DANGEROUS SEXUAL OFFENDERS LEGISLATION AMENDMENT BILL 2015

Consideration in Detail

Resumed from 28 June.

Clause 20: Section 23 amended —

Debate was adjourned after the clause had been partly considered.

Mr J.R. QUIGLEY: Let me explain the opposition's attitude on this clause. The opposition said it would support amendments to the Dangerous Sexual Offenders Legislation Amendment Bill 2015, and it has. We will oppose this particular clause and on a division we will vote against it. As I was beginning to say last night before we were mercifully relieved of our duties by the Leader of the House, the opposition has foreshadowed a materially different clause 20. The material difference is to be found in the first paragraph of the opposition's amendment, which proposes to delete section 23 of the act and insert a new section 23. What the opposition has proposed will considerably stiffen up what is proposed in the amending legislation. It will take away from the court the option, once having found a breach, of amending or extending the supervision order and it makes it mandatory that a dangerous sex offender who has been released into the community on a supervision order and who then breaches any term of that order be returned to prison on a continuing detention order. That is the opposition's proposal in its new section 23. The opposition will be opposing the government's clause and inserting in its place what I have just read out, and for the reasons I have said, which is to considerably stiffen it up.

I will for a moment return to Ugle's case. As I pointed out last evening, consuming alcohol and drugs was a feature of Ugle's offending, and whilst in prison he was still taking illicit substances. Is it any surprise that once he was released from prison, he was found to do this again? I have read from His Honour Justice Fiannaca's judgement.

Mr P. PAPALIA: May I hear some more from the member for Butler, please?

Mr J.R. QUIGLEY: I set out in full measure, according to the judgement of His Honour Justice Fiannaca, the numerous times both inside the prison system and upon release that he offended by consuming cannabis. As I mentioned last night, the judge noted that the respondent underwent urinalysis tests on 17 July 2015 and tested positive and that he had previously returned positive urinalysis tests for cannabis on four occasions while in prison on 3 July 2008, 4 November 2009, 16 September 2013 and 28 October 2013. His Honour then states at paragraph 59 —

> In relation to his recent prison charge for cannabis use, the respondent stated that he had succumbed to peer pressure whilst experiencing stress related to his upcoming DSO annual review.

All that cannabis had been consumed while Ugle was in prison, and the reason he gave for consuming that drug in prison was that he was nervous about his forthcoming annual review for possible release. Perhaps he need not have been so nervous because he was released notwithstanding his cannabis use while in prison. When he got out of prison—surprise, surprise—he used it again. In opposing what is contained in the government's bill, which will give further discretion that could again allow for his release, changing the conditions perhaps—I do not know how we can change the conditions to make it any stiffer—and extending the term, the opposition says that that is not strong enough for the protection of the community. Despite what the government says, this is not what victims want. It was Ms Angela Johnston who stood on the steps of Parliament and complained. She was a rape victim and she said that Ugle's offending is linked to his use of illicit substances. He had used cannabis in prison and was released from prison, and he used it again and what happened? He was immediately released into the community on bail. Because I was somewhat scathing of the role of the so-called Commissioner for Victims of Crime, the minister said that there had never been a report by the Commissioner for Victims of Crime. I do not have anything personal against the officeholder, but in Western Australia we do not have an independent commissioner for victims. If we were to google "WA commissioner for victims", we would be taken to the Attorney General's website.

Mrs L.M. Harvey: Why do you keep attacking the commissioner for victims?

Mr J.R. QUIGLEY: I am attacking the role of the Commissioner for Victims of Crime. The minister says that this legislation had been produced after the commissioner for victims has consulted with all victims. That is simply not right. The commissioner for victims is a public servant working within the Department of the Attorney General; we do not have a separate commissioner for victims who could critique the legislation or the bill. When we go to the DOTAG website and click on "commissioners", it lists a lot of commissioners such as the Equal Opportunity Commission and the parliamentary commissioner for investigations et cetera. It does not list an independent commissioner for victims and there is no annual report of the commissioner for victims.

Let me tell members what has happened. When the minister said that this legislation has occurred after consultation with all victims, I rang Angela Johnston. She has said that on 1 December 2015—because she is

disturbed about this very clause—she had a meeting with Mark McGowan and then requested a meeting with the Attorney General Hon Michael Mischin on the dangerous sexual offender legislation.

Mr D.A. TEMPLEMAN: I am happy to allow the member for Butler to continue his conversation.

Mr J.R. QUIGLEY: She went to a meeting with the Attorney General and present at that meeting was the officeholder of the so-called Commissioner for Victims of Crime. She related to me that she had a discussion with the Attorney General, who told her that her demands and her requests were unreasonable, but there was no interplay with Ms Hoffman. Subsequently, Ms Hoffman emailed her a copy of the government's bill; she said that she would send it through and she did. Ms Johnston had a further meeting with Mark McGowan, because of her concerns about what was in this bill and what was happening with Ugle. She stated in an email that she had called Jennifer Hoffman three times and had left three messages on her mobile phone and that she never received a response so she then rang Mark McGowan who got back to her straightaway. She said that that was the reason she never contacted the Liberal government again or made any comment on the proposed bill. If Ms Angela Johnston is to be believed, and I do believe her, her telephone calls to the commissioner for victims met with absolutely no response at all. She then went through the amendments that I proposed that the government defeated last night and my proposed new section 23, which I propose in new clause 20. She said that she fully supports Labor's amendments to the dangerous sex offender legislation. The feedback from a rape victim is that she fully supports our amendment.

I now refer to the opposition's proposed new section 23, which states —

> If the court is satisfied, on the balance of probabilities, that the person who is subject to the supervision order is contravening, or has contravened, a condition of the supervision order, the court shall make a continuing detention order …

That person will then be brought up in the normal review. Why go to this length? We go to this length because in interpreting the legislation the judges have put their own burnish and gloss on it. I am not blaming them for doing that; they are entitled to interpret legislation. They have said, as I have previously indicated, that they have drawn from Director of Public Prosecutions (WA) v West, as quoted in Director of Public Prosecutions (WA) v Yates—this is all case precedent —

> … should choose the order that is least invasive or destructive of the respondent's right to be at liberty while, at the same time, ensuring an adequate degree of protection of the community …

That is why this amendment is necessary. When a supervision order is breached, there should be no question about that person going back into custody. Subsection (2) of our proposed alternative to section 23 states that if the court is satisfied on the balance of probabilities that the person who is subject to the supervision order is likely to contravene a condition of the supervision order, the court may make further amending orders or extend the time or decide not to make any order at all. That is in the case in which the court thinks it is likely that the offender will breach the order, not when he has breached the order; if he has breached the order, he should go back inside.

Before I resume my seat to give other members the opportunity to comment on this clause, we are opposing the government's clause in this case but we are not frustrating the government by throwing out the clause in its entirety; we are proposing to put in a stiffer clause as sought by the victims.

Mr R.F. JOHNSON: I am absolutely in favour of toughening up this legislation. I think that there may well be some flaws in it, but I want to ask the minister a question. In no way do I reflect on the integrity, capability and professionalism of the people sitting at the table, but could people be excused for thinking that there may be serious flaws in this legislation because the same people who are sitting at the table drafted my private member's bill that I introduced last week and the minister said that there were serious flaws in that bill? I do not believe that there are any serious flaws and I have complete confidence—let me say it again—in those people from the Department of the Attorney General who are sitting at the table. I always have done. The minister can smile and laugh, but she said that there were serious flaws in legislation that was produced by these same people—namely, my private member's bill. Does the minister think that people could be excused for thinking that there may be serious flaws in this bill because the same people drafted it?

Mrs L.M. HARVEY: I will say a couple of things about the member for Hillarys' comment. The first is that legislation is as good as its drafting instructions, and this legislation has already been through the Legislative Council. They are two completely different pieces of legislation. As I said, this legislation has taken a couple of years' worth of consultation, with several drafts. The member's legislation is something that we will come to when it is debated in this house, and I have grave concerns about that. It is no reflection whatsoever on the drafters. The drafters tend to follow the instructions that are given to them. With respect to this amendment —

Mr R.F. Johnson: What kind of serious flaws, minister?

Mrs L.M. HARVEY: As I said, I will get to the member's legislation when it is debated.

Mr R.F. Johnson interjected.

Mrs L.M. HARVEY: We are debating the legislation that is in front of the house at the moment. The reason that the government does not support this amendment is that efficient arrangements to ensure the swift return of offenders into custody are already in place if those offenders present an increased risk to the community. The contravention proceedings in section 24A of the act are triggered, which allows a swift return to custody. The government introduced this provision in 2011 to tighten up the legislation. I am advised by the Attorney General that the proposed new clause may be incompatible with section 24A of the act, which is part of the reason that he advised me that it is not desirable to accept the member's amendment. The other part to the government's rejection of this amendment is that it will remove the court's capacity to continue an offender on a supervision order when that offender has contravened or is contravening a supervision order, even when it may be impossible for the offender to comply with some elements of a supervision order. It is not appropriate to have a catch-all in there. As we heard about the McGarry example last night, even though the court had determined that it may have been appropriate for McGarry to be under a supervision order, it was found that the circumstances in which he would find himself upon his release would not be conducive to him being able to comply with a supervision order. Given that there is the potential for incompatibility with section 24A of the act, which provides for an opportunity to return an offender to detention, the government will not support the member's amendment.

Mr R.F. JOHNSON: This will be the last time that I get up on this clause. I want to make it quite clear that I believe the minister misled Parliament in her comments earlier. This is a much, much more complicated bill than a simple six-clause bill that would preclude people from driving via a life ban. This bill has 58 clauses, and I can understand that there might be one or two flaws; that happens from time to time. That is why both houses look at bills. If we send legislation from here to the upper house, it is often amended, and the other way around. That is the benefit of having two houses—although it is becoming a bit of an anomaly these days because the upper house seems to rubberstamp whatever the government wants. The minister said that there were serious flaws in a previous bill with six clauses in it. The same people who drafted that simple six-clause bill are the people sitting at the table today. I have confidence in them, but the minister obviously does not because she said that the previous bill has serious flaws. She has not conveyed what those serious flaws are, which casts aspersions on the very professional people who are sitting at the table of the house. I think that the minister should apologise to those people and to Parliament for making those disgraceful comments about the people who drafted my bill.

Mrs L.M. HARVEY: The member for Hillarys made one valid point, which is that this is a very complex and finely balanced piece of legislation.

Mr R.F. Johnson interjected.

Mrs L.M. HARVEY: It is the result of a comprehensive review of the existing legislation. It has been through several drafts and through the Legislative Council. Putting in these amendments will throw that balance out. I am advised that these amendments —

Mr R.F. Johnson interjected.

The ACTING SPEAKER: Member!

Mrs L.M. HARVEY: I am advised that these amendments may be counterintuitive to other sections of the legislation, which is why we do not support them. With respect to the member for Hillarys' legislation, we will come to that when it is debated in this house.

Mr R.F. Johnson: Tell them what the flaws are; tell the people at the table because they're the ones you insulted!

Mrs L.M. HARVEY: I will explain very clearly why the member's legislation is unworkable when it is debated in this house.

Mr J.R. QUIGLEY: I have three questions. Since section 24A of the act was introduced, firstly, how many applications have been made by the Director of Public Prosecutions under that section for cancellation of supervision orders? Secondly, how many applications have been made by the Attorney General under section 24A? Thirdly, since section 24A was introduced, how many times have orders been made under that section on applications for review by either the Attorney General or the DPP?

Mrs L.M. HARVEY: The member will have to put that question on notice. I do not have that information available.

Mr P. Papalia interjected.

The ACTING SPEAKER: Member! The question is that clause 20 be agreed to. Clause 20 is about an amendment to section 23, not an amendment to section 24.

Mr P. Papalia: Are you giving me the call?

The ACTING SPEAKER: Absolutely, member for Warnbro.

Mr P. PAPALIA: With respect to the clause that is under consideration regarding making orders that amend the conditions of supervision orders for dangerous sex offenders, since this government took office in September 2008, how many dangerous sex offenders have breached conditions for their release? Of those, how many have been returned to prison?

Mrs L.M. HARVEY: The member would need to put the question on notice. I do not have a detailed analysis or report of every single statistic that the member is asking for. The member needs to put questions like that on notice. Alternatively, if he had sent me an email perhaps this morning, I could have collected that information for him, but I do not have it to hand. The member needs to put it on notice.

Mr P. PAPALIA: This bill has gone through the upper house after full debate and consideration, and the minister has brought this bill and her advisers to this chamber. Our questions are directly related to the reasoning behind her justification for this bill being amended, which is dangerous sex offenders being released and then breaching their conditions. The government is incapable of dealing with that situation. The minister is trying to justify the changes that the government has brought to this place on the grounds that it will make it more difficult for that to occur and it will respond in a more forceful fashion. The opposition has moved amendments that the government is rejecting, which are far more forceful than the ones it is introducing, and the minister is incapable of providing us with the most basic information. This is not difficult. This is the most simple, basic information that the minister must have been aware of when drafting this bill. She must know how many dangerous sexual offenders have been released from prison under her watch. She must know how many have breached their conditions, she must know how many conditions have been breached and she must know how many DSOs have been returned to prison. If she does not, her government is totally incompetent.

Mr J.R. QUIGLEY: The minister raised the question of balance. She said that allowing the opposition's new clause to be passed into law would run contrary to the balanced provisions in section 24A. Section 24A states —

> The court must not release the person —

This is on a section 23 review —

> unless —
>
> (a) the court is satisfied, on the balance of probabilities, that releasing the person is justified by exceptional circumstances; or
>
> (b) the DPP consents to the court releasing the person.

On how many occasions has the Director of Public Prosecutions consented to the offender being released when he is before the court on section 23 reviews because of contraventions?

Mrs L.M. HARVEY: As I said, I do not have that data available at this point. If the member had given me some notice, I could have collected that data for him. It was not asked for during Committee of the Whole in the other place, so I did not request the agency to make that information available for consideration in detail. I can get that data for the member if he would like to put the question on notice, but I do not have it available now.

Mr J.R. QUIGLEY: It was this question of section 24A that the minister said precludes the government from allowing proposed clause 23 to come into effect. It was her argument that because of what has happened under section 24A, the government could not support the considerably stiffer requirements that we propose. Under section 24A, a person who is brought on for contravention proceedings cannot be released unless there are exceptional circumstances to justify the release or the DPP consents. The minister cannot tell us whether there has ever been such a case. We know there have been cases in which people have contravened and been released. Did the DPP consent in those cases—for example, Ugle?

Mr P. PAPALIA: It is possibly not the minister's responsibility but is she telling us that the Attorney General drafted these amendments and he did not know how many DSOs had been released since 2008, he did not know how many had breached their conditions and he did not know how many had been returned to prison as a consequence? Is that the case?

Mrs L.M. HARVEY: As I said, I do not have that information with me in my file. I am sure that the Attorney General did all the appropriate research as part of that consultation process and the review of the legislation, but I am advising the member that I do not have that information to hand because I did not expect to be asked for detailed statistical information and I have not had time to collect it.

Mr P. Papalia: So your advisers are not aware of that information.

Mrs L.M. HARVEY: We do not have the statistical data with us. The member may like to put the question on notice. If he had sent me an email earlier today, I could have retrieved that information. It is not part of the file that I have. My advisers do not have it to hand. I am sure that that information was considered as part of the review process and as part of the drafting process because generally statistical information like that is considered. I am advised that sections 23 and 24 are in use. It is a usual procedure of the court as part of the process of dealing with these dangerous sexual offenders that those two clauses are used. I do not have the exact number and the outcomes of those applications. Had the member given me some notice that he required that information, I would have happily retrieved it for him but I do not have it with me so it needs to be put on notice.

Mr P. PAPALIA: We are in the midst of consideration in detail. I will ask the minister one other question. Does she know how many dangerous sex offenders are on the streets of Western Australia right now under this legislation that the government is amending?

Mrs L.M. HARVEY: I have the second reading reply of the Attorney General. On 30 September 2015, 46 offenders were subject to orders under the DSO act, 22 offenders were subject to detention orders, and 24 offenders were subject to supervision orders, which is a significant increase from the year the legislation commenced, when only three offenders were subject to orders. In the 2014–15 financial year, there were three contravention proceedings for DSO act supervision orders, the highest number on record being four proceedings in 2009–10. Since the commencement of the act, a total of 10 DSOs have had their supervision orders cancelled as a result of contravention proceedings. The first incidence of a cancellation occurred in the 2007–08 financial year, with at least one contravention proceeding resulting in a supervision order being cancelled every year since 2009–10. The year 2014–15 recorded the highest number, with a total of three. In addition, since 2006, four contravention proceedings have resulted in amendments to supervision orders, two occurring in 2009–10 and one in each of 2010–11 and 2011–12. These figures do not include DSOs who are subject to the DSO act's section 40A proceedings for minor or less serious offenders such as technical breaches of DSO act orders. I hope that helps to clarify.

Mr P. PAPALIA: The minister read that very quickly. Is it possible to get that document —

Mr J.R. Quigley: That is the *Hansard* she is reading.

Mr P. PAPALIA: Okay. I was trying to get my head across what the minister said. Ten orders have been cancelled in the years to which she referred. What was the number that has not been cancelled but has breached conditions?

Mrs L.M. HARVEY: I do not have the total number of breaches. Since the commencement of the act, 10 dangerous sexual offenders have had their supervision orders cancelled as a result of contravention proceedings.

Division

Clause put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the noes, with the following result —

Ayes (33)

Mr P. Abetz	Mr J.H.D. Day	Mr R.S. Love	Mr J. Norberger
Mr F.A. Alban	Ms E. Evangel	Mr W.R. Marmion	Mr D.T. Redman
Mr C.J. Barnett	Mr J.M. Francis	Mr J.E. McGrath	Mr A.J. Simpson
Mr I.C. Blayney	Dr K.D. Hames	Ms L. Mettam	Mr M.H. Taylor
Mr I.M. Britza	Mrs L.M. Harvey	Mr P.T. Miles	Mr T.K. Waldron
Mr G.M. Castrilli	Mr C.D. Hatton	Ms A.R. Mitchell	Mr A. Krsticevic *(Teller)*
Mr V.A. Catania	Mr A.P. Jacob	Mr N.W. Morton	
Mr M.J. Cowper	Dr G.G. Jacobs	Dr M.D. Nahan	
Ms M.J. Davies	Mr S.K. L'Estrange	Mr D.C. Nalder	

Noes (18)

Ms L.L. Baker	Mr D.J. Kelly	Mr P. Papalia	Mr P.B. Watson
Dr A.D. Buti	Mr F.M. Logan	Ms M.M. Quirk	Mr B.S. Wyatt
Mr R.H. Cook	Mr M. McGowan	Ms R. Saffioti	Mr D.A. Templeman *(Teller)*
Ms J.M. Freeman	Ms S.F. McGurk	Mr C.J. Tallentire	
Mr W.J. Johnston	Mr M.P. Murray	Mr P.C. Tinley	

Pairs

Mrs G.J. Godfrey	Mrs M.H. Roberts
Ms W.M. Duncan	Ms J. Farrer
Mr B.J. Grylls	Mr J.R. Quigley

Clause thus passed.

Clauses 21 to 27 put and passed.

Clause 28: Section 33 amended —

MR P. PAPALIA: I move the following amendment standing in the name of the member for Butler —

Page 21, after line 21 — To insert —

(2A) A court may only make a supervision order under subsection (1)(b)(ii) if the court is satisfied that the offender will comply with the conditions stated in the order.

(2B) The offender has the onus of satisfying the court as described in subsection (2).

(2) In considering whether to make a supervision order under subsection (1)(b)(ii), the court must disregard the fact that the person will be subject to electronic monitoring if a supervision order under subsection (1)(b)(ii) is made.

Once again, minister, this amendment is almost a replication of earlier amendments, and it is made in the same context. We believe that there is nothing in this amendment that should concern the government. This amendment will stiffen the legislation and the response to dangerous sex offenders. We believe that dangerous sex offenders should be obliged to make their case. Currently, when the courts are considering the release of a dangerous sex offender, it is possible for the offender to remain silent and provide no indication of their intent or willingness to comply with the conditions that have been imposed upon them. Also, as I said last night, when this government came to office, it cancelled the only deniers' program that existed in this country at the time, and certainly the only deniers' program that is offered to sex offenders in our prison system. Therefore, there is a possibility—in fact, it is not just a possibility; there is a probability that these serious sex offenders will go through their entire prison system in complete denial that they have ever done anything wrong. There is a probability that individuals will be convicted and incarcerated and serve out their sentence and not engage in any rehabilitation at all and, in fact, never take even the most fundamental step towards rehabilitation—that is, to acknowledge that they have done something wrong. These offenders do not concede that they have hurt a victim. That is because they do not believe there is a victim. They see themselves as a victim.

It is highly likely in those circumstances that those offenders will reoffend. We have seem advice provided to the courts during consideration for the release of dangerous sex offenders that indicates that it is likely they will reoffend. It now looks as though a person has gone out and reoffended while they were on a release order. We as a state are not compelling these individuals who want to be released—having potentially gone through their entire sentence and having denied at all times that they have ever done anything wrong—to come before the court and state their case or at least say that they did something wrong. We are not putting them in a situation in which they have to confront the extent and nature of their crimes and take some onus of responsibility for convincing the court that they should be released. What we have, instead, is a situation in which offenders can come before the court, remain silent, and potentially be deniers, and, by virtue of the process—which the minister is not choosing to change—can be released. The amendments that the minister is making with respect to time frames for reconsideration and the like do not change the fundamental point that these people can come before the court, say nothing, provide no evidence, provide no argument to suggest that they have learnt a lesson or are willing to undertake a rehabilitative process, and be released. I would have thought that the government would grasp the option that is provided by way of this amendment, via the opposition, with bipartisan support, as an opportunity to provide a tougher set of criteria.

Dr A.D. BUTI: I would like to hear more from the member for Warnbro.

Mr P. PAPALIA: I would have thought —

Mr J.H.D. Day: Where is the member for Butler? Why is he not doing this?

Mr P. PAPALIA: He is off to the toilet or something. It is nice for the Leader of the House to return to the chamber, it is nice of him to be here. Where is the Minister for Corrective Services? Does he not have any responsibility in regard to this legislation, having made the claim in public that he would keep people in prison and throw away the key were it up to him, but he cannot do anything. Last night we heard that the Minister for Police, having herself gone into the public domain and made that same claim, was not telling the truth. The Minister for Police was not telling the truth, the Minister for Corrective Services was not telling the truth and the government was not telling the truth. The government has the ability to intervene, the Attorney General has just not bothered. The Attorney General has let dangerous sex offenders back on the streets without even bothering to intervene. The minister can interject anytime she wants and I will respond. The government has let dangerous sex offenders back on the streets and the Attorney General has failed to act. The Attorney General, the indolent individual in the upper house, has failed to get off his backside and intervene in the process. He has failed consistently. We have been waiting for some action for two years and three months. We finally get this legislation in place and we find here that the government could have acted all along, but that it has failed to act. The minister can interject anytime and I am happy to respond.

In the meantime I will get back to the debate, because that is what we are doing—consideration in detail. We are providing the government with the opportunity to respond and stiffen up the legislation surrounding these dangerous sex offenders, who it has been releasing without even bothering to intervene, while at the same time going out into the community and pretending that it cares—suggesting that if only it could intervene under the legislation, it would have. We know the government could have; we know the Attorney General could have, but he has not. We are providing the government with an opportunity to be more rigorous in its pursuit of retaining these individuals in prison. They are a threat to society. That is what is deemed by the courts. They have been deemed a threat. What the government has been doing and what it suggests we should continue to do is not do everything possible to ensure those people are not released onto the streets if they are still a threat. We can do more. We can compel them to participate, we can compel them to convince the court and we can compel them to show us what they have done—to state their case and to at least acknowledge what they have done. There are people who will be released who are deniers and who have not done that. We have introduced several basic amendments to the legislation that do not alter its finely tuned nature. I am very interested to note that the minister has dropped that argument. Last night on many occasions the minister referred to the finely tuned nature of the legislation and that we could not destabilise the finely tuned nature of the legislation. I have no idea what that meant. I have no idea what the minister was suggesting by that argument, but I note that she has dropped it this afternoon. The arguments were a little more robust with respect to specific clauses that our proposals might contravene or create difficulty with. I do not buy it; I am not convinced at all. We are not changing what is in legislation; we are just adding additional processes to enable these individuals who are a threat to society to make their case and imposing on them the onus of satisfying the court that they will comply, rather than just assuming that they will comply—rather than the court assuming that if enough conditions are put on these individuals, the risks will be mitigated to the extent that they might not offend. However, as has possibly been seen, it does not look as though that is the case. It looks as though no matter how many conditions are imposed upon these people, some of them will still offend and still be very much a threat. We are providing the government with the opportunity to raise the bar a little bit when those people come up for consideration. Instead of lowering the bar and going for the spin in the media, put the bar a little higher.

Dr A.D. BUTI: I will contribute to the debate here about the proposed amendment to clause 28 in the name of the member for Butler. I assume that this legislation has been brought to the house because, as we know, there have been concerns and problems with regard to dangerous sex offenders. In the second reading speech and so forth the government stated that it wished to tighten the legislative framework for how dangerous sex offenders are managed. I would not have thought that this amendment we have proposed would be offensive. I will just wait until I have the minister's attention. The Leader of the House is obviously still shaken by the Premier overruling him this morning. I would have thought that the government's motivation behind the legislation before this house and the debate that ensued is to ensure, fundamentally, that the legislative framework for the management and control of dangerous sex offenders is improved and community safety is at the forefront. I am not really sure why the minister would not agree with this amendment. Maybe she will; she has not stated that she will not agree to the amendment put up by the member for Butler.

Mrs L.M. Harvey: No, we are not going to agree to the amendment.

Dr A.D. BUTI: I have not finished. I have not answered the question. I am in the debate, but I thought I would wait.

Mrs L.M. Harvey: You were pausing. I was distracted by the noise over there.

Dr A.D. BUTI: I do not know how the minister could have been distracted by the noise when she was talking, but anyway.

I do not see why there is anything in this amendment that is offensive to the minister. The amendment states —

> Page 21, after line 21 — To insert —
>
> (2A) A court may only make a supervision order under subsection (1)(b)(ii) if the court is satisfied that the offender will comply with the conditions stated in the order.

Why would the minister oppose that? Why would the minister oppose the following amendment? It states —

> (2B) The offender has the onus of satisfying the court as described in subsection (2).

The final part of the amendment states —

> (2) In considering whether to make a supervision order under subsection (1)(b)(ii), the court must disregard the fact that the person will be subject to electronic monitoring if a supervision order under subsection (1)(b)(ii) is made.

With regard to that final point, as the minister should also understand, there was much debate about whether electronic monitoring systems were being used to improve the chances of a serious sex offender being released from prison. All that amendment is trying to state in explicit statutory terms is that that is not to be taken into consideration. I would have thought that considering the history of serious sex offender cases over the last couple years, the minister would applaud such an amendment that states in clear language that the court must disregard the fact that the person would be subject to electronic monitoring. One could understand a judge thinking that there will be an electronic monitoring system so the community will be safe. Clearly, that is not the case. This amendment puts in statutory terms that the court must disregard that. Considering the whole issue of and the political and public debate on serious sex offenders in the last couple of years, I would have thought that the minister would applaud such an amendment. If the minister is opposed to this amendment, she is surely only opposed to it for pure political reasons. The minister's approach is classic in not consenting to anything the opposition puts up. When I was debating the Mental Health Bill with the now Minister for Mental Health, she agreed to certain amendments because in the end we are here as legislators to ensure we produce the best piece of legislation for our communities. It is not always just about making political points. But that is the way the minister operates—she will never, ever concede anything to the opposition—and that makes for poor legislation. There is nothing in this amendment put up by the member for Butler that she should be opposing.

Mrs L.M. HARVEY: Just to address some of the issues raised by the member for Armadale, this legislation has come forward as a result of two reviews, the first in 2011 and the second in 2014. The second review of the DSO act was specifically to look at the process of applying to the court for a continuing detention or supervision order under the DSO act; the length of time between periodic reviews of detention; the possible consequences of contravening a supervision order, including the granting of bail to the person charged with such a contravention; and the process and penalties for dealing with contraventions of supervision orders. Some amendments were made in 2011 as a result of the first review, as I understand, and now we are looking at amendments in response to the review in mid-2014. That is what the amending legislation is here for today—specifically in response to the review around those four areas.

With respect to this amendment, the advice I have is that the court's task is the same regardless of who leads the evidence or has the onus of proof. We can go to any jail and get a convincing argument from any offender that they are innocent, that they should be released, and that they are on the right track to be good citizens. If the onus of proof is placed upon them, how do we document or quantify that? The legislation is quite clear, particularly in section 33, under which, if a court does not find that a person remains a serious danger to the community, it must rescind a continuing detention order. If the court finds that the person remains a serious danger to the community, it must affirm the continuing detention order or, with effect from a date specified by the court but not earlier than 21 days after that on which the review was concluded, rescind the continuing detention order and make a supervision order in relation to the person. The paramount consideration is always the protection of the community, and the ability to manage an offender in the community or, if a supervision order will not provide that assurance of community safety, provide for a continuing detention order.

Whether the offender can put forward a cogent argument, and the onus is on the offender to prove that they can comply with a detention order is immaterial. It is up to the court to determine whether the offender can comply with the continuing detention order. That is why we have expert reports from psychologists and psychiatrists who can determine whether the offender has an ability or a willingness to comply with a supervision order, should that be ordered by the court. Putting the onus on the offender does nothing to sway the court's primary responsibility in considering whether the offender should be held in detention or released under supervision, because that primary consideration always needs to be the safety of the community. Watering that down or

changing one of the considerations and having the onus go back onto the offender is immaterial to the consideration of the court, and that is why I am advised that we will not be supporting this amendment.

Mr P. PAPALIA: The minister has just made an argument to enable dangerous sex offenders to avoid making their case to the courts prior to their release. She has spoken up on behalf of dangerous sex offenders.

Mrs L.M. Harvey: I have not.

Mr P. PAPALIA: Yes, she has; she just said that she does not believe they should be compelled to make their case.

Mrs L.M. Harvey: What I said was that they can quite easily make a very sound case to plead for their freedom, saying that they are a decent person.

Mr P. PAPALIA: Is the minister sure of that? That is why so many of them remain silent when they go before the courts for these releases.

Mrs L.M. Harvey: It is up to the court to determine whether community safety will be compromised upon their release. There are very convincing DSOs out there. If the onus of proof is on them, they could argue quite vehemently for their release.

Mr P. PAPALIA: I look forward, minister, to asking the people of Western Australia whether they think, at the very least, that dangerous sex offenders should be compelled to make their case before the court prior to their release. I would like to find out what people think about that, because I reckon that the vast majority of people would say that that is not too big a task; that is most probably the very least that we should expect of these guys if they want their freedom back. Noting that they will be compelled to comply with 48 conditions or whatever, because they are such a threat, noting that nobody wants them living next door, and noting that the Minister for Police and the Minister for Corrective Services have said that they should not even be released, I would have thought, in light of all the minister's arguments on behalf of the dangerous sex offenders, that even the smallest of obligations should be imposed on these people. I reckon that most people would agree that that is quite a reasonable thing.

That is a reasonable argument to make—at the very least, they should be asked to justify their release. They should be asked to state something before the court. They should be asked to do something to demonstrate that they have been rehabilitated to the extent that they are no longer a threat, or at least will comply with the obligations and the orders, because, as I stated before, the government removed the deniers program—the only program in the prison system that dealt with people who denied that they had done anything wrong. The government has removed that. There are people who are convicted, go to prison, serve their sentence, comply with no obligations to participate in rehabilitation and, at the end of their sentence, are released into the community, and the minister is not even going to ask them to say anything before the court. The minister is defending their right to silence before the court. Whether the minister likes that or not is immaterial. As opposed to what she is saying is immaterial to the court, I would say it is immaterial whether she likes it or not. The Barnett government is making the case on behalf of dangerous sex offenders that they should not even have to speak before the court prior to their release. That is the bottom line of our amendment. We are saying that the bar should at least be raised that high. The minister is speaking on behalf of the dangerous sex offenders, and defending the status quo. Nothing in this bill changes the compulsion upon them to speak before the court and make their case, so the minister is defending the status quo with respect to how they behave before the court prior to their release.

Mrs L.M. HARVEY: If I can respond, that is absolutely not what I am doing. I would say that I would have faith in a psychiatrist or an expert forensic psychologist and the court making an assessment of whether a dangerous sexual offender is a risk to the community as their primary consideration. If the opposition's amendment was actually intended to compel a DSO to speak, we would probably support it, but that is not what it will do. Court proceedings are full of expert witnesses. This amendment would open up an opportunity for a DSO to find an expert witness to prove that they are a decent human being and should be released. Quite frankly, I am not really interested in what a DSO has to say about whether they are being released or not. I am concerned that if the court has consideration about community safety, and it is done with the assistance of independent expert psychiatrists and psychologists, it can determine whether the offender will be a risk to the community and should be contained on a continuing detention order, or whether they can be managed in the community. My view is that the court needs to make this decision, and whether an offender wants to make a plea to the court is immaterial. As I said, courtrooms and jails are full of very convincing offenders who all believe that they are innocent and who all believe that they are on the right track. I think that putting the onus on them to speak may in fact shift the court's priority from that key priority of putting community safety as the paramount consideration to putting some kind of priority over what the offender has to say. I am more interested in the expert witnesses and the independent assessment of the court.

Going back to the member's earlier comments about my comments to the effect that I would love to lock these offenders up and throw away the key, the Constitution prevents us from detaining someone indefinitely, beyond the term of the court-imposed sentence. That is the inhibition, member for Warnbro. That is the prohibition on being able to keep these people detained indefinitely. Please, if the member is going to quote me and say that I am misleading or telling untruths, my comments on this matter have been—other states have looked at this as well—that we cannot detain people indefinitely in custody under the Constitution. If we could, we would do it.

Mr J.R. QUIGLEY: That is simply not right. Under the Criminal Code, at the end of a case a prosecutor can apply for an indeterminate sentence. As the Attorney General pointed out in the other chamber, there is a difference between detention orders and supervision orders. As the minister knows from reading the transcript—as I know she would have so that she could mouth his words—he said, quite correctly, that a detention order is for an indeterminate period and a supervision order is for a fixed period. As to the minister's proposition that, firstly, a person cannot be detained after sentence, the High Court has approved this legislation. A person can be detained—the minister is wrong. In fact, this whole legislation is about detaining someone after the expiration of their sentence.

Mrs L.M. Harvey: But only with the review provision in it. If the review provision was removed, the High Court would not approve this legislation, and the member well knows that.

Mr J.R. QUIGLEY: Of course. But the proposition put by the minister was the Constitution bars us from holding someone after their sentence.

The Minister for Police came out with this piece of puff saying, "I'd throw away the key", but what she can do, and what I asked her to do last night, was ask the Attorney General to bring an application under section 22 or section 24A, pursuant to his powers in section 6, to cancel the supervision order, which will see him go back in and be subject to reviews. The minister's reply was, "No, I would not do that—no." The minister cannot say, "If it was up to me, I'd throw away the key, but the Constitution is preventing me" when the government's own legislation provides a mechanism for Lyddieth's supervision order to be cancelled and for him to go back and be subject to what will now be biannual reviews.

Is this system working? The minister asks: what would it add to the system if the accused had to carry an onus of proving something? I will return to the case of Wimbridge. Before returning to the details of the case of Wimbridge, I wish to stress that Mr Wimbridge has been charged with an offence. Mr Wimbridge is entitled to the presumption of innocence in relation to the very serious offence of rape that he has been charged with. That is not the point. I did, however, make a slip last night and referred to the word "rape" without putting the word "alleged" in front of it. For that, I apologise to this chamber. I should have said "alleged"; it was late at night and I dropped off the word "alleged". I had previously made it clear that Mr Wimbridge was entitled to the presumption of innocence.

Having said that, let us look at the Supreme Court judgement concerning Mr Wimbridge. In 2008, Justice Jenkins found that Wimbridge was not suitable for release on a supervision order and ordered that he be detained in custody. In 2009, Justice Hasluck confirmed that decision at Wimbridge's annual review and would not release him. In 2010, because of his continual incarceration, Justice Blaxell released him on a supervision order but made a strict supervision order. What happened? In 2011, Wimbridge was brought back before the court for breaching the supervision order in five ways. Firstly, he failed to disclose to police that he had taken possession of a motor vehicle and an internet-capable telephone, which he was required to inform police of. Secondly, Mr Wimbridge was evasive in relation to revealing details of an intimate relationship and he breached a condition that allowed officials to interview any associates.

Mr P. PAPALIA: I would very much like to hear more from the member for Butler.

The ACTING SPEAKER: I thought you might!

Mr J.R. QUIGLEY: Thirdly, Mr Wimbridge possessed pornographic material. Fourthly, Mr Wimbridge breached a condition not to use alcohol. Fifthly, Mr Wimbridge breached a condition not to communicate with prostitutes or exchange messages with prostitutes. The court went on to note that as a result of these breaches, his supervision order was cancelled. The judge noted that Mr Wimbridge met the diagnostic criteria of an antisocial personality disorder. This was indicated by Mr Wimbridge's failure to conform to social norms with respect to lawful behaviour, deceitfulness manifested by infidelity in offending, impulsivity, aggressiveness and irresponsibility.

Dr Hall assessed Mr Wimbridge as being at high risk of reoffending. What happened? During this time, Mr Wimbridge was meant to be taking antilibidinal medication. The judge noted that Mr Wimbridge ceased to use the antilibidinal medication on his return to prison in March 2011, but recommenced the taking of the medication in January 2012. That was a matter of weeks before his case was due for review. Does the minister not think that a judge or the Director of Public Prosecutions would want to cross-examine him about why he stopped taking his medication for a year and only recommenced it weeks before he appeared before the court?

His Honour went on to note that some minor modifications had been agreed between counsel for the applicant and counsel for Mr Wimbridge—that is, counsel for the DPP consented to him being released. I pause here for a moment to once again stress that Mr Wimbridge is entitled at this stage to the presumption of innocence. In his judgement, His Honour went on to say —

> In my view, it is not desirable for Mr Wimbridge or for the community for Mr Wimbridge to be held in custody for the rest of his life —

Listen to this bit —

> if conditions can be set to ensure that on release the community is adequately protected.

I suppose the answer to the question about whether this system has failed or not can only ultimately be determined at the end of Mr Wimbridge's current court case. The judge said that the court would set conditions to ensure that the community was adequately protected. The police, however, have made a very serious allegation against him—I stress "allegation"—that he raped someone whilst out on these conditions. The Minister for Police's response to that was, "What good would it do for these people to have to establish to the court that they will comply?" These people do not give a hang. No-one puts them to the sword, no-one puts the acid on them, no-one cross-examines them, and they never have to come forward and publicly apologise to their victims. They never have to express public remorse or give some flicker of sincerity or resolve not to do it again. The minister just says that that is all rubbish; it is all about the paramountcy of community safety and that what Labor proposes—which is supported by the victims—is unnecessary. His Honour said on releasing him that it would be undesirable to keep him in prison so long as we could put out conditions that would ensure that the community is adequately protected. On the police allegation against him, this system has failed! Whether the police are right remains to be seen in court.

Mr R.F. JOHNSON: I support this amendment. I have to say, in general terms, that this is the weakest legislation on dangerous sex offenders that I have ever seen. It basically does only a couple of things. The legislation will stretch out the time for the review of whether to let a person out of prison from one year to two years. The other area that the legislation covers is that before the decision is granted, the police will have to be given 21 days' notice, so the offender can be registered on the sex offenders website list. Those are the two main areas that this legislation covers. I am staggered that this amendment did not come from the government side of the chamber and that it is coming from the Labor Party. I find that strange because it is normally the Liberal Party that is really tough on this sort of offender, and, in my view, we cannot be tough enough on dangerous sex offenders.

The problem is that we have this stupid system in place in which offenders have to be reviewed. I think we should follow the United Kingdom and American examples in which a person can be sent to prison for 40 years. If we have a really dangerous sex offender, for whom, in the words of the Minister for Police, we should throw away the key, to some extent if we put them away for 40 years, we do throw away the key. That is what we should be doing because these dangerous sex offenders should never be let out. They have that system in the UK and in America. America has sentences of 125 years; probably for doing lesser offences than those some of our dangerous sex offenders in this state have done. Yet here we are namby-pambying around. Quite frankly, if Christian Porter was still the Attorney General, he would probably accept this amendment because he was a lot tougher on criminals. I think the government is showing tremendous leniency towards these dangerous sex offenders, and it should not be. If members talk to the general public, they will be told that these sorts of people should never be let out of prison. I am saying that their sentences should be 40 years minimum. But, obviously, we will not be doing that under this Attorney General.

I defer to the legal competence of the members for Butler and Armadale, who have extensive legal knowledge—more than any member in this chamber I would suggest—and I defer to their comments. I often cross swords with the member for Butler over legal issues and law and order issues. I am normally really hard and I have always thought that he has been a bit soft, but I think that he has come round to my way of thinking now, because he has put forward an amendment that would toughen up this legislation and make it much safer for the community. The community is who we should be considering. I know what I will go to the next election with; I will go with the amendments that should have been supported in this chamber. The minister will not accept the amendment—I can tell members that for a fact, because only the Attorney General would sanction that, and he will not do that—which is a great shame. It is these sorts of decisions and this very weak legislation that I think will bring the government down at the end of the day.

Dangerous sex offenders are a curse on our society, a danger not only to women and men who might be sexually assaulted in a violent manner, but also the children in our society, and they are the people whom we have to look after more than anybody. Some of these dangerous sex offenders are now raping women of 85 years or 90 years. For God's sake, what sort of depraved action do these people have to do to get put away for life, which is where the public want them to be and where I want them to be? The community does

not want them to be released from prison under supervision orders that very often they do not abide by. Time and again we have seen those people not only let out on supervision orders, but let out on parole and then commit tremendously horrific crimes while they have been out on parole or are on supervision orders. In my view, the member for Butler has put forward a very simple amendment. It obviously has the support of the Labor Party; otherwise, it would not have come before this chamber. I support this amendment wholeheartedly. I would go a lot further than that, but knowing the Minister for Police; Road Safety there is no way in a fit she would accept anything that I say in this chamber. I think it will be to her detriment and her cost and the cost of this government to not accept a simple amendment like that put forward by the member for Butler. It is not the answer to everything, but it would certainly help not to release those dangerous sex offenders onto our streets.

Dr A.D. BUTI: Going back to the member for Butler's amendment, the minister gave some response to my comment, but she did not comment on the court being told that it must disregard the fact that the offender may be subject to an electronic monitoring device. Why does the minister not agree to that? It has been an issue of contention over the last couple of years and, in a subliminal way, it could play on the thoughts of judges—they might think that because the offender has an electronic monitoring device, the community will be safe. As we know, that is not always the case and there is an issue of justice about whether someone should be released only because they have an electronic monitoring device. There are two issues. Obviously, there is an issue of justice and whether a person should be in prison for a certain period on notions of justice, and then there is the issue of protecting the community. The last part of the member for Butler's amendment states —

> … the court must disregard the fact that the person will be subject to electronic monitoring …

Why does the minister not agree to that very sensible, reasonable and inoffensive amendment?

Mrs L.M. HARVEY: We discussed this issue when we looked at clause 17. I draw the member's attention to section 19A of the Dangerous Sexual Offenders Act on electronic monitoring, which clearly states —

> (1) The purpose of electronic monitoring of a person subject to a supervision order is to enable the location of the person to be monitored.

That is the only purpose of electronic monitoring. Subsection (2) states —

> For the purposes of the electronic monitoring of a person, a community corrections officer may —
>
> (a) direct the person to wear an approved electronic monitoring device;

The subsection continues, but it is about the administration of the device. To further articulate another direction to the court on electronic monitoring in legislation has not been supported by the Attorney General because when we looked at the figures—there are 24 of these dangerous sexual offenders in the community—it was found that there had been no increasing trend to release to a supervision order as a result of electronic monitoring being introduced. In the absence of any evidence to show that the court was leaning towards supervision orders rather than continuing detention orders, the Attorney General said that there is no requirement to change the legislation because, clearly, the court looks to electronic monitoring as a tool to determine the location of an offender who is being supervised, and the application of electronic monitoring is considered after the decision has been made to release an offender in the context of community safety. I am advised that the Attorney General has chosen not to entertain this amendment because there is no evidence to suggest that electronic monitoring is influencing the court to release offenders on supervision orders rather than to order continuing detention orders. At present, the act is clear that electronic monitoring is only a tool for the location of offenders; it is not a consideration in releasing an offender at present.

Dr A.D. BUTI: Of course the legislation tells us the purpose of electronic monitoring devices—that is, the supervision of offenders. The minister cannot deny that that is considered a protective measure otherwise we would not have it. We would not have electronic monitoring devices if the government did not think they served the purpose of protecting the community.

Mrs L.M. Harvey: The legislation is clear that it is not a protective measure.

Dr A.D. BUTI: What is it then?

Mrs L.M. Harvey: It is a tool to monitor the location of offenders. It is a way of tracking them.

Dr A.D. BUTI: Of course it is, minister. It is not the main thrust of my argument, but of course it is. Why does the government want to know the location of an offender? It is so that we can keep tabs on that person. I think it is good; it should be a protective measure. We want to know where they are so that we can monitor their movements. That is a protective measure and that is good. That is why we have electronic monitoring devices.

We do not want to know where they are for the sake of knowing where they are; rather, we want to know where they are because we know that potentially they are very dangerous.

Mr R.F. Johnson: We want to know whether they're at schools or children's playgrounds.

Dr A.D. BUTI: Exactly. Of course it is a protective measure—to say it is not is just silly. In any case, the minister said that there is no evidence that the court has taken this into consideration. We do not know whether that is the case. Judges might take it into consideration without explicitly writing it in their judgements. In his amendment the member for Butler has pre-empted the possibility of a judge using an electronic monitoring device situation as reason to release a dangerous sex offender. The minister stated that if it were legally possible, she would throw away the keys. Many people think that way. The people we are talking about are among the worst criminal offenders in our society. They are very dangerous people. Why would the minister oppose any amendment that seeks to block the possibility of a judge taking into consideration the fact that a person will be subject to an electronic monitoring device when deciding whether or not to release that person? The member for Butler's amendment says that regardless of whether or not evidence has been formed, the fact is that it is a possibility and we really should be guarding against possibilities because of the nature of the people we are talking about—dangerous sex offenders. They are among the worst criminals in society and we should therefore make sure that our legislative regime totally closes the gate and shuts any opportunity of the possibility that a judge may either expressly or implicitly use the fact someone will be subject to an electronic monitoring device and can therefore be released when in other cases that person would not be released if he was not subject to electronic monitoring as part of a supervision order. That is all this amendment is doing. This amendment will not weaken the government's legislation; rather, it will strengthen it. What will happen if the government agrees to this amendment? It will become a legislative tool, it will be seen as a bipartisan gesture on behalf of the government and, in the end, it will improve the legislation. How can that not be sensible? The minister said that there is no empirical evidence to support this. With all due respect, many pieces of legislation that the Minister for Police and other ministers have brought to this house have not had empirical evidence. The government's anti-graffiti legislation —

Mr P. Papalia: Tell me one that has!

Dr A.D. BUTI: I am trying to be kind, member for Warnbro! That fact is that there was no empirical evidence when the government introduced its anti-graffiti legislation. On the scale of things, that issue pales into insignificance given that we are talking about the people whom we are talking about during this debate. Why the minister would not mandate that the court cannot take into consideration the fact that someone is subject to electronic monitoring is something that I do not understand.

Mr J.R. QUIGLEY: On the very good point that my colleague and friend the member for Armadale raised about empirical evidence, the government has introduced a raft of legislation without any empirical evidence at all just to get a headline. I think the most obvious one is the prohibitive behaviour orders legislation. Prohibitive behaviour orders are just not used, but the papers were full of bluster about how the government was going to wipe out antisocial behaviour by naming and shaming people on a website without there being any empirical evidence that it would push down crime. The government has given up on the strategy, because no applications have been made in the last year. The last time I looked at the website, bearing in mind that the legislation was introduced six years ago by the then Attorney General, Mr Porter —

Mr R.F. Johnson: It came from England.

Mr J.R. QUIGLEY: Yes. The member for Hillarys reminds the chamber that the concept came from England.

Mr R.F. Johnson: It wasn't very successful there.

Mr J.R. QUIGLEY: It was not successful; the member for Hillarys is quite right. The person who is now tipped to become the Prime Minister of England, Theresa May —

Mr R.F. Johnson: Not Boris?

Mr J.R. QUIGLEY: Well, he should be.

Mr R.F. Johnson: Not my cousin?

Mr J.R. QUIGLEY: The member's cousin; I hope he is a distant cousin—a very distant cousin. He should take responsibility and do the negotiations because of what he has done.

The point I am making is that as soon as Prime Minister Cameron and his conservative colleagues were elected to government, the first thing that Home Secretary, Teresa May, said she wanted to do was cancel PBOs because they were just spin from Tony Blair and they achieved nothing. It happened that when that legislation was introduced in the United Kingdom, Hon Christian Porter was in England studying. He watched all this in the media and thought, "There's a good idea." He introduced PBOs here with no empirical evidence whatsoever. In

recent times the government has not even tried to defend the legislation. No applications have been made. One was foreshadowed recently when the police said that they may make an application. The State Solicitor's Office has dismantled the unit that deals with PBOs. The notion that this amendment will make it more difficult to release serious sex offenders and provide a further bar or filter to their injudicious release into our community is nonsense on the basis of there being no empirical evidence. I thank the member for Armadale for drawing this to the attention of the house.

Amendment put and negatived.

Clause put and passed.

Clause 29: Section 34 amended —

Mr P. PAPALIA: The observation I would like to make about this clause, which deals with the Director of Public Prosecutions, is that —

The ACTING SPEAKER (Ms L.L. Baker): Members, Hansard cannot hear with all that noise. Please be quiet.

Mr P. PAPALIA: Once again, I refer to the failure of the Barnett government to act—this was conceded and confirmed last night—when the Attorney General could have acted. For two years and three months now we have been told by outraged ministers that they would act if they could act, but that they do not have the opportunity to do so because the law does not allow them. We now know that the Attorney General can act, when the Director of Public Prosecutions does not, to stop these dangerous sex offenders from being released and can at least appeal against them being released. The only reason the Attorney General has not done this is that he chose not to. The only reason the Barnett government has not acted is that it chose not to. The only reason that the Ministers for Police and Corrective Services have not acted is that they could not be bothered. It was all bluff, bluster and spin. The reality is that the government has let the community down. As stated by Hon Jim McGinty in the public domain after the TJD issue first arose, there is an opportunity under the current act, and even once it is amended, for the Attorney General to get off his backside and act.

Debate interrupted, pursuant to standing orders.

[Continued on page 4315.]