PROHIBITED BEHAVIOUR ORDERS BILL 2010

Consideration in Detail

Resumed from 8 September.

Clause 9: Matters to be considered by court —

Debate was adjourned after the clause had been partly considered.

Mr J.R. QUIGLEY: I want to go back to clause 8(3). We are past that, so I will frame it in terms of other matters to be considered, which is legitimate under clause 9(3)(g). The other matters it takes into account may be other previous relevant offences. Clause 8(3) reads —

> … it does not matter if the relevant offence was committed before, on or after the day on which this section came into operation.

Does that mean when the courts are considering "other relevant offences", they can be relevant offences prior to the operation of this act being the first of the trigger offences? In other words, after proclamation of the act, is the proper interpretation of these two clauses that a "relevant offence" for a person charged can be a conviction for a "relevant offence" prior to the operation of the act?

Mr C.C. PORTER: That is correct. The second trigger offence must have occurred after proclamation. But the first trigger offence, which combined will be the necessary condition, could have occurred before this act came into place; that is, before proclamation. People come to the system with their criminal records as they have accumulated them to date.

Ms M.M. QUIRK: I take the Attorney General to clause 9(3)(e) and 9(3)(g). When considering a prohibited behaviour order against a person, those paragraphs state that "a court may have regard" to certain matters. Paragraph (e) reads —

> any previous behaviour of the person that is similar to the behaviour in relation to which the PBO is being considered by the court;
>
> …
>
> (g) other matters the court considers relevant.

I accept that this other legislation has not yet been passed, but the criminal infringement notices that the Minister for Police announced and second read yesterday, as I understand it, are not criminal convictions per se. Does the Attorney General believe those notices would also include any previous behaviour similar to behaviour for which a PBO is being considered; and will they also be able to be led in evidence before the courts?

Mr C.C. PORTER: I think that is a fair summary. I will give the member a summary to see whether we are in agreement. If someone were issued a criminal penalty infringement notice under the legislation the Minister for Police will bring in, that could not stand as a trigger offence in the two necessary offences before that person would be considered for a PBO. The basis for that is that both the Criminal Procedure Act and the Fines, Penalties and Infringement Notices Enforcement Act in effect say that such an infringement does not count as a criminal proceeding or a conviction. That would count not just for CPINs but a range of other matters as discussed with the member for Mindarie, such as prosecutions or potential prosecutions that are dealt with civilly by infringement. They do not count as a strike, but they could conceivably form the basis of other behaviour that could be taken into account by the court. If there were two relevant offences committed that resulted in conviction, the court, in considering whether an accused is likely to reoffend and also looking at the criminal record, might also consider how many CPINs for disorderly conduct had accumulated in a given period.

Clause put and passed.

Clause 10: Constraints imposed by PBO —

Ms M.M. QUIRK: I refer the Attorney General to clause 10(7), which reads —

> A PBO is of no effect to the extent that it conflicts with or duplicates any of the following that applies to the constrained person …

Those things include restraining orders, limitations or conditions imposed on extraordinary licences, conditional release orders made under the Sentencing Act, intensive supervision orders and youth community-based orders. Having considered how this regime will work, I am concerned—this has occurred in other areas of police activity—how this will mesh up in the information handling. How will the various systems match up so that the interaction of the two orders is understood by those who need to enforce the respective orders? Yesterday the

Attorney General said that the police had not sought additional funding. Certainly the computer systems will have to be upgraded to ensure that there is proper data matching and the proper interaction of the different legislative regimes so that people know exactly what they are enforcing and the extent and limit of it.

Mr C.C. PORTER: That is a reasonable question. I do not have a perfect answer. The member for Girrawheen will appreciate that the purpose of clause 10(7) is to ensure that another order takes precedence if there is a conflict or inconsistency. The duplication means that if a single act were in breach of both a PBO and a restraining order, the applied sanction would be taken under the restraining order rather than the PBO. I refer to the member's question about resourcing. At the moment a problem might exist for the police when they receive a complaint from a resident of a house, whether it be a domestic violence complaint or something of that nature. If after turning up at the resident's house they are told that the person concerned is in breach of his restraining order or violence restraining order, the police have a resourcing difficulty in that they have to check whether that person is in breach of the restraining order, firearms order or some other order. We are adding another checking requirement, which is the PBO. I imagine—this is without specific instruction, because I do not have a police adviser in the chamber—that that sort of information can be placed on the police tasking and data information system with relative ease. The court will keep records of its orders. Information such as warrants, conditions of bail, conditions of parole, restraining orders and firearm restrictions can be adequately loaded onto the tasking and data information system—TADIS. As the system is rolled out to all police—and not only police in cars—when the police come across a single individual who is the subject of a complaint by another citizen, they will be able to place that person's name and other identifying particulars into TADIS to find out whether the person is the subject of a PBO, bail conditions or conditions of parole et cetera. Fortunately, TADIS can cope with that. I am not an expert on that system, but that is my general understanding.

Ms M.M. QUIRK: I am glad that the Attorney General used the word "expert". I was thinking more along the lines of "tech-head". I understand what the Attorney General said. However, the problem with all these systems is that it is not only a question of inserting information. Usually there have to be upgrades and the adding of additional boxes, such as dialogue boxes. It is quite obvious that I am not a tech-head! It is my understanding that there is always a need for computer upgrades to meet these kinds of legislative requirements. It is a question of not only entering the information into TADIS, but also ensuring that this extra legislative regime is accommodated for in the police computer system. As the Attorney General said, no additional resources have been sought by the police. I ask the Attorney General to make some inquiries to determine what it will cost to make the necessary computer upgrades to enable this regime to proceed.

Mr C.C. PORTER: I take the member's point. We have been working through an election promise that relates to a public sex offender register. That is a matter not without its complications. As we have been liaising with police, the police have put to us in very clear terms what they think it will cost them to manage such a system. We have not had similar and specific overtures from the police in the development of this legislation. I concede that they exist in the ability of the dialogue boxes and whatever else is required systemically to put this information onto existing systems. As the system grows, we will contemplate this matter on a yearly budgetary basis. Unlike other matters that I have dealt with in conjunction with the police, they have not made specific cost requests. I take that to mean that in the early stages they will do it in the budget and if that is not the case, they will come back to me on a yearly basis.

Ms M.M. QUIRK: Recent evidence before a parliamentary committee suggested that it is not police practice to talk about costs at the early stage of implementing additional enforcement issues. They will go back to the government and say that they need extra computer upgrades. I understand why the Attorney General does not have that information with him and I appreciate his honesty. However, I seek an undertaking that he will seek that information and be in a position to provide further clarification before the third reading of this bill.

Mr C.C. PORTER: I will do that. The information required will need to be asked for not as much in this budgetary cycle but more in the next one. Even if this legislation passes through both houses, is proclaimed and the police prosecutors receive the training that they will need, I do not imagine that the first orders will start flowing before we start arguing next year's budget. I give an undertaking that I will seek the views of the police for the 2011–12 budget.

Mr J.R. QUIGLEY: I refer to clause 10(3) and paragraphs (a) to (f). Are any of the constraints listed in those paragraphs not available to a court under the section 49(1) of the Sentencing Act which, under the heading "CRO: Requirements" reads —

> A court making a CRO may impose any requirements on the offender it decides are necessary to secure the good behaviour of the offender.

Are any of the paragraphs in clause 10(3) not encompassed by section 49(1) of the Sentencing Act; and, if not, why not?

Mr C.C. PORTER: We have gone through this before, but I am more than pleased to go through it again. There are four substantial differences between the PBO system and a CRO: the circumstances in which they are made, the constraints that can be imposed—I will come back to that in a moment—the manner in which the orders are policed and the penalties for breaching. There is no disagreement necessarily about my assertion that there are substantive differences in subclauses (1), (3) and (4). As to the second of those differences—the constraints that can be imposed—I take the following view. The legislative regime in the United Kingdom uses a formulation of words similar to that which we are using in the Prohibited Behaviour Orders Bill in that a PBO can be anything considered reasonably necessary to reduce the likelihood of a person committing a relevant offence. The wording in a CRO, as is the case with some other orders available under the Sentencing Act, is that the CRO may impose any requirements on the offender that are necessary to secure the good behaviour of the offender. My proposition to the member for Mindarie is that the different form of words will support different types of specific orders. I take the view that the type of order we have regularly seen supported by the words used in the PBO legislation in the United Kingdom—such as that which says that a person cannot approach or touch a car that he or she does not own—would be supported by the formulation in the bill.

Mr J.R. Quigley: If I could interrupt, under which clause?

Mr C.C. PORTER: Clause 10(2) sets out the formulation.

Mr J.R. Quigley: Sorry; which subclause? Is it subclause (3)?

Mr C.C. PORTER: I will come to that in a moment. Clause 10(2) states —

> In making a PBO a court may impose such constraints on otherwise lawful activities and behaviour of a person as the court considers reasonably necessary to reduce the likelihood of the person committing a relevant offence.

Subclause (3) states —

> Without limiting the constraints that may be imposed under subsection (2), a court may constrain the person from doing all or any of the following —

It may be the case that the example I have previously used of not being able to go near or touch a vehicle not owned by the person who is the subject of the order is capable of being established under one of the specific nominated paragraphs in subclause (3).

Mr J.R. Quigley: Which one?

Mr C.C. PORTER: I would say paragraph (b), which states —

> engaging in behaviour of a specified kind, either at all or in a specified place, at a specified time or in a specified manner;

But even if that were not the case, the words are broad enough in clause 10(2) to support such a restriction of civil liberties. The point is, and I understand this to be one of the member's objections to this legislation, that such restrictions of civil liberties are extraordinary. We do not resile from that fact. Indeed, on the basic level of interpretation required, a very clear form of words would be needed to allow such an extraordinary restriction of civil liberties. Based on United Kingdom precedent, these words allow for such restriction of civil liberties. I have never seen a CRO used to support the sorts of orders that this formulation of words supports in the United Kingdom. If the member wants to provide some examples in which that has been the case, I would be very interested to look at them individually. However, as I am aware, it has never happened. I would argue the reason it has never happened is not merely that it has not been tested, but that there is a broad understanding that proper rules of interpretation of the provisions in section 49 of the Sentencing Act would not allow such a restriction of civil liberties to occur.

Mr J.R. QUIGLEY: We heard all about the UK and this and that in the Attorney's answer. I want to try to now pin down the Attorney with specificity. In relation to a contemplated order that a person not touch a vehicle, which clause does the Attorney say the court would turn to?

Mr C.C. PORTER: I would say that it would turn to clause 10(3)(b) and clause 10(2).

Mr J.R. QUIGLEY: Section 49(1) of the Sentencing Act states —

> … may impose any requirements on the offender it decides necessary …

The requirements are imposed not for illegal behaviour, unlawful behaviour or even to secure the offender's conduct against the commission of an offence, but to secure the good behaviour of the offender. Why could such an order at law not be made under section 49(1)? I put it to the Attorney that it obviously can be.

Mr C.C. PORTER: I put it to the member that it could not be. I put it to the member that it never has been.

Mr J.R. Quigley: Why?

Mr C.C. PORTER: Because the formulation of words is substantially different. For such an extraordinary restriction of civil liberties, something perfectly clear and restrictive, such as in clause 10(3)(b) or clause 10(2), is needed. The requirements necessary to secure the good behaviour of the offender are of a qualitatively different type from the requirements deliberately and specifically set out to prevent someone from engaging in specific behaviour of any kind, either in a specified place, at a specified time or in a specified manner. My proposition—the member obviously rejects my proposition but I will put it to him again—is that to have such an extraordinary restriction of civil liberties, something absolutely clear is needed in the legislative formulation so that there is a legislative basis. Otherwise, any argument about whether this or that behaviour could be restricted—that is, any ambiguity—would always be decided in favour of the person whose liberties are sought to be restricted. I put to the member that section 49(1), particularly as it links what is necessary as a restrictive measure potentially to secure good behaviour, will support a far narrower range of potential restrictions than will the provisions in this bill.

Mr J.R. QUIGLEY: Does the Attorney have any case law to support that last proposition?

Mr C.C. PORTER: I have a complete absence of case law to support it, insofar as there has never been a case in this jurisdiction that the member can point to—notwithstanding his many years practising in it—in which an order of the type that I have just described, which is clearly supportable under this legislation, is supportable and has been supported, and has been obtained under the provision that the member cites. If the member for Mindarie wants to provide an example of such a restriction ever, in the history of this section, being substantiated and supported by a CRO —

Mr J.R. Quigley: In relation to this type of requirement, are you referring to a requirement constraining a citizen from otherwise lawful conduct? Are you saying or suggesting that a CRO is limited only to constraining illegal activity and not to activity that would otherwise be lawful?

Mr C.C. PORTER: The CRO allows the constraint of activity for the purpose of securing someone's good behaviour.

Mr J.R. Quigley: What does that mean?

Mr C.C. PORTER: Exactly! I can tell the member what it does not mean. It does not give an unequivocal statutory basis to prevent someone from going near, in the example that we have used, a vehicle or touching a vehicle that the person does not own. I have no difficulty in proposing —

Mr J.R. Quigley: Why?

Mr C.C. PORTER: Because it simply is not specifically enough worded, as are the legislative provisions in our bill, to allow such a significant restriction of civil liberties.

Mr J.R. Quigley: But that is not in the legislation.

Mr C.C. PORTER: If it were the case that those provisions allowed such a restriction, and we have never seen one, either I am correct or no-one has ever thought of it or bothered to make an application. It has never been tested. Either way —

Mr J.R. Quigley: The latter could be the case; could it not?

Mr C.C. PORTER: It is not impossible. However, I would argue the reason that has never occurred is that people take the same view of that provision as I do; that is, it would be a matter of some ridiculousness to suggest that it could support such a specific restriction of civil liberties.

Mr J.R. QUIGLEY: Does the Attorney agree that CROs are used to restrict civil liberties beyond touching cars—in other words, to restrain someone from going to certain areas in the city?

Mr C.C. PORTER: They are used for some purposes of restraint, but to secure good behaviour. The purpose of restraint in a CRO is linked to the positive notion of securing good behaviour, whereas the very wide constraints set out in clause 10 link the idea of restraint to something that is "reasonably necessary to reduce the likelihood of the person committing a relevant offence". The test for the basis of restraint in this legislation is a lower or easier test to meet than is the CRO test in section 49 of the Sentencing Act. Quite obviously, this clause will mean a wider array of restrictions on a person's civil liberties than will section 49.

Mr J.R. QUIGLEY: With respect, that necessarily has to be wrong, does it not, because, as the Attorney has said, PBOs are to secure restraint or to obtain a restraint for someone committing an offence? Did I understand that correctly, Attorney?

Mr C.C. PORTER: No; not at all. A PBO criminalises behaviour that would not otherwise be criminal. It allows for the restriction of behaviour that would otherwise be lawful.

Mr J.R. Quigley: I understand that. But you said that it was for the purpose of stopping them committing offences.

Mr C.C. PORTER: No, no. The purpose is a purpose "reasonably necessary to reduce the likelihood of the person committing a relevant offence".

Mr J.R. Quigley: That is right.

Mr C.C. PORTER: Therefore, if that were the case —

Mr J.R. Quigley: Is that not what I said?

Mr C.C. PORTER: In the case of someone who had previously offended with respect to motor vehicles, clearly this formulation based on the UK precedent allows the quite extraordinary restriction of civil liberties whereby someone cannot go near to or touch a motor vehicle. The member for Mindarie thinks that such a restriction could be successfully argued on the basis of section 49 of the Sentencing Act, whereas I think that is highly unlikely, if not next to impossible, because one of these provisions is substantively different in that it links the ability to obtain a restriction of someone's civil liberties on the basis that the court considers such a restriction reasonably necessary to prevent something from happening—that is, to reduce the likelihood of a person committing a relevant offence. Section 49 is substantially different in that it requires some or other form of restriction potentially as a matter of securing positive behaviour or good behaviour. Always with drafting, small differences can make a massive difference in practice, particularly in the area of the restriction of civil liberties. If I am wrong, the member should show that I am wrong. He should show me a CRO that is of the type of restriction that I have nominated—the motor vehicle example—as an example.

Mr J.R. QUIGLEY: I submit that what the Attorney General is saying must necessarily be wrong. He has explained to the chamber that the purpose of the PBO is to constrain the person from the likelihood of committing a relevant offence. The purpose of the PBO is to constrain the person from committing a relevant offence, which, as the Attorney General is aware, is a defined term. A relevant offence means an offence involving antisocial behaviour, which is also defined. That is the purpose of the PBO, and that is what it is aimed at. However, section 49(1) of the Sentencing Act, in its capture, is far broader, because it is related not to granting an order to restrain an antisocial offence, but rather to secure good behaviour, which could relate to much more minor offences that do not even necessarily involve antisocial behaviour; it could be any offence or any behaviour. To anyone reading this debate and reading this legislation, it would be blindingly obvious that the capture of section 49(1) is far wider than that of clauses 10(2) and 10(3).

Mr C.C. PORTER: Not at all. It is the member who is completely wrong rather than me, for the reason that a CRO can be imposed only if there are reasonable grounds for expecting that the offender will not reoffend. How is it, then, as the member says, that an order could be established that gives great variety on the basis of preventing someone from offending? Indeed, a CRO can be imposed only if it is considered that the person is unlikely to reoffend. The purpose of the restriction in section 49(1), read in conjunction with the other sections that establish a CRO, is clearly not to stop someone from reoffending, but to make him do something to secure his good behaviour.

Mr J.R. QUIGLEY: Under the present suite—because this is only a bill still—if it is the case that the court does not have confidence that there will not be a further offence, there are other options available to it to secure a person's continuing good behaviour; the court will just crank it up a level, will it not? It will crank it up to a CBO.

Mr C.C. PORTER: If the member wants to argue CBOs, we can argue CBOs, but not a moment ago the member for Mindarie told me that it would be possible to use the words "secure the good behaviour of the offender" in section 49(1) to support an order of the type of "do not touch a motor vehicle you do not own" to prevent someone from offending. I quite properly pointed out to the member that the very basis for giving a CRO is the court having made a determination that the person is not likely to reoffend. If the member acknowledges that he is quite incorrect on his CRO proposition, we can go on to argue the CBOs.

Mr J.R. QUIGLEY: We will, but section 47(a) states —

> there are reasonable grounds for expecting that the offender will not re-offend during the term of the CRO;
>
> …
>
> … the offender does not need supervising by a CCO …

If there is some apprehension that the offender may reoffend—that is, the case will not meet the test of reasonable grounds for expecting that the offender will not reoffend—it will go to a supervised regime, will it not, under a CBO?

Mr C.C. PORTER: The only way that that argument could ever be tested would be in a court, before a judge, and I propose to the member that if he were to try to secure a restriction of someone's civil liberties of the motor vehicle type that we have described based on that argument, he would invariably fail.

Mr J.R. Quigley: Under the CBO, however, such requirements can be placed upon the person, can they not?

Mr C.C. PORTER: If the member will point me towards the relevant clause, we will have a look at it.

Clause put and passed.

Clause 11: When PBO comes into force —

Mr J.R. QUIGLEY: Apart from a person's history, a PBO will impact on parole consideration, because the person will come before the Prisoners Review Board and will have a PBO in place. How does the Attorney General see this meshing with parole requirements? I understand that clause 10 has dealt with any possible conflict with young offender sentencing.

Mr C.C. PORTER: There will be some similarities between what could be a term of restriction on parole and what could be in a PBO. As I have said previously, I would envisage that the number of people to whom PBOs apply who actually receive a term of imprisonment and for whom the PBO starts to operate once they are released from jail will be in the smaller percentage of the overall number of those subject to PBOs. Nevertheless, I also think the argument is a sound one. The types of constraints that might be imposed by a PBO might go in advance of those that could be restrained on parole. There is a clear basis for it, but I would note that parole, of all the orders that can be given, is probably the one with the strongest statutory basis to be the most restrictive.

Clause put and passed.

Clause 12 put and passed.

Clause 13: PBO ceases to have force if conviction set aside or quashed —

Mr P. PAPALIA: It might be appropriate to pursue the question I raised yesterday under this clause. How on earth has the Attorney General reconciled himself with a situation in which a young person will be labelled by having his identity placed on the web forever at a young age and a time at which he might be going through a rebellious period? As young adolescents, many young men have massive amounts of testosterone flowing around their bodies, which is probably a more dangerous chemical than some of the other additives that people put into their bodies. As a result, they may conduct themselves in a manner that they will, nevertheless, grow out of, and invariably the large majority of the population will move through to a more mature pattern of behaviour. They will adopt responsibilities and engage in relationships that they may not have had as young people. They will possibly undertake responsibilities such as family and children. How on earth has the Attorney General possibly reconciled himself with having labelled those individuals forever? In light of the modern world in which we live, whereby any employer will undoubtedly at least have the opportunity, but in many, many cases will take that opportunity, to do a net search for the individual that he or she is interviewing for employment, how does the Attorney General reconcile himself with effectively condemning those individuals to, at the very least, an added weight, another challenge or an additional hurdle for reforming their behaviour?

Mr C.C. PORTER: There are obviously costs associated with publication for the individuals who are the subject of a publication but we have done a cost–benefit analysis and said that the types of individuals whom we are trying to target have reached a point at which the benefits to the public of attempting to constrain them or incapacitate them in situations in which they have breached the orders that restrain them is a greater benefit to be served and be derived from than the cost that will clearly be placed upon each of the individual offenders who make themselves subject to a PBO.

Mr P. PAPALIA: That is the response that I expected from the Attorney General. I understand the process by which he has reached that conclusion. I have to put on the record the observation that that determination is made completely within the constraints of his mindset. His natural inclination, by virtue of his life experience and his profession, is to determine that the way to resolve this situation is to enact yet another law. I put it to the Attorney General that by doing so and by constraining himself with that thought process and that method of determining the way forward, with his natural inclination and his natural prejudice towards a law being the solution, he precludes himself from considering a solution that might be more innovative and a little more expansive, possibly even more challenging, but, I would suggest, probably far more effective. Ultimately, when the cost–benefit analysis was done, I do not believe that the Attorney General took into account the enormous cost associated with that individual going to jail, which he may do as a consequence of the PBO, but beyond that,

that individual being labelled and thereby being presented with another hurdle, another barrier, to reforming himself. The Attorney General is ignoring and overlooking potential alternative measures. I am not talking about the legal ones that my learned colleague is referring to and the Attorney General has been talking about, and I am not talking about ones that have necessarily been employed elsewhere in the world. I am just saying that the Attorney General currently overlooks other measures as a natural result of his prejudice because of his background and experience. I think he is making a mistake. By creating this piece of legislation, he will continue down this path, which he has been pursuing since he took office, in that all of his solutions are based on adopting another law.

Beyond that, I would also like to record my scepticism and my suspicion of the Attorney General's motivations. Invariably, legislation of this nature that he has introduced into this place since taking office has been associated with a media program that is designed entirely to demonstrate his government's toughness to raise a false expectation or a false perception on the public's behalf that he is actually doing something. As I have said to the Attorney General on a number of occasions, when he does this, he is engaging in that pretty juvenile practice that has been pursued by governments—I openly admit that it was pursued by our government, by other governments before that and by other state governments in other jurisdictions around the country and other western nations around the world—for well over a decade now of focusing purely on creating an image. Its motivation comes from the intention of gaining populist advantage. It does not come from trying to seek a better outcome or a better solution.

Mr C.C. PORTER: I appreciate the member's views; I think I understand them well enough. I am not sure what they have to do with clause 13. I will give a brief address in response. He questions my motives. That is his choice. He says that I have a responsibility as a policymaker to do things in an orderly, researched, methodological and empirically verified fashion. I concede that that is the case. To the best of my ability, I believe that that is what this legislation seeks to do. The member takes a different view. He has accused me of calling him names in an infantile debate. Indeed, he accused me of calling him a name that I have never called him. He promised me that he would show me in *Hansard* where I called him that.

Mr P. Papalia: I'll search for it. I'll find it.

Mr C.C. PORTER: I look forward to the member doing that because I have never said that about him in this place.

Mr P. Papalia: It was in relation to the Pardelup Prison Farm discussion.

Mr C.C. PORTER: In any event, I will say this about the member for Warnbro. If I have certain responsibilities as a policymaker, the member for Warnbro, as a member of an opposition that will no doubt one day have the ability to make policy, will also have responsibilities. I do not think that my problem with the way in which he approaches this area of law reform and public policy is that I think he is soft or weak or strong or otherwise. Softness is not the problem; vagueness is the problem. When the member says to me that I have failed to consider "potential alternative measures", I say to him that with respect to this cohort of offenders that we have clearly identified, who have reached a point at which all rehabilitative measures have failed, what is the potential alternative measure that the member says this Parliament and this government or any government should bring to bear on those 20 most prolific adult and juvenile offenders? If he can do that without using phrases and words such as "holistic solution" or "innovative" but actually tell me and give me an example of what it should be with any degree of specificity that rises above the remotely vague, I will listen to it.

Mr P. PAPALIA: I will do that.

Mr C.C. Porter: When?

Mr P. PAPALIA: In the lead-up to the next election. I will present it as an alternative to the Attorney General's solution. I am serious about this. The Attorney General is doing what he is doing for purely political purposes. There is no motivation behind his legislative agenda beyond accumulating benefit in the public domain and providing a perception of the government as having done something. There will be no positive outcome beyond that. I will offer an alternative to the Attorney General's program, to his agenda and to his solutions as we approach the next election.

I have already put out a change to the public debate. I have given the Attorney General the opportunity to engage in a more mature fashion. I will not give him the opportunity to continue in a juvenile fashion with the populist debate that he has embarked upon and tear apart any proposed solutions between now and the next election. I will put them out there and allow people to decide at the time. I have raised the issue of justice reinvestment as a framework within which there will be specific solutions. I know that the Attorney General would like to have a specific solution so that he can get his dozen minions in his office and his department to work on trying to find where that particular solution may have failed somewhere else in the world and present in a schoolboy debating club manner a proposition that has not worked elsewhere.

The ACTING SPEAKER (Ms L.L. Baker): Member, I remind you that we are debating clause 13.

Mr P. PAPALIA: I am just responding to the Attorney General.

The ACTING SPEAKER: I know, but make sure you keep to the point.

Mr P. PAPALIA: I will not go on. I will present the Attorney General with options. I will not do it in a fashion that is demanded by him whereby it suits his agenda. I will do it when there is an opportunity to convince the people of Western Australia that we will be the better alternative government and let them decide.

Mr J.R. QUIGLEY: Thank you, Madam Acting Speaker (Ms L.L. Baker), and for the indulgence of the house, in allowing me to remain seated for a second day.

I refer specifically to the question—I think it was more than a rhetorical question—directed to the member for Warnbro by the Attorney General and ask him to show me with some specificity how this can be changed? Firstly, in his response to the member for Warnbro, he spoke of the 20 most prolific cases, but that is a disingenuous argument, is it not, given that the legislation is not aimed at just those people? Clause 8(2) refers to a mere two relevant offences—not 20 or 20 a year. We are not looking at these most prolific offenders at all. After the proclamation of this legislation, this legislation will encompass relatively minor offending—that is, people who have committed one offence in 2008 and commit another offence of disorderly conduct in 2011. That is not the top 20 offenders, is it? Clause 8(2), which this chamber has agreed to, provides for two offences—they can be relatively minor—over a three-year period. Why, then, did the Attorney General say to the member for Warnbro that this is aimed at the top 20 offenders? I do not get it.

Mr C.C. PORTER: It is a very good question and one the member has asked about 22 times now and I have responded as follows on every occasion. The two convictions within the specified period is a "necessary", not "sufficient", condition. Many other things would have to be proved. Looking at them objectively, those hurdles are high compared with other legislation of this type. The court must be absolutely satisfied that the person has not merely committed those two offences, but, above and beyond that, is likely to reoffend in a similar manner if not constrained. That will mean having recourse to his previous behaviour—notably, his criminal record. It is that fact that aims this legislation squarely at serious, recidivist offenders who have engaged in low-level criminal conduct over a significant period. The member may disagree with that. I do not know whether that submission is made any stronger by its endless repetition here, but I think that is the correct view of this legislation.

Mr P. PAPALIA: The title of clause 13 is "PBO ceases to have force if conviction set aside or quashed". We could deal with this during debate on clause 34 regarding publication of details. If the PBO is to be set aside or quashed, what will be done to remove the individual's personal details, photograph, name and suburb from the internet?

Mr C.C. PORTER: We can and will deal with that when we debate the relevant clause. The relevant clause that deals with publications allows the court to end a publication and to give an order to end the publication. That is the provision that will be used.

Mr J.R. Quigley: To end?

Mr C.C. PORTER: Yes.

Mr J.R. Quigley: Or to not publish at all?

Mr C.C. PORTER: Yes, but upon application to end a publication.

Mr P. PAPALIA: The point is the PBO will never cease, regardless of whether it is set aside and quashed, because a component of the PBO will go on forever out in the ether on the internet. That is the point.

Mr C.C. PORTER: If a court order states that publication is no longer lawful, whilst there might be physical material in the ether, that material would be unlawful and people would run the risk of unlawfully publishing it.

Mr P. PAPALIA: Is the Attorney General suggesting that the court order will somehow suck all the information back in from the internet so that those personal details, including the person's name and the suburb he lives in, will somehow come sucking back because someone issues a court order?

Mr C.C. PORTER: Obviously, that is not what I am saying. But part of this debate is the fact that people do not always meet court orders. However, in a very cautious way, this legislation allows for mechanisms to remove the ability to publish in certain circumstances and, indeed, the quashing of a conviction would be one of those circumstances. Is there still the potential for people to disobey that order? Of course there is, as there is with any order. Again, this comes down to a variance of views between the sides of this house on the benefit that can be occasioned to the community and the cost to any single individual.

Mr J.R. QUIGLEY: If it is right that the regime being imposed is cautious, and I do not accept it is—I say that it is anything but cautious, and we will get to that matter in due course—but since the Attorney General raised it at this point —

Mr C.C. Porter: I did not raise it at this point; the member for Warnbro raised it.

Mr J.R. QUIGLEY: In his reply he did.

Clause 34(8) was a measure introduced after the publication of the green bill. I do not have a marked-up copy, but —

Mr C.C. Porter: That is correct.

Mr J.R. QUIGLEY: — it gives specific parliamentary warrant to republication on the internet. The Attorney General will agree that once a matter is set aside, it is beyond the court's jurisdiction to prohibit that republication if it is maintained on a server outside this jurisdiction.

Mr C.C. PORTER: I am happy to debate clause 34 now if that suits. That is not my reading of the way that clause operates. Clause 34 contains an ability for a court to make a publication or to withdraw an order for publication. That applies to publication.

Mr J.R. QUIGLEY: I will leave that until later.

Clause 13 is headed "PBO ceases to have force if conviction set aside or quashed". In the first instance, should there, at least, be no publication until the appeal period has expired?

Mr C.C. PORTER: That is not the way in which we drafted this legislation.

Mr J.R. Quigley: I understand it is not the way, but in fairness.

Mr C.C. PORTER: It is not the way we have drafted this legislation. That would make it very unwieldy indeed.

Mr J.R. QUIGLEY: Can the Attorney General explain why it would be unwieldy to stay publication until the expiration of the appeal period? It is the Attorney General's CEO who will effect the publication. He will know when the 21 days are up. What is the rush between zero and day 21?

Mr C.C. PORTER: If the assessment is prima facie, once the court convicts someone in these circumstances and gives a PBO, the court has made a decision that that person will be likely to reoffend, not likely to reoffend after the appeal period has expired but likely to reoffend tomorrow when he re-enters the community. This is legislation that is predicated on an urgent need.

Mr J.R. QUIGLEY: Why is the publication so urgent within the 21 days? This is different from the order. The order is there to constrain. In the balance of fairness, once this is out on the internet—we will deal with that under clause 34—why can publication not be stayed until after the appeal period expires, because the PBO will cease to have effect at that point if the appeal is successful? There is no way it can be taken back from the internet.

Mr C.C. PORTER: In these circumstances, we have determined that community safety is an immediate priority and publication is the important part of the order; it is the part of the order that allows for enforcement and allows the community to assist itself in its own protection. As has been noted in the decisions in the United Kingdom that have revolved around publication, a PBO without publication is of very low efficacy and usefulness.

Mr J.R. QUIGLEY: Is it not right that the main justification for publication, as identified by the UK Home Office, was that it led the community to believe that the government was doing something about antisocial behaviour, and that is what it published on its internet site?

Mr C.C. PORTER: I ask the member to show us where that was said by the Home Office, because we dispute that that was ever said.

Mr J.R. QUIGLEY: As the Attorney General knows, since that announcement by Theresa May, they have archived some of the Home Office comments, have they not? Have I got that right? Theresa May came out and debunked the whole theory behind ASBOs. She said it is a failed system. After she made that announcement, they archived most of the Home Office's comments, did they not?

Mr C.C. PORTER: There are so many comments; if the member wants to draw my attention to one of them, please do, and I will make comment on it. The member asked me if he was right with respect to his comments about Theresa May, the UK Home Secretary. The member made a number of public comments about Theresa May and what she did or did not say. He asked me if he was right. No, he was not. I will quote from a media statement that was put out by the member for Mindarie, John Quigley, MLA, shadow Attorney General, on Wednesday, 11 August 2010 —

> Labor will oppose the Liberal Government's proposed prohibited behaviour order legislation that will identify juvenile and minor offenders for the rest of their lives …
>
> Mr Quigley said the Liberal's proposed PBO legislation was a second hand failed idea from a clueless Government.

Mr J.R. Quigley: That's all true so far!

Mr C.C. PORTER: Well, we are getting there. The media statement goes on to say —

> "The legislation was based on the British legislation introduced in 1999 and axed in July this year," Mr Quigley said.

That was a claim that he repeated on 6PR.

Mr J.R. Quigley: The policy was axed.

Mr C.C. PORTER: Wait a second. He said that the United Kingdom has axed the legislation following a review. The member for Mindarie asked me whether he was correct in his statements with respect to the UK Home Secretary. No. His statements were the opposite of correct; that is, they were incorrect. The legislation has not been axed. Theresa May has said some things about the legislation. I will give the member a quote —

> That is why I have launched a review of the anti-social behaviour powers available to the police. I am determined to give them and the other agencies a toolkit that is appropriate and effective; with tools that are quick, practical and easy to use.
>
> Simpler sanctions, which are easier to obtain and to enforce, will provide the police and practitioners with a firm hand to tackle the problem cases.
>
> Where possible, they should be rehabilitating and restorative, rather than criminalising and coercive. But where necessary, they should be tough and provide a real deterrent.
>
> Just this morning, the latest ASBO statistics have shown that breach rates have yet again increased—more then half are breached at least once, 40% are breached more than once and their use has fallen yet again, to the lowest ever level.
>
> It's time to move beyond the ASBO.

The member for Mindarie says that is a statement that is antagonistic towards ASBOs. I think that in large part it is. But what might be next on the UK Home Secretary's agenda might not be something that the member would particularly like. Is the member for Mindarie correct that they have been axed? No. I do not know why the member said that. Are they being reviewed? Yes. ASBOs are being reviewed. Part of that system, which is based on criminal sanctions—which is not an ASBO—is what we are adopting here. We are not adopting that part of the system that those negative comments by the Home Secretary were made about; that is, that existing part of the UK system.

Mr J.R. QUIGLEY: The Home Secretary said that it is time to move beyond retribution and punishment to restorative and rehabilitating. She has axed the whole philosophy of retribution and punishment, which the Attorney has openly said this bill is built upon. This is a failed system. This is a failed philosophy, and it has been identified to be a failed philosophy by none other than the Conservative Home Secretary of the United Kingdom, who has said it is time to move beyond retribution and punishment and deal with the real causes. Is that not true?

Mr C.C. PORTER: No. Again, that is not true. It amazes me that I can read to the member a clear and simple paragraph and he can interpret it in ways that suit him but that do not bear any resemblance to the paragraph that I have read. What Theresa May said is that, when possible—she is talking generally about law enforcement responses—they should be rehabilitating and restorative. But she also said that, when necessary, they should be tough and provide a real deterrent. I think the member's characterisation of the statement that I read to him not three minutes ago is disingenuous.

Mr J.R. QUIGLEY: No. It is reasonable. Is she not saying no more than if there is serious offending, there will be serious punishment to deal with that serious offending; but to deal with recidivists, we need to move beyond punishment and retribution and into restorative justice? Is that not what she is saying?

Mr C.C. PORTER: No. I do not believe that is what she is saying; and I can read it to the member again if he likes. The point of this legislation is that we are dealing with people who have been through a range of restorative, rehabilitative, kinder, softer and gentler options, which options our government is delivering far in excess of the former government, notwithstanding the member for Mindarie's professed favouring of them here while he is in opposition. Those options have failed with respect to a particular cohort of offenders. Therefore, we, rather than having vague concepts that will be released in two years' time, have a plan to deal with that. This

is the plan. The member does not support this plan. I certainly understand that. However, the plan remains as it is in the bill before him.

Mr J.R. QUIGLEY: The Attorney General has got all the printouts from the United Kingdom. Since Theresa May made that statement, has there been the public naming and shaming of juveniles?

Mr C.C. PORTER: Contrary to the member's earlier assertions, yes.

Mr J.R. Quigley: On ASBOs or CRASBOs, or both?

Mr C.C. PORTER: Both.

Mr J.R. Quigley: Could you give me those examples, please? You have got them here, have you not?

Mr C.C. PORTER: I have them for both, yes.

Clause put and passed.

Clause 14: Explanation about PBO to be given —

Mr J.R. QUIGLEY: Subclause (4) states —

> A PBO is not invalid merely because the constrained person was not given the explanation.

As I understand it from the Attorney General's explanations given to the chamber today, the constraints themselves may be largely aimed at what otherwise is lawful behaviour.

Mr C.C. Porter: Yes.

Mr J.R. QUIGLEY: If a person cannot understand what is being said in the court, that does not matter; he can still be sent down this road of punishment and perdition with, as the Attorney General has said, an increased likelihood of imprisonment, without his ever having understood that he was not to engage in what otherwise is lawful behaviour. I am thinking now of the Indigenous population. I have read recent reports of the Human Rights Commission. Those reports say that up to one-third—I think it might even be higher—of Indigenous people in remote areas have a very poor understanding of the English language and often do not understand what is happening in court. I have cross-examined Indigenous witnesses. I have appeared in cases involving Indigenous people. Many of those people do not understand simple English. If our fellow Australians, the first occupants of this great land, are brought before a court, and they cannot sufficiently understand English to understand the PBO, how it is just that those persons can then be put on the path to imprisonment if they conduct themselves in what otherwise, in their general upbringing, would be lawful behaviour; for example, to go into the main street of Fitzroy Crossing? How is it being fair to these poor people to say that the purpose of this legislation is to bring about imprisonment with more certainty in cases of breach?

Mr C.C. PORTER: Well, I think that when we look at that clause in isolation, it does not give the most accurate picture of the safeguards that are built into the system. As we discussed yesterday, the only circumstance in which a PBO can be made ex parte is if a person has been personally served. There will always be instances in which a person will not turn up to court no matter the seriousness of the matter that may face that person in court. We have tried to put into place a system in which we hope in the overwhelming majority of cases people will turn up to a court and proceedings will be understandable to the individual who is appearing before court. That is a basic feature of any court proceedings. Then, under subclause (1), a court that makes the PBO must explain to the constrained person the purpose, the consequences, that the PBO may be varied and whether the PBO imposes constraints. Under subclause (2), if the constrained person is present, the court must give the explanation orally or in writing, and if the constrained person is not present, the explanation must be given in writing. Then there are provisions for those who do not readily understand English. The question is whether subclause (4) is a fair saving provision for those persons who fail to turn up to court personally to hear their PBO and are then later informed in writing; but, for one or other reasons, the mere fact that they were not given the explanation cannot be the basis for invalidating the PBO. It may be that the sorts of things that the member for Mindarie is now arguing will be the basis for invalidating a PBO, but they are not going to be sufficient conditions for invalidating a PBO.

Mr J.R. QUIGLEY: I am less concerned about people who fail to turn up when given a notice to turn up to court than I am with people who are present in the court. On the evidence of the Human Rights Commission of Australia, there is a large cohort of people, especially in remote areas, who fail to understand the proceedings in which they are involved.

Mr C.C. PORTER: How is that any different from sentencing? When we go back to the history that equates to a fair trial in Australia, in cases like Jago and the like it has been established that there a certain minimum procedural requirements that a court must engage in in its proceedings to ensure that matters are fairly put. Our courts do that very well in their proceedings. If the member for Mindarie is concerned about a person who may

be in court who may have an order made against them and, notwithstanding the best attempts at explanation by the court, there is a failure to communicate, that is a life problem that exists in all our courts across Western Australia with any number of proceedings, criminal and civil. However, by and large, our courts do a very good job, often with the use of interpreters to ensure that people understand the proceedings that have been brought against them.

Mr J.R. QUIGLEY: They do a varied job because under the commonwealth law, there is greater protection for people for whom English is a second language. Under commonwealth law —

Mr C.C. Porter: What law?

Mr J.R. QUIGLEY: Under commonwealth law it is incumbent upon the prosecution to establish, for example, when a person to whom English is a second language is being interviewed that the person actually understood the language in what was being put to them.

Mr C.C. PORTER: The member is talking about the rules for police interview that originated in the Northern Territory by the commonwealth—the name escapes me for the moment. Those rules are slightly different from those under our own legislation, but again our rules for video-recorded interviews do require that the person understand the caution that is provided to them. This encompasses their understanding of language, but it is a completely different issue from this.

Mr J.R. QUIGLEY: This is designed to constrain people unsophisticated to western society who would nonetheless, during their schooling and lifetime, learn, for example, that it is wrong to hit someone, to steal and to throw a stone. I accept that the level of sophistication for them to understand those matters only needs to be very basic; it is part of normal upbringing. However, understanding constraints against lawful behaviour that they have always been taught is perfectly okay to do and understanding that now a court is saying "Do not do it", it should be incumbent upon that court to satisfy itself, as a matter of law, that the person actually understands the PBO.

Mr C.C. PORTER: That is within reason, and that is why we have placed in this bill the provision at subclause (3) —

> If a constrained person does not readily understand English, or the court is not satisfied that the constrained person understood the explanation, the court must, as far as practicable, arrange for the explanation to be given to the constrained person in a way that the constrained person can understand.

There is always the need to balance requirements in judicial proceedings of any type; but it appears to me at least that is a very fair inclusion in this legislation and largely goes to obviate the problem that the member for Mindarie has identified.

Mr J.R. QUIGLEY: The Attorney General used the saving words "as far as practicable." We know that the courts go on circuits to these places that take them far and wide through country where people speak Indigenous languages. Would the Attorney General regard it as practicable to fly in an interpreter—because the magistrate flies in—or to halt the PBO proceedings until an interpreter who can explain those proceedings is flown in, or will the Attorney General say that is just not practicable and leave it to others to somehow explain it at some time?

Mr C.C. PORTER: The point I made to the member earlier is that there is a very substantial body of common law derived from the nature of a captive-free court, our Constitution, the meaning of a fair trial, cases such as Jago and others that relates to how courts must conduct their proceedings on the basis of minimal procedural fairness, taking into account those who do not readily understand English. The problems that the member have identified, as they relate to a court giving an explanation to someone who has just become the subject of a prohibited behaviour order, are the same problems that the courts have in those areas on sentencing. At the moment, while sometimes there are imperfections, the courts manage very well in explaining to Indigenous and other persons who have English language difficulties what is happening to them in court and what is the nature of the sentence. This is simply an adoption of the same practices that occur with sentencing.

Mr J.R. QUIGLEY: Given our recent jurisprudential history, would the Attorney General agree that the population that is going to bear the burden of these PBOs first and foremost will be our Indigenous population? It was the same with mandatory sentencing, was it not? The first case of mandatory sentencing was an Indigenous woman.

Mr C.C. PORTER: What "mandatory sentencing" is the member talking about? Is it the member's government's mandatory three-strikes sentencing or is it mandatory sentencing with respect to aggravated burglary —

Mr J.R. Quigley: Fair question!

Mr C.C. PORTER: — or his federal government's mandatory sentencing with respect to people smugglers, or is the member talking about this government's mandatory sentencing with respect to three strikes for assaulting a police officer?

Mr J.R. Quigley: Three strikes for assaulting a police officer? So you have to assault him three times before you are sentenced?

Mr C.C. PORTER: Sorry; the police officer legislation, which is this government's, is not a three-strike system. I had in mind the member's own legislation.

Mr J.R. QUIGLEY: It is a fair question that the Attorney General asked and I am referring to that legislation. The first people who were sentenced under that legislation to mandatory terms were Indigenous people from remote areas. Is that not true?

Mr C.C. PORTER: I am not sure that that is correct. I can find out for the member.

Mr J.R. Quigley: I am referring to the Indigenous lady up in Broome who in the course of a scuffle hit a police officer on the nose.

Mr C.C. PORTER: There was at least one instance in which a police officer's nose was broken by an Indigenous person.

Mr J.R. Quigley: I cannot remember the nature of the injury; I know it was bodily harm.

Mr C.C. PORTER: I can access those cases for the member. However, if the proposition that the member is putting is that our criminal justice system measured by levels of imprisonment disproportionately affects Indigenous people, then yes it does. When the member's government came to office, the percentage rate of Indigenous —

Mr J.R. Quigley: It was never my government. I was a backbencher in a government —

Mr C.C. PORTER: The government of which the member was —

Mr J.R. Quigley: I did not drive the policy of the government. I signed up for it, the same as your backbenchers.

Mr C.C. PORTER: The government whose policy the member for Mindarie did not drive had an increase in Indigenous rates of imprisonment of 34 to 41 per cent. That has deceased marginally under this government. Whether that will mean that these orders —

Mr P. Papalia: The percentage decreased? How many other blackfellas have been imprisoned in the last 18 months as a result of your government?

Mr C.C. PORTER: As a proportion of all the prisoners who went into prison, it is a lower proportion than was the case under the former government.

Mr P. Papalia: Forty-three per cent in the first 18 months was the answer that the Attorney General gave me, which is exactly the same.

Mr C.C. PORTER: No, not at all, because under the former government, to have moved from a 34 per cent rate of Indigenous imprisonment to a 41 per cent rate, all of the new policing practices that were adopted were clearly disproportionately affecting Indigenous people to the extent that they were increasing their representation in prison. To have reached 41 per cent the disproportionate impact of the policing must have been greater than 41 per cent in the years 2002 to 2008. The member raised a point but he is not terribly interested in the detail.

Mr P. Papalia: I am interested. I was referring to the disproportionate impact on Aboriginal people from the spike this government oversaw in the first 18 months of taking office.

Mr C.C. PORTER: That disproportionate impact was less than or equivalent to the same disproportionate impact the former government had over the total growth of prison population in its time in office.

Mr P. Papalia: The residual disproportionate impact was still there; then the Attorney General put the spike on top of it.

Mr C.C. PORTER: I do not think the member for Warnbro understands what I am putting to him. I understand the point the member for Mindarie makes. Whether Indigenous or non-Indigenous, I say again the legislation is targeted at recidivist offenders with a criminal record which indicates that they are of a high likelihood to reoffend against their local communities.

Mr J.R. Quigley: I was not talking about Indigenous and non-Indigenous in terms of population representation in the prison system but, rather, we have an Indigenous population in remote areas and English is their second language. We then have clause 4 that says it is not invalid merely because the constrained person was not given an explanation.

Mr C.C. PORTER: But of course equally, when looking at matters such as sex offending and other types of offending, one of the things we found was that Indigenous people who are offending in communities that the member has mentioned are often offending against other Indigenous people.

I recently attended two ministerial councils. One of them was the ministerial council for the reduction of violence against women. As a key performance indicator, they asked for the increased charge, prosecution and successful conviction of Indigenous men for assault, domestic violence and sex assaults. At the conference I attended the next day they asked for decreased percentage rates of Indigenous incarceration. They are two very difficult KPIs to simultaneously obtain.

To the member's point, I am not at all convinced this will have a massively increased impact on Indigenous individuals. This legislation is designed to look beyond ethnic status and target people who are serious recidivist offenders against their local community. I add to that I think the policing of this will be far easier achieved in metropolitan rather than regional areas.

Clause put and passed.

Clause 15 put and passed.

Clause 16: Term used: youth-related PBO proceedings —

Mr J.R. QUIGLEY: Clause 16 really just defines the words "youth-related PBO proceedings" in this division. It then goes on in that division to talk about the various considerations when dealing with a child. Given our international treaty obligations, especially the covenants and rights of the child to anonymity in criminal proceedings, what considerations has the government given to whether this is a flagrant breach of an international treaty lawfully entered into by the commonwealth of Australia? I understand the argument goes either way. Under the International Covenant on Civil and Political Rights there will be no arbitrary imprisonment or arbitrary detention. As I understand the mandatory imprisonment argument—although I do not accept it—it is not arbitrary because it is done in a court where everything is considered and it is only after conviction that a particular penalty will follow. But there does not appear to be any such argument available in relation to the publication of children's names. That is an article of the international Convention on the Rights of the Child, but they have anonymity in court proceedings.

Mr C.C. PORTER: There are a lot of rather complicated questions inside that question. With respect to publication, what provision of what international document is the member referring to as potentially being —

Mr J.R. Quigley: The international Convention on the Rights of the Child. I have forgotten the article number now. Is it Article 2? The Attorney General referred to it in his second reading speech.

Mr C.C. PORTER: Indeed; so we are on the same page. With respect to the other documents, are there other —

Mr J.R. Quigley: Why does the Attorney General say it is not in breach of that?

Mr C.C. PORTER: The reason it is not in breach is there is no international judgement or precedent which has said that that provision provides a blanket prohibition against publication of juveniles' details.

Mr J.R. Quigley: Does it need a judgement? Does it not speak for itself?

Mr C.C. PORTER: If only it were all that easy with covenants of civil rights, constitutions and so forth. There is no case that suggests that is a blanket prohibition. Our Children's Court of Western Australia Act allows for publication of children's details in a range of circumstances. My best understanding is that as a matter of international jurisprudence the provision the member cited has never been accepted or even argued to present a blanket prohibition on the publication of the details of children who are involved in the criminal justice system. That is reflected in our own legislation in Western Australia and elsewhere in Australia. I might also add that the United Kingdom, which has been regularly publishing such matters, is a signatory to that same treaty. It has never been successfully argued that those publications fall outside or are inconsistent with the provision the member just cited.

Mr J.R. QUIGLEY: Is the Attorney General aware of any challenge to that in an international court? Is there any case precedent of it?

Mr C.C. PORTER: The only case precedent that I am aware of is a case called Stanley v. Brent. That case was considered under a similar provision of the European charter of human rights. To cut a long story short, in that matter it was found that publication was not contrary to the relevant provisions; it was not a system designed to humiliate or shame the offenders; the publication was essential to the system; and so long as it was approached on a case-by-case basis with the application of judicial discretion it met all the requirements of that document. That is the only case I am aware of.

Clause put and passed.

Clauses 17 and 18 put and passed.

Clause 19: Court to take into account certain principles and considerations —

Mr J.R. QUIGLEY: Why is clause 19 limited to only subclauses (1) and (2) of section 46 of the Young Offenders Act, and not the other considerations?

Mr C.C. PORTER: They are the most relevant and directly applicable. The others relate to sentencing.

Mr J.R. QUIGLEY: It is the principle applied to young offenders. This is part of a sentencing process, is it not, because the application is made after the conviction but prior to the sentence?

Mr C.C. PORTER: It is not part of the sentencing process. It is a civil proceeding that procedurally is conducted parallel, more often than not, during sentencing processes where the sentencing is also being conducted. To be fair and cautious we have adopted those parts of the principles and considerations that are applied generally to young offenders in sentencing, which make sense to apply in a procedure that is a non-sentencing procedure, to the present PBO procedure.

Mr J.R. QUIGLEY: The Attorney General mentioned that the government had been cautious. Has the government given any consideration to the effect of the following, to which I have had personal experience? When the details of a young offender who is on the cusp of adulthood are published, we build a reputation for that person. In right-minded parts of the community, that person builds a reputation for being recalcitrant and therefore has to be watched. In other parts of the community, especially amongst that person's peers, he builds a gung-ho reputation and has to live up to that persona. I experienced this when I dealt with the minor disorderly offending of a young man. As soon as his offending was widely publicised, he had to live up to his reputation. What part has that played, if any, in the government's thinking in the framing of this bill?

Debate interrupted.

[Continued on page 6328.]