through Parliament because the opposition kicked it into the long grass in the Legislative Council. Lord knows what it will do to this bill.

Today, we also have to deal with the third reading of the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill so we can clear it out of this house. It is very important legislation to do with the distribution of drugs in our community. It was sought by the Corruption and Crime Commissioner, who advises that he sought the same legislation from the previous government but it never got around to it. There was no

response at all. We have a lot of legislation being drafted at the moment and the Parliamentary Counsel's Office is working overtime. We make no apologies and we are very proud that we have brought this legislation before Parliament within the first six months. We will not accept the opposition's amendments in consideration in detail. I will deal with the opposition's amendment in further detail but when we look at its legislation to make a continuing detention order, it is accepted first time there should be a reversal of the onus. Last year, the then Deputy Premier said it would be too confusing for a court to have the reverse onus. The opposition was advised by the then Attorney General, who had legal advice, that it would be too confusing for a court to do this and it voted down the legislation. I repeat: had there been this reverse onus, when DAL came before the court, he would not have been able to get away with sitting mute as he obviously did—as evidenced by paragraph 13 of Her Honour's judgement—and he would not have been able to discharge the onus that fell on him, so he would not have been released.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Mr P.A. KATSAMBANIS: I think this clause is the best place to ask this question, because the Attorney General studiously avoided it in his second reading response. The Attorney General tells us that he has brought in this legislation partly to honour an election commitment and partly to ensure that circumstances such as those in the case of DAL do not happen again. In my speech at the second reading stage, I asked the Attorney General to provide me with any legal advice he has that would indicate that, if the amendments had been in force prior to the consideration of DAL's last application, the decision in that case would have been different and the man would have remained behind bars. I note that the Attorney General did not address that question and, given that we are now considering the short title, I ask whether he will table that legal advice. I indicate at the outset that although there are some amendments that I want to go through, I do not intend to labour this process or drag it out. It is an urgent bill and we will get it through urgently. I will be sharp in my questioning but I expect responses. Will the Attorney General table the legal advice or not?

Mr J.R. QUIGLEY: No.

Mr P.A. KATSAMBANIS: On that basis, I will let that answer stand for itself.

Clause put and passed.

Clauses 2 to 8 put and passed.

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

Mr P.A. KATSAMBANIS: I foreshadow that there will be an amendment to this clause. This is the amendment to the Bail Act. This is the substantive amendment that puts into place the provision around bail that the Attorney General described in his summation as analogous to the bail provisions applying to a murderer. That is all well and good, but in so doing, he indicated that he considered some constitutional aspects when he did not introduce the absolutely strict no-bail condition which his party took to the election campaign and which he said last year he would introduce. I again ask the Attorney General whether he will table the legal advice around the constitutionality of a strict no-bail provision without any exceptional circumstances.

Mr J.R. QUIGLEY: No.

Dr M.D. NAHAN: Can the Attorney General explain why he says no? He has been asked why he has brought this bill on urgently. In opposition, he said that he would apply a strict provision of no bail. He took it to the campaign and he said that the party said the same thing. He has obviously received advice that his promise cannot or should not be fulfilled and we are asking him for that advice. He has repeatedly waived legal privilege in this house. He has an onus to tell Parliament why he has been advised to change his commitment. He expects us to, and we want to, commit to a vote on this bill, but it is a legitimate request by the opposition to be advised whether there is legal advice that there are constitutional restrictions on not fulfilling his promise and commitment. Why does he not do it?

Mr J.R. QUIGLEY: During the drafting process, I was advised by the drafters and the state solicitors that it would be unconstitutional to have it in the terms that I had originally announced, so it is in the form that it is in.

Mr P.A. KATSAMBANIS: That is why we want to see that advice. Until very recently—in fact, until he introduced this bill—the Attorney General was personally committed to no bail, full stop, in these circumstances. There were no exceptional circumstances and no wriggle room. Is he suggesting that the policy that he and his party took to the election was unconstitutional?

Mr J.R. QUIGLEY: I repeat: my advice was that the absolute denial of bail was unconstitutional and that is why we framed it in the same manner as for a person applying for bail on a wilful murder charge.

Dr M.D. NAHAN: Could the Attorney General give us an explanation of how it is unconstitutional? He has received advice, and he has refused to table it for us to read. He is a lawyer and he has lawyers in front of him. Can he discuss how and why it is unconstitutional, and not just tell us that his advice says that it is?

Mr J.R. QUIGLEY: These bail provisions apply when a person is charged with breaching a condition of the release order. Under our Constitution, it is assumed that the person is innocent until such time as the charge has been proven. My advice is that when dealing with a person before the court who is presumed to be innocent, it is unconstitutional to not even consider bail for a person who is presumed to be innocent. We cannot take away from the court the power in relation to a person who stands before it as innocent—I am not talking in this context about being innocent of a serious dangerous offence; that is what they have been imprisoned for and that is why they have been released on a supervision order—of the allegation that they have breached one of the conditions contained in, for example, annexure A in DAL's case. When that person appears before the court, they are presumed at law to be innocent of breaching that condition until it has been proven. My advice is that it is unconstitutional not to consider bail for a person who is presumed to be innocent, and that is the very reason why there is still a clause in the Bail Act that allows the consideration of bail prior to conviction even of people who have been charged with the most heinous crime of murder, although the threshold is set so high as to practically exclude the possibility of the person being released on bail.

Dr M.D. NAHAN: The Attorney General has practised criminal law very widely for a long time. He is a very experienced lawyer, particularly with the Bail Act and the various constitutional issues, particularly in this type of instance. I am sure that he has lectured courts on the presumption of innocence in various court cases.

Mr J.R. Quigley: I never lectured in the court.

Dr M.D. NAHAN: I bet he did not! Is he saying that, in opposition when drafting the Australian Labor Party's commitments and in discussion with the public, he was not aware of this issue? Was he negligent or forgetful or so desperate to make cheap political points that he overlooked the constitutional limitations on what he had proposed?

Mr J.R. QUIGLEY: We have made it as difficult as possible—practically impossible—for a person to ever get bail on this charge.

Debate interrupted, pursuant to standing orders.

[Continued on page 4128.]