DANGEROUS SEXUAL OFFENDERS LEGISLATION AMENDMENT BILL 2015

Second Reading

Resumed from 17 May.

MR J.R. QUIGLEY (Butler) [4.27 pm]: I rise as the lead speaker for the opposition to speak on the government's proposed amendments to the Dangerous Sexual Offenders Act 2006. I will make some general comments. However, I do not know whether I will have time to fit in all the detailed comments I want to make during my second reading contribution on the Dangerous Sexual Offenders Legislation Amendment Bill 2015, so I will have to save at least some of them for consideration in detail.

I would like to turn first of all to the absolutely offensive speech that the Attorney General of Western Australia made in the other place. I note that the Deputy Leader of the Liberal Party, the honourable Minister for Police and other matters, has carriage of this bill in this chamber. One hopes that she will distance herself somewhat from the comments of the Attorney General. I will start with what the Attorney General said, because we know that there has been a lot of public concern expressed about the dangerous sexual offenders legislation and the number of very dangerous sex offenders adjudged to be at high risk of reoffending being released into the community.

The Attorney General of Western Australia made this false charge —

> I have to say that there seems to be a terrible tension between the Labor Party wanting to take credit for the community safety provided by this legislation while at the same time raising public fears and concerns for the sake of political opportunism in order to criticise the government for the way that the act operates, …

This is an utterly false and offensive charge by the Attorney General. At page 1056 of the *Hansard* of 22 March 2016, the Attorney General goes on to say —

> … the Labor Party suddenly realised it did not have much of a law and order policy to offer the public —

That is rubbish. We know that. The government is the one who de-fanged and stripped out the operative clauses of the no body, no parole bill. The government went weak on that bill. I can tell you, Mr Acting Speaker (Mr N.W. Morton), that all the people in marginal seats, like Balcatta, Forrestfield and Bunbury, know that this government stripped out the fangs of the no body, no parole bill and rendered it meaningless.

Leaving that aside for a moment, the Attorney General continues —

> … so it decided to whip up concern among certain areas of the community whenever dangerous sex offenders were being released. We have things like flash mobs. A member of the Labor Party in the other place who, upon the release of the offender, without even knowing precisely what suburb he was going to, put out a tweet saying, "We need a flash mob on this issue."

He was alerting the people in his community to the release of Lyddieth into that community. That is not something that the government would come out and openly say. We will go to Lyddieth's case for a moment—I will just get it out of my batch here—because it is worth turning to the details of that case. Lyddieth is the person who is known as TJD. The Lyddieth case prompted the Deputy Leader of the Liberal Party and Minister for Police, who has carriage of this bill in this chamber, to say she would keep him locked up forever. Lyddieth is a sexual predator. He was dealt with by the court for offending on 1 May 1992. Justice White sentenced him to 19 years and one month imprisonment for 48 sexual offences. Remember, those offences were committed all around the western suburbs. He preyed upon women. He scoped them out, went to their houses in the hours of darkness and committed the most vile offences against them. Over a period of nearly four years, Lyddieth committed 48 serious offences against 13 young women, in each case breaking and entering their dwelling to do so. The offences were committed on his victims at night-time. Lyddieth was initially refused a supervision order and was ordered to be held in detention, but was ultimately released.

I will go to the record of what happened. In 2013, the very senior judge, now retired, Hon Eric Heenan, QC, expressly declined to rescind the continuing detention order on Lyddieth. A mere 12 months later, the court made the decision to release Lyddieth on a community order. To quote from an article, this prompted Hon Liza Harvey, the Minister for Police, to say, "I'd throw away the key". That was her statement. The article went on at page 3 to say that the minister said he was a particularly bad sexual offender, and she would throw away the key. Hon Liza Harvey could hardly be described as part of a Labor Party flash mob—no. However, there was a group of women who said, "Enough is enough; we've had this. We want to protest, and the community wants to protest, about what is happening." It should not be forgotten that in many of these cases, the Director of Public Prosecutions himself consents to the orders being made. On 22 March, the Attorney General

went on to say that the local member's rent-a-crowd had come out and complained that a dangerous sex offender had been released into their community.

I have a photo—it is a selfie, so it has my ugly mug in the corner—that was taken in Forrest Place. As members can see, it shows some people holding a banner that says "#enoughisenough". The woman on the left is Angela Johnston. She is one of Ugle's rape victims. Her house was entered at night—I will come to the details of the rape on her later—and she was terribly defiled by Ugle. Yet the Attorney General would seek to belittle Angela Johnston by calling her just part of a Labor Party rent-a-mob. The Attorney General did the same thing to the other woman in this photograph, Margaret Dodd. The Attorney General said that what Margaret Dodd was doing, in leading a community campaign for no body, no parole, was just a media stunt. Therefore, anybody who speaks against the Attorney General, or in a manner that the Attorney General does not like, is belittled. That is the Attorney General's first line of attack. I have read the *Hansard* of the Legislative Council, when Hon Adele Farina asked some questions during the committee stage on this legislation, and the Attorney General said to her, "If you'd just button your lip and listen, you'd learn something"—as though she would learn something from the Attorney General! The Attorney General is held out as the font of all legal knowledge in Western Australia. Is this position sustainable?

I want to come to the Attorney General's legal opinion on the Dangerous Sexual Offenders Act. The Attorney General has said that the most important amendment to this act is that the government of Western Australia surrenders all authority to obtain these orders. The Attorney General proposes to amend section 6 of the Dangerous Sexual Offenders Act by providing that all applications under the DSO act will be made in the name of Western Australia. When the courts come to interpret that, they will say, "What is meant by 'in the name of Western Australia'?", and the Attorney General will say, "That it binds Western Australia." That means that if the Director of Public Prosecutions decides not to appeal a case, that is the end of the matter; the Attorney General has no function whatsoever. The Attorney General has made that clear in the Legislative Council. We will deal with this further during consideration in detail. The Attorney General describes the Attorney General's function under the DSO act as being properly characterised as a reserve power. The Attorney General is wrong; it is not a reserve power. The Attorney General of Western Australia has never had, nor has any Attorney General ever had, the power—not to commence a prosecution; the Attorney General has always had that power—to obtain an administrative order for the detention of a person in a state prison without that person having been convicted of an offence that is punishable by a term of imprisonment. That is an administrative action; it is not a prosecution action. It has never been that the executive, or the Crown, and now the state, have had this reserve power. They did once, before 1215, when the barons holed up King John at Runnymede and said that there would be no further imprisonment of the people without a due trial. In the great charters of the thirteenth century, it was ultimately revised and documented in Magna Carta that there would be no imprisonment of anyone without a due trial. In this case, we are not dealing with a trial; we are dealing with an administrative action.

The state does not have a reserve power to lock its citizens up; it is a conferred power. Where is this power conferred from? It comes from the Dangerous Sexual Offenders Act. The Attorney General, in his speech, which we will come to later during the consideration in detail stage, sought to belittle Hon Jim McGinty. He said that Hon Jim McGinty wanted to take credit for community safety by inaugurating this legislation. Later on in his speech, in a further attempt to belittle the former Attorney General Hon Jim McGinty, the Attorney General said that all he did was to cut and paste the legislation from Queensland. Well, what an astute Attorney General! Why would he not cut and paste legislation that the High Court has already approved, so it could not be subject to a constitutional challenge? It is exactly what Hon Christian Porter said that he would do with the anti-association laws. He said that he was waiting for the final enunciation of the High Court on the South Australian and New South Wales cases before he framed the legislation, so that it would be constitutionally bulletproof. The honourable minister who is in the chamber today said similar words about its enforcement—that we are waiting for the High Court to give it the constitutional tick. The Attorney General sought to belittle Hon Jim McGinty on the fraudulent, ill-founded basis that he had copied legislation that the High Court had approved—Lordy be!

But look how unconstitutionally unsound the Attorney General is. If the cabinet has not woken up to that yet, it should. The greatest error that the Attorney General made and that he put before cabinet was the Bell finalisation bill, which also involved a constitutional question. It was a simple constitutional question that made Western Australia the laughing stock of the nation. I bet that the Attorney General did not frame the constitutional question thus when he sought approval to take this matter to the High Court. Here is the constitutional question: section 109 of the Constitution states that if there is a conflict between a state law and a commonwealth law, the commonwealth law prevails. Income tax law provides that no liquidator shall transfer any asset without having first made tax provisions for the notice that has been served on it, which had been served in the hundreds of millions of dollars by the Australian Taxation Office. The brilliant Attorney General came up with a scheme in which we would pass the legislation and all the assets of the Bell liquidator would

become the property of the state. Immediately, the commonwealth challenged the legislation because it was inconsistent with the tax law, which states that assets cannot be transferred out. Our genius Attorney General's position in the High Court was that the liquidator never transferred the assets; we just took them. What a joke! Did the Attorney General explain to cabinet that all the tens of millions of dollars he was gambling on getting were reliant on the interpretation that taking the assets from the liquidator was not the liquidator transferring them? That was met with absolute derision in the High Court. Regarding the Attorney General's constitutional soundness, he is not fit for purpose.

The most concerning part of this legislation is that the minister has come into this chamber and promoted an amendment to section 6 of the Dangerous Sexual Offenders Act that all applications will be taken in the name of the state of Western Australia and are binding on the Attorney General. The legislation, as it currently stands, states —

> **6. Attorney General may perform functions of DPP**
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> (1) The Attorney General may make an application that the DPP may make under this Act and may give a consent that the DPP may give under this Act.
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> (2) In connection with the exercise by the Attorney General of a power of the DPP, a reference in this Act to the DPP includes, as an alternative, a reference to the Attorney General.

The legislation that this Parliament passed unanimously conferred upon the Director of Public Prosecutions a power to make applications to the Supreme Court for the continuing detention of a sex offender, and this Parliament by legislation conferred the same power on the Attorney General. Why did Parliament do that? Parliament did that because this is not a prosecution; this does not come within section 20 and the sections that follow thereafter of the DPP act, because they deal with prosecutions and the Attorney General has always had a reserve power in relation to prosecutions. What is the government doing? The government is coming in now and saying that it has abandoned all authority. If the DPP consents to the release of a dangerous sex offender—it is not a prosecution—the government will abandon its authority to be able to institute an appeal. It is surrendering that authority as a government. The government has always had that authority under section 6, but as a government it is surrendering that authority. Far from Hon Liza Harvey, Minister for Police, going before *The West Australian* and saying "I'd throw away the key" in relation to Lyddieth, with this legislation, she is coming into this chamber and saying, "I'm going to urge this chamber to surrender Parliament's authority for the government to be able to launch an appeal. I'm going to urge that." That is absolutely 180 degrees in contradiction to what she said to the media.

It has been widely speculated in the media and, indeed, has come from the lips of the current Premier that the minister could be a future Premier or Leader of the Liberal Party. If the Premier goes before the election, the minister could be a future Premier. The minister cannot go out and tell the media that she would throw away the key and then quietly come into this Parliament and surrender the government's authority to do anything about it. This should be of concern to the media and to the community. Why has this happened? Why is the Attorney General doing this? The Attorney General is doing this because after Lyddieth's release I said that the government cannot throw away the key and do what the minister is proposing, and we will come out with a constitutional scheme that will considerably strengthen this legislation. The women asked me, "What can we do? What can you do?" I told them that I am the shadow Attorney General and that I can do nothing, but they can go to the Attorney General and ask him to act under section 6 of the legislation and institute an appeal. If the case is so serious that the honourable Minister for Police thinks that Lyddieth should still be in prison, go to the Attorney General and ask him to institute an appeal under section 6. That horrified the Attorney General and he said that he did not have power to do that, but it states in the act that he does have that power.

If there is one thing that this Attorney General is known for, it is for doing as little as he possibly can. Reports sit with him. I have had judicial officers say to me that they write to him and get no response. The Law Society of Western Australia and the Western Australian Bar Association say that they write to him and get no response for months and months. He did not want to appeal and that is why he does not want to have this authority. He wants the honourable Minister for Police, who has talked it up big—"I'd throw away the key"—to come in here and fly the flag of abject surrender. In a case like Lyddieth, an Attorney General has two courses—he either institutes an appeal under his powers at section 6(2) of the legislation or, if he does not think an appeal is appropriate, he explains to the public why the supervision order is appropriate. But the Attorney General does not want to do that either. He does not want to justify why it is appropriate, lest people think he is weak on law and order. He wants to eradicate the power and the government to surrender its position so that he can henceforth say, "Don't look at me. Don't try to hold me accountable for this situation; it's all with the Director of Public Prosecutions." Then, in the Legislative Council, he said that the DPP is accountable. That is half true. The DPP is accountable for matters that he instigates in court—he is accountable to the court. For the administrative decisions he makes—for example, not to appeal a case—he is not accountable. The Attorney General falsely

claims, and misleads the Parliament by saying it, that he is accountable through his annual report. Go to his annual report and look for Lyddieth, Ugle or any of the cases that I am about to talk about and see whether he is accountable to this Parliament through the annual report. Of course he is not.

We cannot consider what is happening with this legislation unless we go to particular cases. We all talk about dangerous sexual offenders, but let us look at what these people actually did, what is being said about them by the people who assess them—the psychiatrists and psychologists—and then see what result the current law has delivered and how often it has delivered an inappropriate person back into the community. I will go back in time, if I may. I have a number of cases here such as Ugle, Lyddieth and McGarry, but the one I will start with is that of Mark Bradley Wimbridge. The court summarised Mark Bradley Wimbridge's history as follows. On 27 March 2008, Her Honour Justice Jenkins found that he was a serious dangerous sex offender within the meaning of the act and detained him in custody. A year later, on 16 June 2009, His Honour Justice Hasluck, as he then was, also declined to release him and ordered that he be retained in custody. However, on 10 July 2010—Wimbridge's third annual review—Justice Blaxell replaced Wimbridge's continuing detention order with a supervision order. Wimbridge's own counsel had conceded that he was a continuing danger to the community and he was placed on a supervision order. He was then aged 45 and his offending had commenced at the age of 13. Mr Wimbridge was charged with breaching his orders. Let us look at what happened. The judgement of Commissioner Sleight states —

> As mentioned earlier Mr Wimbridge was placed on a supervision order by Blaxell J on 20 July 2010. On 16 March 2011 McKechnie J found that Mr Wimbridge had breached the conditions of the order made by Blaxell J in a number of ways, namely:
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> (1) … had failed to disclose to police that he had taken possession of a motor vehicle and an internet capable telephone;
>
> (2) … was evasive in relation to revealing details of an intimate relationship and breached a condition that allowed officials to interview any associate;

The next one is a very serious breach —

> (3) … had possessed pornographic material;

The next one is very relevant —

> (4) … had breached a condition not to use alcohol;
>
> (5) … had breached a condition not to communicate with prostitutes …

And so it went. The judgement also noted that Mr Wimbridge had a diagnostic criteria of an antisocial personality disorder. It stated —

> This was indicated by Mr Wimbridge's failure to conform to social norms with respect to lawful behaviour, deceitfulness manifested by his infidelity in offending, impulsivity, aggressiveness and irresponsibility. Dr Hall assessed Mr Wimbridge as being a high risk of reoffending and stated that there was nothing to suggest that the risk of Mr Wimbridge reoffending was time-limited.

The judgement also states —

> … Mr Wimbridge was not able to adequately apply coping strategies to his behaviour and that supervision conditions on their own would not be sufficient to reduce the risk of reoffending to an acceptable level.

So, Justice McKechnie cancelled Mr Wimbridge's release order. The matter went back to the Supreme Court and Commissioner Sleight, in November 2011, said —

> If not, I make such an order that only one psychiatric report be prepared …

That is relevant to the legislation before us.

Further, the judgement states —

> Dr … Owen also diagnosed Mr Wimbridge as having an alcohol abuse disorder in sustained remission and an antisocial personality.

The judgement then quotes Dr Owen —

> He has offended whilst on bail, on parole and whilst attending community based maintenance offender programs.

This is what Wimbridge has done. The judgement continues —

> In the most recent report dated 13 March 2012, Dr … Owen states that Mr Wimbridge continues to present as a high risk of sexual violence reoffending and that the presence of psychopathy increases this risk.

The psychiatrist also noted the presence of normal to high libido and deviant sexual arousal. The judgement continues —

> Mr Wimbridge has recently recommenced … counselling with a psychologist, Dr David Summerton. I have not received any report from Mr Summerton, as he does not wish to jeopardise his ongoing treatment relationship with Mr Wimbridge.

The report of Dr Owen quoted in the judgement also states —

> Mr Wimbridge is currently saying the right things.

Interestingly, on page 9 of the judgement, His Honour goes on to note —

> I have been provided with a minute of proposed conditions if Mr Wimbridge is released on a supervision order. An initial draft was prepared as part of the Community Supervision Assessment report dated 15 March 2012 and some minor modifications have been agreed by counsel for the applicant and counsel for Mr Wimbridge.

The importance of that is these conditions were agreed to by the DPP and by Wimbridge's counsel, so this was all done by consent. The minister now proposes that the Attorney General has no overriding authority for the protection of the community. The judgement goes on to recommend that Wimbridge be subject to electronic monitoring when required, taking into account all considerations that are required for the protection of the community. Now, listen to this, here it is: the judge shares a different view to the minister. The judgement states —

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

There is a divergence of opinion there between the minister and the court in interpreting the current legislation. Wimbridge is now charged with breaching this supervision order in at least two ways: consuming alcohol, and raping a woman last Saturday night while on a supervision order—aggravated sexual penetration. This report stated that he has an addiction to alcohol, which increases the danger. Mr Justice McKechnie quite rightly cancelled his order because of his abuse of alcohol, and the court said it would come up with conditions that would protect the community. It did not protect the woman who was raped on the weekend, and it did not stop Wimbridge from consuming alcohol, which probably led to the offence.

Fortunately, on Sunday morning the magistrate remanded Wimbridge in custody. This goes to one of the other amendments. One of Labor's amendments provides that a sexual offender charged with any breach of a supervision order must not be offered bail; he must be held in custody. The Attorney General sought to dismiss this amendment, stating that people could not be kept in custody on the mere suspicion that they have breached an order. The Attorney General is wrong not only in his constitutional approach to reserve powers, but also in relation to this. A person cannot be arrested on mere suspicion. A search warrant can be obtained on the suspicion that something will be detected on premises that offers evidence towards an offence, but someone cannot be arrested on mere suspicion. There must be a reasonable belief that can be objectively tested against known facts that a person has committed an offence before that person can be arrested. The Attorney General was wrong, and we will come to that in consideration of our amendment later.

Before Wimbridge was arrested on a charge of aggravated sexual penetration on Saturday, the police must have had an honest and reasonable belief that he had committed this offence of rape, or aggravated sexual penetration. Before they could charge him with breaching the supervision order by consuming alcohol, which in their opinion led to this further offending, the police had to have a reasonable belief that he had consumed the alcohol. What does the government say about this? This was kept absolutely under wraps. The government did not want the community to know about one of these dangerous sexual offenders who has been released on a supervision order—I will not go through it again because we do not have the time, but we have gone through what the psychiatrists have said about Wimbridge, how dangerous he is and how many judges refused to release him before the Director of Public Prosecutions consented to his release—in advance of coming into Parliament and admitting to being lay-down surrenderers. The minister is holding up the white flag of abject surrender, and surrendering the government's right to appeal against a release on a supervision order.

Even though the minister comes out with these high and mighty words about keeping them in jail forever, she speaks with a forked tongue. The opposition will call the division, and the minister will say that all decisions

made by the DPP are binding on the state of Western Australia and the Attorney General cannot institute his own appeal, despite this Parliament having conferred that specific power on the Attorney General in the legislation passed unanimously in this chamber in 2006. I do not know what the explanation for that will be.

I do not know whether the minister will apologise to Mrs Johnston. She had the decency to apologise, on behalf of the Attorney General, to Margaret Dodd, for calling her part of a media stunt, but whether she will apologise to Angela Johnston, Ugle's victim, is another thing. Mrs Johnston will be well apprised of what the Attorney General had to say about her, as will the people of Balcatta, Forrestfield and the marginal seats, knowing that this government does nothing for victims, but if the victims speak up this government berates them. The government appointed an absolutely notional Commissioner for Victims of Crime, who is only a public servant working within the Department of the Attorney General. None of these victims can speak to the woman, and when Ms Hoffman has appeared here in the estimates hearings, and I have asked her questions on behalf of victims, she has been nothing but nasty in the manner of her reply.

Mrs L.M. Harvey: That is completely untrue.

Mr J.R. QUIGLEY: That is true. Not this last estimates hearing —

Mrs L.M. Harvey: She is a strong advocate for victims, and your comments are offensive.

Mr J.R. QUIGLEY: The minister's comments are offensive in what the government has said about the victim Mrs Johnston—that she is part of an Australian Labor Party rent-a-crowd. The only thing that the Commissioner for Victims of Crime has done is to be very instrumental in dismantling the domestic violence court. What a thing to put on a curriculum vitae—"I was instrumental in that."

Let us turn to Ugle for a moment. He is another absolutely terrible offender. We will go through this in consideration in detail, which will go for some time. I will just go through some of the offences that he has committed. I have to turn even further back to find the start of his offending. The dates of his appearances were 12 January 1992, 4 February 1993, 1 April 1993, and 21 October 2007. The first offence was committed while he was under a special release order; the second and third were committed while he was on parole for previous offending, including the first serious sexual offence, and the fourth set of offences, of which there are only two counts, was committed while he was subject to a community-based order. His first sexual offence, on 12 January 1992, was committed on a 17-year-old female. Mr Ugle was, at the time of the offence, affected by alcohol and drugs. He had been ejected from a bus, and had gone on to break into a house, demanding money. He penetrated the woman's vagina with his penis, without her consent, and took cash from the house. The second serious offence was on 4 February 1993. The victim had undergone surgery the day before. She had gone to bed, and was on heavy medication to ease the pain. Ugle was on parole at the time of this offence. He entered the house and sexually penetrated the victim. A third serious sexual offence, on 1 April 1993, was committed on an 11-year-old girl. Ugle and two accomplices broke into the family's home at night. Mr Ugle walked into the bedroom, pulled the blankets and sheet up, pulled off the girl's underpants, and digitally penetrated her. He fled when she called out for help from her parents. The fourth set of offences that he was convicted of, on 21 October 2007, comprised two counts of the offence of sexual penetration without consent, involving digital vaginal penetration and cunnilingus. The offences occurred in the victim's house while her children were present. She was scared for the children. I do not think Mrs Johnston would mind me saying that this was the offence in which she was the victim. She spelt this out herself—I am not giving it away, although the report refers only to "ALJ": Angela Johnston—outside, to the media, and said how scared she was that Ugle had just been arrested again and charged with breaking his conditional supervision order by, amongst other things, consuming illicit drugs, but was immediately let out on bail. Why would Mrs Johnston not be alarmed? It was whilst he was taking these illicit drugs that other offences occurred. When we raised this case in public, the Attorney General's response was to ask: why put him in custody for a minor breach on mere suspicion? I repeat: the police do not arrest people on mere suspicion; they have no power to arrest on mere suspicion. They have to have an honest and reasonable belief that someone has actually committed an offence. I know it would concern you, Mr Acting Speaker (Mr P. Abetz), for such a person to be released on bail without so much as a thought. It is wrong, and that is why one of Labor's amendments is that if someone is arrested and charged with breaking one of these conditions, there is no bail. Some might ask: what if it is only a minor condition? The answer is that all the conditions are serious, otherwise a Supreme Court judge would not have put them on the release order.

What happens with these offenders? As we will see in these cases as we go through them in detail, they start to push the envelope, and we do not keep a diary. "What happened? Nothing. We smoked some cannabis. What happened? Nothing." They start to push it to see what will happen, and what do they end up doing? They end up raping someone, like Wimbridge did last Saturday. That is absolutely dreadful. Did this government come out and warn the community that a serious, dangerous sex offender had raped someone on Saturday, had committed aggravated digital penetration? We heard not a word; just hushpuppies, because the government was coming into this Parliament with the full intention of surrendering the government's authority to conduct appeals and to go

down to the court to seek a rescission of a supervision order. Under the legislation as it currently stands, that is what the Attorney General can do. It is not a prosecution and it does not conflict with the role of the Director of Public Prosecutions; it is an administrative action.

The Attorney General has some personality dysfunction that compels him to berate anyone who has an opinion different from his own. As I said, he has already berated Hon Adele Farina for asking a question in the upper house and said to her that if she would just zip her lip and listen, she would learn something. Who can ever forget what happened just before the state of Western Australia ingloriously went off to the High Court to argue that "transfer" does not mean "taking"? What derision that was met with by the High Court. IMF Bentham Ltd, the litigation funders, sought an opinion from Mr McCusker, QC—former Governor of Western Australia, held in the highest regard by the High Court and a more esteemed jurist not to be found in this state—who cast the opinion that, of course, this was unconstitutional. Did he run off to the newspapers? No. He did what a Senior Counsel is required to do. A solicitor writes to him saying, "Mr McCusker, is this legislation that is being presented to the Parliament of Western Australia"—remember, it had not gone through the Parliament at that stage, and the government ended up rushing it through Parliament so that no-one could think about it—"constitutional or not?" Mr McCusker cast a one-page opinion, jointly signed by another very senior lawyer, Mr Steven Penglis, who also appeared in the High Court on this matter, to say that the legislation was unconstitutional, and sent it back to the solicitor. The solicitor gave it to the client, IMF, and the client made it public. Boy, did that upset the Attorney General, who had fooled his cabinet colleagues into believing the argument that the word "transfer" was not inconsistent with what the government had done, which was to take the assets of the receiver. Because Mr McCusker's opinion was in direct contradiction to that of the Attorney General, he—the first legal officer of this state—used parliamentary privilege to go into the Legislative Council and say, "Who does this Mr McCusker think he is? Who elevated him to deity? Why should his opinion count more than anybody else's opinion?" He sought to berate Mr McCusker, who was found to be correct, seven–zip, by the High Court, which just laughed at the proposition advanced by the Attorney General for Western Australia through his legal counsel; it just laughed at him.

So we come back to the Dangerous Sexual Offenders Legislation Amendment Bill 2015. The notion that proposed section 7A expresses only a reserve power that has always been with the Attorney General, and that what we are doing by changing the legislation to say that anything the Director of Public Prosecutions does is done in the name of Western Australia merely cleans up that reserve power, is 100 per cent wrong. It is not a reserve power; for the reasons previously given, it is a power conferred upon both the Attorney General and the Director of Public Prosecutions by the legislation to protect us from situations such as what happened on Saturday night, with Wimbridge raping another victim. It is to protect us in situations in which no less than the Minister for Police comes out and says, "I'd throw away the key"—referring to Lyddieth—and then comes into this Parliament and says, "We totally surrender the authority to seek a cancellation of the supervision order or to appeal the supervision order." I stress that these are not prosecutions; these are administrative actions undertaken by the DPP. The Director of Public Prosecutions recognised that there was some tension between the Dangerous Sexual Offenders Act and his office, and he said so in his submissions to the review of the DSO legislation. The way that the government has tried to resolve this is to just hop in and surrender all authority to the DPP.

We will go through these cases, because during the second reading debate in the other place the Attorney General gave figures for how many people had been released on DSOs. I turn to page 1510 of the *Hansard* of Tuesday 22 March 2016 in the Legislative Council. The Attorney General stated that, since the last amendment to this legislation —

> … more than 53 per cent of DSOs were released on supervision orders by the court. In 2014–15, nearly 49 per cent of DSOs were released on supervision orders by the court.

What we want to know from the minister representing the Attorney General is: in how many of these cases did the DPP consent to release on a supervision order? In the case of Lyddieth, in which there was a consent to the release, I specifically want to know if the minister agrees with that. Does the minister agree that he should have been released? That is the position the authority took. We know the minister's public comment is that he should not be released. The government has something it can do about that. The minister had something she could do about that. She could have gone into the cabinet room and said, "The government has simply got to do something here. Stop sitting on your hands, Mr Attorney General, and instigate an application in the Supreme Court. Exercise your authority, exercise your power; do something in the Supreme Court." As I said, the Commissioner for Victims of Crime will not do anything to help them. None of these people who called the Commissioner for Victims of Crime have had any assistance at all from her. The demonstrators shown in the photos I held up—which the Attorney General writes-off as a "Labor rent-a-crowd"—that is, the group of sexual assault victims who form the group "#enoughisenough", invited the Attorney General to come to their gathering

in Forrest Chase, but he would not go and face them, because he would not want to explain why Ugle was let out on bail. He would not want to justify that. Under the legislation, he has the power to do something about it. The Attorney General's use of the term "rent-a-crowd" is a slur on victims. All this government does is slur victims. It says, "We're tough on law and order but we'll slur the victims." The Attorney General slurred Margaret Dodd because she rang up the media and she—not Labor—started a petition. Over 45 000 people signed the petition for a no body, no parole law. The Minister for Police came into this chamber and gutted that through her amendments. Even the member for South Perth asked what that all means. He did not understand it. The member for South Perth said, "In the party room we are told that it needs just some little amendments." He knows the victim's father. He asked what happened in there. I said, "Johnny, they gutted the legislation. They took out the provisions relating to no body, no parole and put them in the objects of the act as a mere aspiration." He said, "We weren't told that in the party room." I said, "No, of course not, because they didn't ever want to legislate no body, no parole", as all the constituents in Forrestfield will find out. The government wanted to stop that legislation. It could not vote it down in the face of 45 000 people, so the government said it would vote for it, but it first wanted to make a little amendment. It said, "We will completely de-fang it, make it without power, and just include those words in the objects of the act as an aspiration."

Labor will put forward a number of amendments. I will deal with a matter about Ugle during consideration in detail, but it is worth mentioning the case of TJD. The Attorney General said, "Lordy me, I didn't want to do anything about DSOs in the first place, but all this has started because the Labor Party has whipped up community concern in relation to TJD." He blames us for that in his second reading speech. The lengths that the Attorney General will go to to sideline and to make little or light of the public concern in these matters is not breathtaking, it is just outright dishonest. The Labor Party did not go around —

The ACTING SPEAKER (Mr P. Abetz): Member, I am not sure that what you just said is parliamentary.

Mr J.R. QUIGLEY: It was not truthful. The government has tabled its heavily redacted review of the DSO act. I will hold that up for the cameras in case anyone wants to get a screenshot of it. That is the government's report. Mr Acting Speaker can see how this government does not want this Parliament even to see the details of its own review! In this report, it details that it was the victim of TJD who went to the media and was interviewed by Channel Nine. It was hardly something drummed up by the dreadful Labor Party, was it? This is victims, once again, not being listened to by the government, not being listened to by the so-called Commissioner for Victims of Crime and having to go to Channel Nine to raise their concerns. Is it the Labor Party that controls the editorial views of *The West Australian*? I do not think so. Is it the Labor Party that controls the microphone or the dump button in Mr Adshead's studio? I do not think so. Is it the Labor Party that controls the talkback airwaves? I do not think so. The airwaves and the media were flooded with the victims' concerns, because the public had read reports in the paper in which the offenders were described as being not only dangerous sex offenders, but also burdened with very serious psychiatric issues such as narcissism, alcohol and drug addiction, a total lack of empathy, and being right up high on the Australian scale for the diagnosis of a psychopath, and then see them released! Why would the community not be concerned? It does not take a politician from this or any other chamber to come out and whip up community concern. Hearing that, why would they not be concerned? What will concern them, if it ever gets reported, is that the minister has come into this chamber on behalf of the government to surrender the government's authority under section 6 of the legislation, to seek a revocation order of a supervision order. It is surrendering the government's authority to go to the Supreme Court to appeal an order. The government is doing this because it does not want to embarrass the Director of Public Prosecutions. The minister will tell us on how many occasions the DPP has consented to orders.

MRS M.H. ROBERTS (Midland) [5.27 pm]: I will make some brief comments on the Dangerous Sexual Offenders Legislation Amendment Bill 2015 and I look forward to the consideration in detail stage. Firstly, the member for Butler has raised some very serious issues here today. There is no more important issue than community safety. There are no worse perpetrators of crime than paedophiles and those who commit acts of sexual violence against women and children. It is on record that the former Labor government, under Attorney General Jim McGinty, introduced the Dangerous Sexual Offenders Act 2006. In fact, he introduced the bill in November 2005. In introducing the original legislation, Hon Jim McGinty referred to other legislation that the Gallop government had been proactive in bringing forward to improve community safety in this state. He made reference to the Criminal Law Amendment (Simple Offences) Act 2004. He also made mention of an act that I brought in as Minister for Police, the Community Protection (Offender Reporting) Act 2004 that required convicted paedophiles to routinely report to police and advise them of relevant personal information, including their name, date of birth, address, employment details, motor vehicles owned or driven to them and so forth. That legislation enabled our state of Western Australia to participate in the national sex offender register. That was a first. The national sex offender register was gradually introduced around that time, and Western Australia was certainly one of the leading states in signing up to it so that paedophiles and other serious sexual offenders could not escape detention if they moved from state to state. Eventually, all the other states joined the national

sex offender register. Jim McGinty also cited the Criminal Law Amendment (Sexual Assault and Other Matters) Act 2004, the Working with Children (Criminal Record Checking) Act 2004, the Criminal Code Amendment (Cyber Predators) Bill 2005 and some other legislation. As a government, we were very keen to put this legislation in place because it is one thing for offenders to serve their sentence; it is quite another thing for them to be released safely into the community. At that time, it disturbed us that offenders who were released on parole and into the community at the end of their sentences effectively continued to pose a risk to the community. They had not fully rehabilitated and they continued to pose a risk, particularly to women and children in the community. As a government then, our view was that we should proceed with legislation to put community safety first—to put the victim first. Even though someone may have served their time as a penalty for their offence, so to speak, they may still present a danger to the community. If there was a risk that they were going to go out and do more of the same degrading crimes against women, or if there was a risk that another child or woman could be raped or assaulted because these people had been let out into the community—if there was not just a probability of that occurring, but a risk of it occurring—it was our strong belief that, as a government, we needed to protect the community and keep the offender in custody because of the risk they posed to the community. If members read through the rap sheets—the offences of many of these repeat sex offenders—they are frightening; they are awful. I think it is plainly horrific for anyone in the community to think that they, their sister, their mum or their daughter could be subjected to an offence by one of these offenders.

I have heard both the Minister for Police and the Attorney General respond to our calls over the last two or three years to close loopholes and make the legislation tougher. We were amongst one of the first states in Australia to introduce this legislation, and it is often the case that it is only through practice and seeing how the legislation works that we realise that there may potentially be some loopholes or areas in which the legislation could or should be made tougher. That is exactly the position that we have found ourselves in for three or more years now. By his own admission, the Attorney General said in his second reading speech that the review first started in 2011 and a subsequent review was done in 2014. Reviews are not done without a belief that there really is a problem, and problems have been reported by victims of people who are being released into the community.

The Attorney General does not seem to take this issue seriously at all. He has dillydallied on it. All along, he has clearly thought that there is some kind of hysteria from women or the community, or any of those who think that the legislation is not effective. For month after month, he would not give out his review; we asked for the review all last year. We were told that the legislation was going to be introduced—"gonna", "gonna", "gonna" from the Minister for Police and the Attorney General. They were "going to" do something and nothing eventuated. We peppered them with the odd question through Parliament: "When will you introduce legislation? You said you would. When are you going to toughen up these laws?" because surely the community is at risk unless the loopholes are closed and the legislation is toughened up. None of us want to see anyone else offended against when predatory people are released into the community. We see the likes of the offender who killed Gillian Meagher in Melbourne and wonder how he got released back into the community and where the balance there was wrong. I certainly do not want to see offenders of that nature released into the community where they pose a danger to every citizen in Western Australia, but, most often, children and women.

The Attorney General took his own good time on it. He would not operate in a bipartisan way. He would not provide a copy of the review to the opposition. That is a bit how this government operates—how the Minister for Police and the Attorney General operate. Other governments have not operated in that way when it comes to matters of community safety. I well remember when Hon Kevin Prince was Minister for Police. He routinely provided us with copies of reviews. He also routinely provided us with copies of draft legislation and got input. That assisted the passage of legislation through this house because he had a view—as did Jim McGinty—that if the legislation was good and going in the right way when it came to law and order, all the people in Parliament generally wanted to see our community safer. Most people in this Parliament have good motivation in that regard. I think it is abhorrent to play politics with community safety, but that is something that this Minister for Police does all the time, and the Premier has done it too. They like to talk tough on law and order. They continue to make announcements here and there, and they are always playing politics, saying, "The Labor opposition won't support this because we're tougher than it is!" Members opposite should do a little less chest-beating and a little more action because no-one is weaker on these things than the Attorney General.

The Attorney General has basically had the go-slow on this legislation for about three years. He had the go-slow on the review and he hid the review, and every month last year it was "going to be introduced" to Parliament. It was never introduced and it was only when one of these offenders was prominent in the media—there was a lot of talkback radio about it and community concern; not whipped up, but genuine community concern out there—that the Attorney General was dragged, kicking and screaming, into bringing the legislation before Parliament. When did he bring it before Parliament last year? It was in the last week of Parliament; it was introduced in the Legislative Council at the death knock of Parliament when there was absolutely zero opportunity to put the

legislation through. In doing so, he made a few claims. Basically, in an attempt to justify his own laziness and tardiness, he put forward the proposition that, firstly, the legislation was actually pretty good. He said that the legislation was operating pretty much how it should and that there were no major problems with it. That was his first conclusion. It was a bit like, "Why are you harassing me for this? Why are you banging on about it because really only minor changes are required?" I read out the Attorney General's second proposition in question time today. He said it through the media in November–December last year. He basically told the media words to the effect that no sexual offences had been committed by people who were declared sexual offenders whilst they were the subject of a supervision order. That was his second proposition. Again, he was telling people to just tone it down and chill out a bit because there was no real rush and only minor amendments were needed. Although there have been some breaches, the Attorney General implied that they had been only minor breaches. Perhaps someone had not gone for a urine test, they had not shown up at a police station on the days when they were required to, or perhaps they had been drinking alcohol—who knows? He implied that these were minor breaches, that they had not actually offended and, more particularly, that they had not actually committed a sexual offence.

Again, he is downplaying it, saying that there is no rush and trying to pretend that he is not really responsible for anything that is grievously wrong. On 22 March this year he repeated that claim when he said in the Legislative Council, and I quote —

> No serious sexual offences, as defined in the act, have been committed by any declared dangerous sexual offender subject to a supervision order to date. One DSO was prosecuted for the possession of child exploitation material. The number of successful contravention proceedings supports the proposition that the current legislative regime has worked well for the protection of the community, as contravention action has successfully been taken in cases of DSOs who appear not to be coping with the supervision regime before those offenders reverted to sexual offending. The figures that I have mentioned do not include DSOs who were subject to section 40A proceedings for minor or less serious offences such as technical breaches of DSO act orders.

I would have thought that looking at child exploitation material and the like would be good reason for such a person to be taken straight back inside, especially someone who has the history that these declared dangerous sexual offenders have. I note that although some people may think that imbibing alcohol and other things contrary to a supervision order is a relatively minor thing, imbibing alcohol and other substances of course lowers inhibition and makes it more likely that a person will regress to their shocking and terrible behaviour. The consequences of that for another human being in our society are absolutely dire and shocking. Today the Minister for Police confirmed on the record that a declared DSO had in fact been arrested on the weekend and had been charged with a breach of a supervision order and with aggravated sexual penetration. In my view the Attorney General should resign. I think the Minister for Police and the government have a lot to answer for, but I think the Attorney General should resign. He has taken at best an ambivalent attitude to this legislation; he has taken an ambivalent attitude toward the safety of women and children in our state. He has gone slow on the reviews. He had one review in 2011 and another in 2014. He sat on the reviews and said that there was no rush. He kept the review from public and opposition scrutiny and introduced legislation in the dying days of Parliament last year, which effectively the government has given little priority to this year and which it has brought on for debate in this place for the first time today. It is not good enough. The Attorney General's flimsy excuse is that the legislation is working and he knows it is working because, as he effectively said, nobody has been raped yet. That is what the Attorney General said; that was his legal-speak in his statement —

> No serious sexual offences, as defined in the act, have been committed by any declared dangerous sexual offender subject to a supervision order …

What the Attorney General meant by that is no-one has been sexually assaulted; no-one has been raped. However, someone was allegedly raped on Saturday night and an offender appeared in court on Sunday morning in Northbridge. I think the Attorney General has a lot to answer for. Had that person been in jail, that incident would not have occurred. Based on information the member for Butler put before the house it would seem that the state supported his release on supervision; is that not right, member for Butler?

Mr J.R. Quigley: That is right; in Wimbridge's case, yes.

Mrs M.H. ROBERTS: This is the most serious of matters and we are certainly not going to delay the passage of this legislation.

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

Minister for Police and the Attorney General that we cannot just lock up people and throw away the key because it is against the Constitution. We do not have to do that. It is not a matter of locking them up and permanently throwing away the key. Yes, there need to be appropriate review periods. The Attorney General has suggested, and this bill proposes, that it be after two years rather than one year unless by an application—there are conditions for that application—but maybe it should be reviewed every five years. I certainly think this can be toughened up, because I personally believe that the community has a right to say that those people who pose a serious risk of harming us—me, our children, our wives and our mothers—who are not rehabilitated enough, who have raped and in a degrading way sexually assaulted little children and women, and done it not just once, twice or three times, but many times over in the most obscene way, should be locked up and we should throw away the key. That is my view. To say that we do not have a right as a community to do that is just wrong. I do not think toughening this up more is prevented by the Constitution. If it were, we should change the Constitution because I think it is wrong. I think that the victims and potential victims' concerns need to be put first here. We all have a right to go about in the community in safety and our mothers, children and friends should be able to do the same. These people should not be released back into the community if they pose any risk at all. The balance has to be in favour of the victim. The balance has to be in favour of all the little children going to school in this good state. Why should they be put at risk because it may or may not be in the interests of an offender? If we can make a law to have the death penalty for some crimes, certainly we can make a law to impose life imprisonment.

MR P. PAPALIA (Warnbro) [5.48 pm]: I, too, wish to comment on the Dangerous Sexual Offenders Legislation Amendment Bill. I join my colleagues in expressing my disappointment at the behaviour and lack of professionalism and action by the government, in particular by the Attorney General, on this matter. This issue perhaps more than any other exposes the Barnett government as a fraud in frequently making claims about the laws it brings into Parliament and what that will do for crime in Western Australia. The Barnett government has been an abject failure and has failed the Western Australian community on crime. In the nine consecutive months to April this year there has been double-digit growth in crime statistics. We have record numbers in the prison system and record associated costs—more than $1 billion this year—being spent on a corrective services system that is failing and that is churning out more criminals than it has at any time in history. Under this government, our prisons have been turned into crime universities. Our prisons are pumping out an extraordinary number of graduates who are raining on Western Australian society a real scourge—not the scourge of graffiti, to which the Minister for Police has referred in the past, but the real scourge of crime.

This government has been exposed on the issue of dangerous sex offenders. In the Attorney General's response to speeches on this legislation in the other place, he criticised the opposition for its stance on the government's inaction on this issue. I want to address that. As I said at the outset, this issue, perhaps better than any other, exposes the fraud of the Barnett government when it comes to protecting the Western Australian community. The Attorney General said in the other place —

> We have heard on several occasions over the past couple of years those on the opposition side who ought to know better alleging that anyone who is classified as a dangerous sexual offender ought not to be released at all—that is how extreme it got—and that if there were any risk of a person committing an offence, they ought not to be released.

Undoubtedly, people have said that. However, those people are not just on the opposition side. Similar comments have been made by many government members, both backbenchers and frontbenchers. The Attorney General went on to say —

> That is a remarkable the proposition from the opposition, and it is more remarkable when it is repeated by those who claim to have some legal learning. Of course legal learning, commonsense and principle go by the wayside when there is political advantage to be obtained.

The Attorney General in the upper house has taken the high moral ground on this legislation and has suggested that he has not engaged in political opportunism as part of his government in the last eight years. In fact, it is in the last decade because, prior to this government taking office, the Barnett-led opposition, and, prior to that, multiple opposition leaders in the Liberal–National government, engaged in rampant populism on law and order matters, and the Attorney General was part of that. The Attorney General has also been part of that in recent times. The Attorney General berated the opposition across the chamber in the upper house and said that it was preposterous that the opposition would suggest that dangerous sex offenders should remain in prison. However, the Attorney General's fellow frontbenchers have engaged in exactly the same practice. In fact, way back in March 2014 when the notorious TJD incident occurred, the Attorney General himself engaged in blatant populism. I will talk about that. In fact, I will quote him. The Attorney General had sat on his hands for a couple of weeks and had done nothing on this issue, and he was criticised broadly by commentators in the media, by the opposition and by people in the community. The Attorney General finally put out a media release and said that he was going to conduct a review into the dangerous sex offenders legislation. He is quoted as follows—

> "I have asked my department to conduct the review in close consultation with the Director of Public Prosecutions, WA Police, the Department of Corrective Services and the Commissioner for Victims of Crime and to report back to me within three months," …

Remember, this was in March 2014.

Mr J.M. Francis: What was the incident—which one?

Mr P. PAPALIA: This is the TJD incident.

Mr J.M. Francis: Yes, but which one?

Mr P. PAPALIA: The first one.

Mr J.M. Francis: Out here in the car park?

Mr P. PAPALIA: No; not out here in the car park. It was when TJD was first released, and there was outrage. The Attorney General went on to say —

> "If any reforms are required, I will introduce legislation for those reforms in the spring session of Parliament and I will expect the full support of the Opposition in passing this legislation."

The Attorney General was suggesting by those comments that the opposition would be reluctant to support any such legislation and might in fact be an impediment to the government toughening up the legislation on dangerous sex offenders. That press release was on 20 March 2014. We are now finally encountering the debate on the dangerous sex offenders legislation—two and a half years later. Finally, the Attorney General has introduced legislation to the house so that we can question him and the government about that legislation.

The Attorney General suggested in those early days of the inquiry that he had set in motion on 20 March 2014 that the opposition was the problem. The Attorney General criticised the opposition's contribution to the debate on the dangerous sex offenders legislation and said that we were acting in an outrageous fashion by alleging that anyone who is classified as a dangerous sex offender ought not to be released. A couple of government ministers have done exactly that. On 19 March 2014, the Minister for Corrective Services said in this place —

> I am certainly not going to stand here and openly question the motives behind the Supreme Court, other than to say that somebody very close to me has been a victim of a dangerous sexual assault, not too far in the past. Certainly, if it were my decision, I may well have made a very different decision to the one made by that Supreme Court officer …

That is exactly the same as the language for which the Attorney General has criticised the opposition. On the same day, 19 March, the Minister for Police said in this place —

> Forty-four conditions were imposed on this offender for his management in the community. It says in the report repeatedly that he is a dangerous sex offender, he is a serious risk to the community, and he will be a danger to the community. So it is indeed perplexing as to how the decision has been formed that this person can be adequately managed in the community and the community can be protected with this person wandering around. It is perplexing and it is disturbing, and the community and the people in this chamber are rightfully outraged.

That is similar to the language for which the Attorney General has criticised the opposition. Further, on the next day, 20 March, the Minister for Police went on to criticise the release of these individuals and said —

> If I was in that seat making that decision, I would have said, "I don't want this guy living next to me; I don't want him living next to my daughters.
>
> …
>
> I would have said, "I don't want him living next to my sisters or my nieces."
>
> …
>
> I would have made that decision and said that if it is not good enough for me to have that guy living next door to me, it is not good enough for our community. The government has said repeatedly that it disagrees with this decision. We do not agree with this decision. The fact remains that because this person has been released, he has become a problem for our community and our police officers.

That is exactly the language employed by the opposition that criticised the release of that individual, and others, under this government's legislation, yet that is the language that was criticised by the Attorney General in the other place during the course of debate on this legislation. The Attorney General criticised the opposition for saying exactly the same thing as the police minister and the corrective services minister have said. They did not

say that just in Parliament, of course. The Minister for Police was quoted in *The West Australian* of Friday, 21 March, as follows —

> Police Minister Liza Harvey unreservedly backed WA Police for bailing TJD and attacked the court's decision to release him, saying "I don't want him living next door to my daughters".

On Friday, 27 June 2014—not just at the time of the original release—the Minister for Police is quoted again in *The West Australian* as saying —

> Mrs Harvey immediately voiced her displeasure at the ruling, while warning Comeagain that any breach of one of the 43 conditions of release would mean an immediate return to jail.
>
> "The safest place for him is behind bars—but we are bound by the decision of the court," Mrs Harvey said.
>
> "I can only imagine (the victims' horror) in seeing this man released, and I share it."

That is similar language to that employed by the opposition on numerous occasions, for which we have been soundly and roundly criticised by the Attorney General.

In *The Weekend West* of Saturday, 28 June, the Minister for Police repeated the same sort of language. She expressed her horror at the decision. She went on to say —

> "It is, with respect, wrong for commentators to assert, as they have, 'despite being declared a serious danger to the community a judge nevertheless chose to release an offender …

Sorry. That was the response from Justice McKechnie.

Sitting suspended from 6.00 to 7.00 pm

Mr P. PAPALIA: Before I was saved by the bells, I was reflecting on the odd nature of the Attorney General's attack on the opposition in the other place when he suggested that the opposition was being irresponsible in its criticism of the release of dangerous sex offenders under this government's oversight. I was reading from *The Weekend West* of Saturday, 28 June and reflecting on the Minister for Police expressing her horror at the decision for the release of, I think, Patrick Alfred Dennis Comeagain and the criticism that she subsequently earned from Justice McKechnie about that case. Justice McKechnie is reported to have said —

> "It is, with respect, wrong for commentators to assert, as they have, 'despite being declared a serious danger to the community a judge nevertheless chose to release an offender on supervision'," …

The judge chose to respond because there had been a number of outbursts and public statements by more than one minister—not just the police minister—including the Minister for Corrective Services. Indeed, I felt that even the Attorney General's original media release on the TJD issue suggested that he was being critical of the opposition and that it was somehow an impediment to keeping dangerous sex offenders locked up, which I found interesting.

There were further reports in the media on this issue in July 2014. On 2 July, an article in *The Australian* with the headline "Sex offender release irks minister" stated —

> THE West Australian government and judiciary appear to be at loggerheads, with the Corrective Services Minister questioning a judge's decision to release a dangerous sex offender from jail. On Monday, a WA Supreme Court judge decided the first person to be indefinitely jailed under WA's 2006 Dangerous Sexual Offenders Act, Edward William Latimer, would be released from prison under a strict five-year supervision order.

Further on it states —

> Corrective Services Minister Joe Francis said he would have preferred Latimer had been kept behind bars.
>
> "That's my personal view … but what is incumbent on our system of government and justice is the separation of powers," he said.

Yet again, on 5 July, there was a retort by Justice McKechnie in response to the most recent round of criticism of the judiciary by government ministers. This time it was in an article in *The Weekend West* by Tayissa Barone, Tim Clarke and Amanda Banks under the headline "Rebuke for minister over Comeagain". It states —

> Speculation surrounding the convicted rapist's whereabouts came as a senior Supreme Court judge openly chastised Police Minister Liza Harvey and Police Commissioner Karl O'Callaghan over their comments they would like to see Comeagain still behind bars.

It went on to state —

> … Justice John McKechnie said he hoped ministers and police appreciated the legal thinking that went into a decision to release a dangerous sex offender.
>
> "Otherwise, (the comments) just stir up trouble," he said.

The point of all those quotes and references is to confirm that it was a bit bizarre for the Attorney General, in his response to the opposition's comments in the debate on this legislation in the other place, to criticise the opposition for somehow being responsible for this type of public commentary, when clearly it was government ministers who were engaged in an attack on the judiciary over this matter, despite the fact that their government had been responsible for the release of the dangerous sex offenders. I think it was because they were feeling susceptible to having surrendered any claim they might have had in the past to pursue law and order on behalf of Western Australians. Undoubtedly and undeniably, the government has failed to reduce crime in Western Australia. Crime is out of control. Crime statistics are growing, despite the massive costs of the prison system, which clearly are just adding to the problem.

I want to ask the Minister for Police to respond to one thing on behalf of the Attorney General. He said in the other place that more than 53 per cent of DSOs were released on supervision orders by the court and that in 2014–15 nearly 49 per cent of DSOs were released on supervision orders by the court. I want to know where the Attorney General got those statistics from and who gathered them. I know that only one person in the Attorney General's department is dedicated to the analysis and composition of statistics. I am very sceptical when people release percentages as a claim that they have somehow achieved some great success and suggesting that there has been a reduction in the number of people, because, quite clearly, as the prison population has grown massively and as, I suspect, the number of dangerous sex offenders in the prison system has grown —

Mrs L.M. Harvey: Can you slow down and go back and give me the statistics?

Mr P. PAPALIA: No; I have to speak quickly as I have only two minutes left. I will ask for an extension and then I will slow down so that the police minister can hear me.

[Member's time extended.]

Mrs L.M. Harvey: What stats are you talking about?

Mr P. PAPALIA: In the Attorney General's speech in the other place, he claimed that the opposition had suggested that the changes to the management of DSOs to enable GPS tracking to be considered in their release would in all likelihood result in more dangerous sex offenders being released. When that announcement was first made and the proposed changes were first introduced, the then minister, Hon Terry Redman, conceded that that was very likely to be the case, or words to that effect. We continued to state that criticism publicly and suggested that the government changed the criteria to include GPS tracking as one of the considerations. We believed that, as a result, the judiciary was probably more inclined to believe that it would be safe to release more dangerous sex offenders. In his speech in the other place, the Attorney General made the suggestion that that was not the case and he released some statistics that he claimed refuted the argument. He said that in the year before GPS tracking was introduced, more than 53 per cent of DSOs were released on supervision orders by the court and that in 2014–15 nearly 49 per cent of DSOs were released on supervision orders by the court. I am sorry, Attorney General; I just do not buy it. I have seen the government manipulate statistics. I know he does not do statistics and data analysis. He is pathetic at it. He is appalling at transparency; he does not do that at all. I have seen the police manipulate statistics; and, if the statistics did not look good, I have seen them change the criteria so that the statistics looked better. I have seen the police regularly determine that it was clear that things were not looking good for them in the argument on crime statistics so they changed the criteria by which statistics were measured to ensure that the statistics did not look so bad. I think it is high time we had an independent authority gather, on behalf of government, all the raw data from within all the crime-related portfolios—Attorney General, police and corrective services—and analyse it and publish it so that everyone can see what the true story is.

On the claims made by the Attorney General, I say this: Exactly what time frame was the Attorney General referring to when he said that in the year before GPS tracking was introduced, more than 53 per cent of DSOs were released? Then in the next sentence the Attorney General went on to say that nearly 49 per cent of DSOs had been released. Did he use a suitable period of 12 months that suited his argument? Did he choose a financial year, for instance, that did not necessarily reflect fairly what was really happening? How many DSOs were on the street at that time in 2014? How many are on the street now? I am absolutely certain that the actual number will be significantly higher than at that time. I understand that the percentage may be lower than the overall percentage of DSOs in the prison system, but that does not paint a fair picture. If claims of this nature are going to be made, a lot more detail needs to be given. As I said, I know that only one person, level 7, has been dedicated—in 2015 anyway; perhaps it has been increased this year—to gathering statistics in the Attorney General's department. I am not sure how successful or capable they will be of getting a good picture of

crime statistics and trends and conducting analyses of them. I note that in the three years from 2013 to 2015, the funding of the Attorney General's department for accumulating data, analysing it and reporting crime and related statistics was cut by 55.6 per cent. It was not very high in the first place. It was only $261 252 in 2013 and it was $116 781 in 2015. The number of people dedicated to a task went from 2.75 full-time equivalents to only one in 2015. I question the ability of the Attorney General's department to even respond to questions about this matter and provide reasonable, fair and open statistics relating to the nature of the number of DSOs and the extent of the increase of DSOs being released as a consequence of the changed criteria to incorporate GPS tracking. I do not believe it, so I would very much like to hear more from the minister about those statistics quoted. I do believe that it is very likely, as was conceded by the minister of the day, Hon Terry Redman, that when GPS trackers were incorporated as one of the criteria for consideration for release of a DSO, the consequence was an increased number of dangerous sexual offenders on the streets of Western Australia. I just think it just stands to reason. We had all of the hot air and bluster from the Minister for Corrective Services at the really quite fair criticism directed towards him. Because of the integral part he played in selling the message about the GPS process to the community of Western Australia, when he was criticised by that same jury for having made it more likely that more DSOs were on the streets, there was a great deal of bluster and hyperbole from him, but I do not believe him. I do not believe the Attorney General's statistics. I want to know where he got his numbers from, I want to know what the raw numbers were and I want to know what time frames he was referring to—specifically incorporating the months, from when until when, and how the measures were taken. It is not good enough to make claims. The government has no credibility when it comes to providing transparency in just about every field of endeavour and particularly in crime statistics.

As the member for Butler said earlier, the government has surrendered responsibility for this legislation. What is being brought in here is not what was promised by the Attorney General in March 2014 when he was finally dragged kicking and screaming into the public debate. When TJD was first released, with the outrage that followed, further releases and breaches occurred and the Attorney General suggested that he was going to act swiftly. He initiated an inquiry that was to be completed within three months. It was going to be introduced in the spring session of the Parliament that year and it was going to be tough. The inference was that the opposition probably would not want to support it and he would be watching the opposition closely to ensure that it did support any proposed increased toughness in the legislation introduced. Now, all these years later, all this time later, what we get is not a toughening of legislation, not a tightening of restriction on the release of dangerous sex offenders, but an effort by the Attorney General to avoid responsibility, to move himself out of the frame and to avoid being put in the frame to challenge the release of these dangerous sex offenders. It is clear, as has been outlined by the shadow Attorney General, that currently the Attorney General has that power. He has the authority to intervene.

Mrs L.M. Harvey: He does not have the authority.

Mr P. PAPALIA: He has the authority under the current legislation. What he is doing here is a cover-up. He is changing legislation so he is no longer responsible—so he can avoid responsibility. That is a complete sham. That is a backdown. That is contradictory in just about every respect to the message conveyed in 2014 by the government and that subsequently continues to be peddled. As I have said on a number of occasions in recent times, I believe that the government has lost all credibility on any crime and punishment or law and order matter in Western Australia. My only regret about the last ReachTEL poll in Western Australia was that the poll failed to ask what the preferred party on law and order or community safety was. The poll asked about education, financial management and health, and WA Labor was well and truly preferred in those three areas of endeavour—massively, member for Balcatta; I am looking over there. The member for Balcatta might need to do a bit of Google searching and read those results of the ReachTEL poll. But unfortunately, sadly, I got straight on the phone to *The West Australian* to ask whether the poll had asked about community safety. I think in all likelihood even in that one field of endeavour on which the government no doubt desperately hopes it might still have some credibility amongst the population, it would have lost it. At the very least, WA Labor would be considered to be just as reasonable a proposition for dealing with any law and order or crime matters in Western Australia, and in all likelihood it would be considered to be better. The shadow police minister has completely outscored the police minister on the policing model. That has been abandoned. The new policing model has been demonstrated to be a failure and the backflips around that were extraordinary. All the other failures that can be seen in the Attorney General's department, in police and in corrective services confirm that in the minds of the Western Australian public, this government is in disarray in those areas as much as in all the others.

MS M.M. QUIRK (Girrawheen) [7.18 pm]: I will be brief, but I wanted to make a few comments about the Dangerous Sexual Offenders Legislation Amendment Bill 2015 and the regime for dangerous sexual offenders, because it is an area I had some experience in when I was Minister for Corrective Services. The first thing I want to say is that I think in general terms in all but the most exceptional of cases past behaviour dictates future

conduct. We are dealing here with a small proportion of sexual offenders who are pathological and almost incapable of rehabilitation, and severe caution needs to be taken with those people. In addition to that, many of them deny their sexual conduct and this means that they are not amenable to doing any programs while in prison, because the orthodoxy of prison psychologists is that unless people want to change or acknowledge their wrongdoing, they are not susceptible to counselling or other cognitive behaviour therapy. It is a waste of time since they are denying their conduct. Such a program was introduced by the previous government. However, former minister Christian Porter dismantled that. The upshot of that was that the worst, the most entrenched, the most intransigent offenders who denied that they had committed any offence were the very ones who did not receive any treatment. As a consequence, because they had not undertaken any programs, they did their full sentence without being released on parole; parole was denied because they were not participating in a program.

The hardest, the most intransigent, the worst of these offenders come out of jail having served their full sentence and are not subject to any supervision. People under this legislation are judged by the court as to whether at some stage it is suitable to release them under supervision. I do not normally criticise the judiciary, but in this case I will because I believe that there is a level of naivety in some of the decisions made by the judges in releasing some of these offenders. For example, they tend to rely on factors such as the offender being on anti-libidinal drugs. Their effectiveness very much depends on the offender taking them. Also, although they might suppress physical performance, they do not necessarily suppress the urge or the desire to dominate a victim. It may well be that attempts are still made, so I am also very concerned when judges say that someone is taking anti-libidinal drugs and therefore they should be released, because there is absolutely no guarantee that they will take them and it does not stop some offenders from attempting criminal conduct and subjugating their victims.

The ACTING SPEAKER (Mr P. Abetz): Member for Butler, I can hear every word you are saying. Can you please keep your voice down?

Ms M.M. QUIRK: The second thing that used to happen was that some judges would find that a particular person before the court represented a danger to the community, but would go ahead and release the offender regardless. As Minister for Corrective Services, that caused enormous difficulties with where we could house them, bearing in mind that the judge had made a public declaration that the person remained a dangerous offender. As soon as the word got out that a dangerous sexual offender was in the community and remained a danger, no-one, of course, wanted them living near them. The judge had naively decided to release them without the necessary supports and with the naive hope that the person would not reoffend, yet there was a very real problem of having to deal with them in the community.

The next issue is one on which I concur with the member for Warnbro, and that is the provisions in this bill that relate to the relationship between the Director of Public Prosecutions and the Attorney General. What is definitely sought to be done here is to abrogate the responsibility of the Attorney General and to distance him from proceedings that the DPP may take. At the end of the day, the Attorney General is the first law officer of the land and is responsible to the community for the smooth and streamlined running of the criminal justice system. He is to ensure that people are not unduly put at risk in these circumstances. For the minister in this place representing the Attorney General to deny that the government is attempting to further distance the Attorney General from his responsibilities through this legislation is simply rubbish, because that is exactly what this bill intends to do.

I am also concerned about the provision that permits —

> a supervision order must not take effect for at least 21 days, to give the authorities responsible for the monitoring and management of the offender …

This was brought about by the TJD case and the fact that the left hand did not know what the right hand was doing. I am concerned that this is the remedy to this problem and we are not instead trying to at least integrate and streamline the police, the courts and Corrective Services so that they are able to share seamlessly and expeditiously information relating to charges. It seems to me that this is the wrong approach. Giving the 21 days is not fixing the system but merely trying to cover up the cracks.

The final thing I want to say is that I noticed that the second reading speech states that there is "a new duty on offenders to disclose relevant material for court hearings". In this context, I ask: what is "relevant material"? That could mean a multitude of things. In the course of the consideration in detail stage, I would certainly like some guidance on what relevant information an offender has to disclose in the course of court hearings.

MR M. McGOWAN (Rockingham — Leader of the Opposition) [7.28 pm]: The opposition will seek to amend the Dangerous Sexual Offenders Legislation Amendment Bill 2015 to toughen it up and to ensure that we provide greater protection to women in our community. We will take that approach and the shadow Attorney General will

move a range of amendments to ensure that this bill means something. The approach of the government to this issue is weak, weak, weak. These so-called reforms are minor in the overall scheme of things.

We have been pursuing this issue now for a number of years—at least three, I would expect—and we have had some very significant cases come before us and we have taken up the cases of the victims of dangerous sex offenders. I want to remind the house that I received a Facebook message from someone by the name of Angela Johnston, and I gave her a call. She is now living interstate, but she is in fear of the dangerous sex offender who raped her in Collie in 2007. She contacted the opposition because this dangerous sex offender was being released and she could not get any feedback from the government. She explained her circumstances to me and how frightened she was of Mr Warren John Ugle, who broke into the house in which she was living in Collie in 2007 and raped her whilst her child was present in another room. He was imprisoned and then released, and she was very concerned about his release because she was of the view that he would reoffend. Since that period, Mr Ugle has been in the press a few times in relation to some allegations made against him and discussion about whether he will be breached and indeed go back to prison which, of course, is a matter before the courts. But she was very concerned about the existing law and the impact that it was having on her.

The existing law, the Dangerous Sex Offenders Act, was a 2006 piece of legislation, as I recall, and it was designed to overcome an existing area of the law so that dangerous sexual offenders who were at high risk of reoffending had the prospect of staying incarcerated in order to protect the public. Before these laws were brought into effect, there was nothing to ensure that someone at the end of their sentence could remain incarcerated if they were a serious prospect of reoffending. Dangerous sex offenders served out the entirety of their sentence and may not have had any rehabilitation or undertaken any sort of course or the like to improve their behaviour and understand what they have done, and then they were released at the end of their sentence, as they probably would not have received parole. At the end of their sentence, they would be released and nothing could stop that from happening. The then Gallop government brought in these laws because there was nothing there before that. It was a good initiative. I was advocating for it. There had been a shocking case in Queensland involving a fellow of the name of Fardon, from memory, who said prior to release at the end of his sentence that when he got out, he was going to rape someone, and there was nothing anyone could do to stop it because he was going to be released. What the Queensland Parliament did was to bring in laws to ensure that for someone in that circumstance, the court could make an order to keep them in prison. In this case, Western Australia followed suit. The legislation was designed to ensure that there was a protective measure against those people who are at serious risk of re-offending. It is a good initiative. It has been in place now for nine years. Of course, as the experience of the laws progresses, we might want to make amendments to improve the laws even further. When the cases of TJD and Mr Ugle came along, the opposition said that there needed to be significant changes to these laws—Labor came out and said that there needed to be significant changes. The shadow Attorney General and I stood out in the fern garden outside this building and advocated significant changes to the law.

Mrs L.M. Harvey: They should have been sentenced for longer.

Mr M. McGOWAN: Right; thank you. It has been years since the case of TJD came along. We were talking about this years ago. The Attorney General, who moves at glacial speed, is sloth-like in his administration of his portfolios, which I think even ministers would privately agree with. He undertook to undertake a review of the laws. Apparently, this review has been released today. On page 5 it states that the review was announced by the Attorney General on 20 March 2014. This review into the laws was announced more than two years ago. There was all this public concern about TJD and dangerous sex offenders, so the Attorney General said, yes, there would be a review, and on 20 March 2014 it was announced. That was after some advocacy by the opposition, I think from 2013. On 20 March the review was announced. It has been tabled today. Look at it! All sorts of areas of it are missing. We cannot get to the bottom of it. "Redacted" is the word, but "blacked out" is the more commonly understood phrase. Pages have been blacked out throughout the report. For all these parts of this report into these issues, the government has removed information. The Parliament itself does not even get access to that information. What a government of secrecy—shocking secrecy. We called for the government to change the laws. The government glacially moved to some inquiry into the laws and now the government has released a report full of secret provisions. I want to quote one bit on page 16. This is one part of the report. It states —

> In the case of Mr TJD, the perspective of some members of the community, the Opposition, and some sections of the news media, was that the decision of the DPP to not oppose the application, at the annual review of Mr TJD's continuing detention order for a supervision order, should have led to the Attorney General exercising his powers and taking over the application from the DPP. That is, that the Attorney General should have applied for a continuing detention order under the DSO Act in respect of Mr TJD.

Then the next one, two, three, four, five, six, seven paragraphs are blacked out. We do not know what the report thinks about that. We do not know what the review thinks about what we had to say. I wonder why the

government has blacked it out. Perhaps the report endorses what we had to say. If we get elected to government, that information will be released, as will all the contracts and other things that this horrible, secretive government has been hiding. The Leader of the House is leaving the chamber; he does not like it.

Mr J.H.D. Day: Tell me more.

Mr M. McGOWAN: He was scurrying away.

Mr J.H.D. Day: Not at all.

Mr M. McGOWAN: It was sloth-like behaviour. The first paragraph on page 16 of the review is about our commentary on the Attorney General and why he did not take up the opportunity to apply for a continuing detention order on Mr TJD, and the next seven paragraphs are deleted. We do not know what the report found on that. Does that not raise all sorts of questions with people? There he is leaving again! The point is that the Attorney General has the opportunity under the existing laws to undertake an appeal in relation to a person being detained; that is, if a decision were made to not retain someone in prison, the Attorney General has the opportunity to appeal, independent of the DPP.

Mrs L.M. Harvey: He still can. That's not changing.

Mr M. McGOWAN: Let us check that out.

Mrs L.M. Harvey: We will, because you're wrong on that.

Mr M. McGOWAN: I am advised that the Attorney General has said something different from that.

Our approach to this legislation in light of the advocacy, certainly in my case, of Angela Johnston, whom I have met a number of times—she is the rape victim of Mr Warren John Ugle—is that we need to toughen up this situation so that if someone is at serious risk of reoffending, they will not be released. We are saying that they will not be released: that is Labor's position. Currently, as we have seen from some of the reviews by the courts, some people, such as Mr TJD, who the court found has a narcissistic personality and is a danger to the community, are still released. We are saying that we should toughen up the law, and the Liberal Party is saying no. That is the situation we are in. Under our changes, those people would not be released. The shadow Attorney General has put on the notice paper a range of amendments to the government's laws. Those amendments seek, firstly, to reverse the onus of proof so that an offender would need to convince a court that they would not offend again; secondly, if a police officer alleges that an offender has breached an order, they must be arrested and cannot be released on bail unless there has been a determination by the courts; and, thirdly, when breaches come before a court, the offender must convince the court to a higher standard that he will not breach. They are three significant reforms to toughen up these laws. There is a clear point of difference. We have done it on the basis of listening to people whose calls the government would not even return. The Attorney General has described Angela Johnston, whom I have met a number of times and have spoken to—she has my mobile number and often calls me—along with other complainants about the existing situation, as the ALP's rent-a-crowd. In which speech was that, shadow Attorney General?

Mr J.R. Quigley: The second reading speech.

Mr M. McGOWAN: It was during the second reading debate in the upper house. He described them as the ALP's rent-a-crowd. This is the victim of a rapist. Is she an ALP rent-a-crowd? I do not think she even knows what party I am in; she is not interested in such things. All she did was contact me via Facebook because she could not get feedback from the government. I mean, honestly; it is appalling.

We have a range of reforms on the notice paper. We will release these details that the government is hiding away—redacting—if we are elected to government. We will find out exactly what that report had to say, because that sort of secrecy is appalling. We will support the government's minor changes to the laws because any change that is a slight improvement is better than nothing. This will be a test for Liberal Party members: will they support a toughening of dangerous sex offender laws or will they not? That is the test that will be applied in this Parliament. They failed the test in the upper house but that is the test that will be applied here in the lower house when the shadow Attorney General moves his amendments.

I note from question time today and from watching Channel Nine news tonight that a case is currently before the courts about which certain allegations were made on the weekend. I was disturbed when I saw Channel Nine news on this. It is one of these issues that we need to get to the bottom of, certainly after any court proceedings have been concluded. I thought the question asked by the shadow Minister for Police today about whether any changes to the law would have made it less likely for that individual to be released was very pertinent. As the facts of that case come forward, we will see what they hold because I think it will be relevant to know whether the changes to the law on the notice paper from the state opposition or those from the government would have made a difference to the release on the weekend of the person accused of a sexual offence. When the facts of that

matter are concluded and we see what indeed occurred, as I am sure we will, we will be able to make a judgement, as will the people of Western Australia, about whether the changes to the law as advocated by the opposition would have made a difference to the release of that individual. I think it will be very interesting for people to judge that at that point in time.

I look forward to the consideration in detail stage of this debate and I am sure the shadow Attorney General will prosecute the case very well.

MRS L.M. HARVEY (Scarborough — Minister for Police) [7.42 pm] — in reply: I am pleased to stand and respond to members' contributions in this place on the Dangerous Sexual Offenders Legislation Amendment Bill before the house. First of all, a number of assertions have been made by those opposite about some provisions of this bill somehow weakening the legislation and weakening the Attorney General's role. The advice I have received is that that is not true. It is very easy in opposition in this Parliament to make all sorts of promises about changing legislation, locking up people, throwing away the key and all these things.

Mr P. Papalia interjected.

The ACTING SPEAKER (Mr P. Abetz): Member!

Mrs L.M. HARVEY: Thank you, Mr Acting Speaker. I am two sentences into my reply and I am already being interjected on.

In response to the member for Butler's assertions, I have a responsibility as a minister in executive government to abide by the Constitution. The fact remains that this legislation is seeking to give the courts the ability to retain in prison a person on a continuing detention order past the expiration of the term imposed upon them by the court or to release them on a supervision order with conditions. We are talking about offenders who have served the time allocated to them as a consequence of their actions and are looking at release.

I am gobsmacked at the rhetoric from members of the opposition about this. We are talking about offenders who have served their prison sentence and are looking at release because they have finished their time in prison that the court allocated to them as a consequence of their offending. When we bring mandatory minimum sentences to this place, I get nothing but opposition from the member for Butler and others about how —

Mr J.R. Quigley interjected.

Mrs L.M. HARVEY: — irresponsible it is to take sentencing discretion away from the judiciary.

Mr J.R. Quigley interjected.

The ACTING SPEAKER: Member for Butler!

Mrs L.M. HARVEY: Our mandatory minimum penalties for violent home invaders who commit acts —

Mr P. Papalia interjected.

The ACTING SPEAKER: Member for Warnbro; I do not want to have to call you.

Mrs L.M. HARVEY: Under our mandatory penalty legislation, offenders who in the course of a home dwelling burglary sexually assault the occupant of the home will stay behind bars for longer. The member for Rockingham talked about particular cases and an incident from 2007. Under our mandatory penalties regime, that offender would not even be up for consideration of a continuing detention order or a supervision order because they would still be behind bars. They would be behind bars for longer as a result of their offending. We are talking about when people have finished their sentence.

Mr P. Papalia interjected.

The ACTING SPEAKER: Members, the Minister for Police has the call.

Mrs L.M. HARVEY: This is where we differ ideologically in these areas, but I will go back to the salient points that members have raised. I have been quoted extensively in this place. As a mother and a member of the community, an aunty, a sister and a daughter, I do not want dangerous sexual offenders released into the community. Of course I do not; I do not believe anybody does, but the fact remains that we have to abide by the Constitution and, constitutionally, we cannot detain people indefinitely except under a strict legislative framework, which is what we are proposing to achieve with this legislation. One of the key amendments is that when an offender applies for release after the first year and is refused, we are giving them a two-year window before they are allowed to apply again for release from detention. That will make the legislation significantly tougher. It will test the Constitution and it is quite radical. We are saying to offenders, "Finish your sentence; after a year you can apply to be released, we will give the court the opportunity to determine whether to continue to detain you or release you on a supervision order, but after that 12 months, you can't apply again for another two years." That is a significant strengthening of the legislation. I do not know whether members opposite do not

understand what we are doing or are deliberately obfuscating. It is extraordinary to be putting this legislation in place, but we think it is necessary. Yes, we are doing that on behalf of victims so that victims have a wider window between appearances in court when, having completed their sentence, offenders are applying for release. Had a mandatory minimum sentencing regime been in place, they may not even be eligible for release but that is the system we have.

Members talked about looking after victims. I take members back to when the legislation was introduced. A lot was said about what Hon Jim McGinty did when he was the Attorney General in bringing this legislation forward. At the time, the member for Nedlands, the opposition Attorney General, Ms Walker, tried to insert a provision into that legislation to include a victim impact statement, along with the psychiatric and psychological reports, for consideration of the court. That was a deliberate consideration of victims as part of the original legislation in 2005 when it was debated in this place. At the time, members who were in this place who are still here—the members for Girrawheen, Rockingham, Cockburn, Collie–Preston and Mandurah—all voted against the insertion of that provision to specifically allow for a victim impact statement to be a consideration of the court at the time of the offender seeking release. That is being included in this legislation because we felt then that it was appropriate and we are including that now as part of the review of the legislation and the new act.

Mr P. Papalia interjected.

The ACTING SPEAKER: Member for Warnbro, if you do not desist, I will call you.

Mrs L.M. HARVEY: The member for Midland talked about dangerous sex offenders not always being released on parole. We need to be clear that there are two different regimes. Parole is when an offender is released prior to when the sentence applied by the court has finished. Provisions are attached to parole and some of them are of a similar type to the supervisory provisions that one might expect a dangerous sex offender to incur as part of this regime. We are talking about supervision orders or a continuing detention order for dangerous sex offenders who have completed their sentence. It is a different regime; we must not confuse this regime with parole, because parole is the release of an offender prior to the completion of a sentence under different considerations of the Prisoners Review Board.

The member for Midland seemed to imply that a review of this legislation was done in response to its failings. My understanding is that it was part of the statutory review process of the legislation. We write a review clause into nearly every legislative instrument we bring to this place. Out of that very considered statutory review process came a new Commissioner for Victims of Crime. There was consultation with victims and consultation with the legal fraternity—indeed, it was a broadly consulted and robust review—and out of that review we have recommendations for legislative reform and that is what we are taking on and have brought to Parliament as part of this amending Dangerous Sexual Offenders Legislation Amendment Bill.

The member for Midland blamed the government for a consideration of the court and called for the Attorney General to step down. Ultimately, the court decides whether to release an offender who has completed their sentence on a supervision order or continue to detain them. We are not proposing to change the Constitution; that is what would need to change to change this regime and keep people behind bars beyond the sentence that was allocated by the court. We are not proposing to do that. We are proposing to amend the legislation and to amend aspects of it that were raised as part of the review process as desirable to be improved upon.

I do not have access to the statistics referred to by the member for Warnbro. I understand his reluctance to engage in and believe any of the statistics released by the government. Similarly, we find questionable some of the statistics referred to by the opposition and we also need to go back and examine them. I will endeavour to find out over what period those figures were gathered and see how that intersects with the GPS tracking of offenders. I had a look at those statistics when they were released—I cannot remember the exact numbers—but we specifically looked to see whether there had been a trend after the GPS ankle bracelets came in place. The problem that was purported to occur from GPS tracking was that a court would look to the tracking device and say that because offenders can be GPS tracked, they could be released. A small number of dangerous sex offenders are eligible for release each year, so statistically we are talking small numbers. But —

Mr P. Papalia: Can you understand my scepticism when you release a percentage rather than the actual numbers?

Mrs L.M. HARVEY: I can; I understand that. But the assertion that more offenders were being released as a result of the government's GPS tracking system was found to be untrue and was not sustained by the figures.

Mr P. Papalia interjected.

Mrs L.M. HARVEY: No, it was agreed that there could be the potential, but the facts show us that something else is happening and that in actual fact fewer offenders are being released since the introduction of GPS tracking.

Mr P. Papalia interjected.

Mrs L.M. HARVEY: I will; I have already endeavoured to give that to the member.

The assertion made by the member for Girrawheen and other opposition members that somehow the Attorney General has removed himself from the process is 100 per cent incorrect. Section 6 of the Dangerous Sexual Offenders Act states that the Attorney General may perform the functions of the DPP, so the reserve power remains. Section 6(1) reads —

> The Attorney General may make an application that the DPP may make under this Act and may give a consent that the DPP may give under this Act.

That reserve provision remains in the legislation. All that has happened is an additional insertion to tidy up and clarify the DPP's responsibility in taking these proceedings forward in the name of the state. It will not remove the Attorney General from the process. Rather, it will clarify the position of the DPP. In fact, when Hon Jim McGinty brought in this legislation, in his words it was necessary for the Attorney General to retain what may be fairly described as a reserve power to act in appropriate cases. That reserve power remains in place; it has not been removed or deleted from the legislation as part of the amending bill. When we get to consideration in detail, members opposite who have a copy of the amending bill or who find an original copy of the legislation, will see that there is no deletion of section 6 of the act.

The member for Girrawheen seemed to misunderstand the insertion of the 21-day period before a continuing supervision order is made by the court and the offender is released into the community. That 21-day period will allow the police to appropriately place an offender on the Community Protection website or, as people call it, the sex offender website. A 21-day appeal period was written into the legislation so that offenders have the opportunity to appeal the decision to have a picture of their face published on the Community Protection website. To ensure that the offender cannot be released until the appeal period is finished, we are providing for a 21-day gap between when the court issues the supervision order and the offender is released to allow for that appeal period to be served so that the offenders can be published on the Community Protection website. We think that it is sensible that there are no gaps between an offender being released into the community and a picture of their face being published on the Community Protection website so that the community in the vicinity of where that offender will be living can use that new tool—a tool that this government introduced—to acquaint themselves with the characteristics of an offender and to make visual identification of an offender who may live near them. That is what the 21-day appeal period is about.

I want to clarify the Attorney General's comments. The Attorney General is a very compassionate man. He very much empathises with victims. Having formerly worked with the DPP, he has dealt with victims of crime most of his career. The Attorney General objects to victims of crime being paraded as part of a political campaign, because that does not serve them. Although he empathises with victims of crime, he has been quite clear and has stated—I support him—that victims of crime should not be manipulated as part of a political campaign between differing political parties in these sorts of matters. It is that to which the Attorney General takes great umbrage, and I support him in that. His comments have been misconstrued by members opposite. We need to clarify why offence was taken. The Attorney General thought that some victims of crime were being manipulated through the media as part of a political campaign and he objected to that because he has dealt with victims of crime in his role with the DPP. That is what he took offence to.

Although his comments may have been misconstrued, that is where I believe the Attorney General stands and that is what his undertaking to me has been with respect to victims of crime.

I thank members for their contributions to the second reading debate on the Dangerous Sexual Offenders Legislation Amendment Bill 2015. As we go through consideration in detail, I will correct some of the myths and half-truths propagated by the opposition with respect to this amending legislation. The government has undertaken a very thorough process of consultation. The Commissioner for Victims of Crime—the first in this state—has been involved in this process from go to whoa, dealing with victims of crime and ensuring that they are supported through the process and that their considerations and suggestions are taken on board. I look forward to Ms Hoffman, the Commissioner for Victims of Crime, having the opportunity, via me, to explain some of the methodology behind the review and the amending legislation before the house. I commend this legislation to the house.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Mr P. PAPALIA: The original release of TJD set in motion a chain of events that commenced with the Attorney General announcing an inquiry, and ultimately, I assume, led to this place finally having this legislation. At the time the Attorney General indicated that the legislation would be introduced in the spring session of 2014: Why did that not happen? Why are we —

The ACTING SPEAKER (Mr P. Abetz): Member, we are dealing with clause 1; that question is relevant during the second reading debate, but certainly not under the short title. I ask you to address yourself —

Mr P. PAPALIA: No; it is relevant. The short title is "Dangerous Sexual Offenders Legislation Amendment Act 2015". I am wondering why we did not get the amendment bill in 2014, as promised by the Attorney General in March 2014.

Mrs L.M. HARVEY: I am advised that the process of consultation was quite thorough and extensive. The Attorney General desired that this legislation be robust and stand the test of both houses of Parliament. So, the legislation took longer than expected to get to the point at which the Attorney General was happy to bring it to Parliament.

Mr J.R. QUIGLEY: The Attorney General said at that time that he would commission a report on these matters. That was in June 2014. He introduced the legislation without ever tabling that report: why was the report tabled as late as today in another place heavily redacted? We cannot make sense of the report. Why has the government introduced the legislation without honouring the Attorney General's —

The ACTING SPEAKER: Member, this is not relevant to the clause. Those issues should have been raised during the second reading debate, and you rightfully did so. They are not relevant to this —

Mr P. Papalia: No; it relates to the title of the bill. Part of the title of the bill reads 2015; all this was supposed to be delivered in 2014.

The ACTING SPEAKER: Member, I will not allow that line to continue; it is not appropriate and it is not relevant to the short title of the bill.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 3 amended —

Mr J.R. QUIGLEY: Clause 4 reads, in part —

> ***psychologist*** has the meaning given in the *Mental Health Act 2014* section 4;

And then something different —

> ***qualified expert*** means —
>
> (a) a psychiatrist; or
>
> (b) a qualified psychologist;

I noticed that in the other place the Attorney General said he was looking for —

> … additional qualifications or accreditations that can be prescribed that will qualify them to give the expert opinions that are necessary under the legislation.

What additional qualifications and accreditations must a psychologist have to become a qualified expert under the new definition?

Mrs L.M. HARVEY: The change in this definition relates to the workforce scarcity of psychiatrists who practice in this particular area; it is not a phenomenon unique to Western Australia. The change will mean that two qualified experts, only one of whom must be a psychiatrist, will examine the offender to prepare reports about an offender under the relevant provision. It will basically allow for a psychiatrist and a psychologist or another qualified person —

Mr J.R. Quigley: A qualified psychologist?

Mrs L.M. HARVEY: A qualified psychologist, to put forward a report on the offender. That is it.

Mr J.R. QUIGLEY: Yes, but the Attorney General foreshadowed in the other place that there will be additional qualifications. The Attorney General states on page 1696C of the *Hansard* of 23 March that there will be —

> … additional qualifications or accreditations that can be prescribed that will qualify them to give the expert opinions that are necessary under the legislation.

The question was asked —

> Is a "qualified psychologist" more qualified than a psychologist?

The Attorney General replied —

> They may have different accreditations or qualifications, but they have to be a psychologist within the meaning of section 4 of the Mental Health Act.

And —

> We are looking at psychologists who qualify, …

What additional qualifications would a psychologist have to have to be a qualified psychologist? What is it contemplated will go into the regulations to mean that they are gazetted as a qualified psychologist, not a psychologist simpliciter?

Mrs L.M. HARVEY: I am advised that the workforce scarcity of psychiatrists available to prepare reports for the purposes of the DSO act has been a concern for many years. Forensic psychologists could be another source of appropriate reports to inform the court. The proposed amendment to allow suitably qualified psychologists to prepare reports for the purposes of section 14(2) of the DSO act will not be operative until the relevant qualification or accreditation is prescribed. That means that the status quo will not change until the appropriate qualification or accreditation is identified, but it will allow for an alleviation of the issue around workforce scarcity of psychiatrists who are prepared to report on things for the purposes of the DSO act. That will occur when an appropriate standard of qualification is identified. I might add that this is not unique to the dangerous sexual offenders legislation in WA. The equivalent legislation in New South Wales, Victoria and the Northern Territory also allows for a broader range of qualified experts to make equivalent reports. It is in response to the scarcity of specialist psychiatrists in the area and will allow for forensic psychologists and others to be identified as qualified experts. The member should read the next definition, which states —

> ***qualified psychologist*** means a psychologist holding a qualification or accreditation prescribed for the purposes of this definition;

Basically, this allows us to determine what qualification or accreditation is appropriate.

Mr J.R. QUIGLEY: That was my question: what are the additional qualifications required by a psychologist to be an accredited psychologist within the definition?

Mrs L.M. HARVEY: Basically, this is a futureproofing provision, because at the moment the jurisdictions are currently consulting to determine what level of qualification would be appropriate. As I said, until this legislation goes through, a qualified expert is still a psychiatrist as defined under the Mental Health Act. Once it is determined what level of qualification is appropriate, it will be prescribed. I put a suggestion to the member that one example is a forensic psychologist, but that has not been determined as yet and, indeed, this process is being determined in each state at the same time.

Mr J.R. QUIGLEY: Is it fair to categorise the minister's answer to, "What are the additional qualifications that a psychiatrist will need to be a qualified psychologist?" as "I don't yet know"?

Mrs L.M. HARVEY: No.

Mr J.R. Quigley: Then what are they?

Mrs L.M. HARVEY: The definition states —

> ***qualified psychologist*** means a psychologist holding a qualification or accreditation prescribed for the purposes of this definition;

As to which of those qualified psychologists will then be categorised as a qualified expert, we have not determined which area of psychology will be the one.

Mr J.R. Quigley: So you do not know yet?

Mrs L.M. HARVEY: No; we have not settled on which area is the most appropriate.

Mr J.R. Quigley: So you don't know.

Mrs L.M. HARVEY: It has not been determined yet, no.

Mr P. PAPALIA: How thin on the ground are psychiatrists willing to perform this role in relation to dangerous sex offenders? Are we talking about a small handful of people? Is there an imminent threat that we will not have someone to perform the role, or is there an anticipation that the government would prefer to have larger numbers than are available now?

Mrs L.M. HARVEY: I am advised that it has been an issue in every jurisdiction since the legislation has been enacted. A small number of psychiatrists specialise in this area, and if we look at the numbers, there are a small number of offenders as well. It is an issue that each jurisdiction is dealing with and we need an opportunity to allow other areas of expertise to be involved in the process.

Clause put and passed.

Clauses 5 and 6 put and passed.

Clause 7: Section 7A inserted —

Mr J.R. QUIGLEY: This is a clause that the opposition shall oppose. The minister said this changes nothing—it cleans up a paperwork issue and allows the Director of Public Prosecutions to make the application in the name of the state of Western Australia and nothing more. Is it correct, minister, that it does not change the relationship with the DPP or otherwise inhibit him at all, and just cleans up the paperwork enabling the DPP to make the application in the name of the state of Western Australia? Do I understand the government's position correctly?

Mrs L.M. HARVEY: Indeed, and section 6(1) of the Dangerous Sexual Offenders Act states —

> The Attorney General may make an application that the DPP may make under this Act and may give a consent that the DPP may give under this Act.

The proper exercise of the power of the Attorney General to plead applications under this section is to be understood having regard to a relationship between the Attorney General and the DPP under the Director of Public Prosecutions Act 1991. The remarks on that legislation, on its introduction alone, put beyond doubt that the Attorney General's power to bring applications under the DSO act is properly characterised as a reserve power; a power to make an application under that legislation if the DPP has not made a decision either way on the matter. If the DPP takes or chooses not to take proceedings under the DSO act, that choice is one made on behalf of the state of Western Australia and is not one that can be circumvented, overridden or ignored by an Attorney General of the day who may take a different view of the case, and certainly not for political reasons. The position at law is that the DPP is the primary applicant under the DSO act and makes these applications and takes other proceedings under the legislation on behalf of the state of Western Australia. The bill clarifies this by providing that applications and proceedings taken by the DPP can be made in the name of the state of Western Australia rather than in the name of the Director of Public Prosecutions as is presently the case.

The purpose of the introduction of proposed section 7A is to make plain, in the same way as any indictable matter before the court, that it is done in the name of and on behalf of the state of Western Australia. The issue of reserve powers is already present in the legislation and has been since its passage and it seems to have been well understood at the time that the legislation was passed. It is consistent with the total regime involving the relationship between the Attorney General of the day and the DPP. That was also recognised by Hon Jim McGinty in 2005 when he had carriage of the bill. The reserve power of the Attorney General remains. This clause clarifies the actions of the DPP in acting on behalf of the state of Western Australia with respect to proceedings under this legislation.

Mr J.R. QUIGLEY: Why does the minister say that the power of the DPP is a reserve power and not a power conferred by legislation?

Mrs L.M. Harvey: Could the member please elaborate on the question?

Mr J.R. QUIGLEY: Certainly. Why does the minister say that the power of the Attorney General is a state reserve power such as he has in prosecutions, or the Governor has to dismiss a Parliament? Why does the minister say it is a reserve power and not a power conferred upon the Attorney General by legislation?

Mrs L.M. HARVEY: I take the member back to section 6, "Attorney General may perform functions of DPP", which reads —

> (1) The Attorney General may make an application that the DPP may make under this Act and may give a consent that the DPP may give under this Act.

(2) In connection with the exercise by the Attorney General of a power of the DPP, a reference in this Act to the DPP includes, as an alternative, a reference to the Attorney General.

The reserve power of the Attorney General exists and remains when the DPP has not as yet made a decision. That has not changed.

Mr J.R. QUIGLEY: That is not right. The Attorney General, expressly under section 6, could make any application that the DPP could make at any time. That is what the legislation expressly provides, does it not? Indeed, this legislation does not say, "We protect the reserve power of the Attorney General". I put it to the minister that neither the Attorney General nor the state of Western Australia has ever had a reserve power to detain people beyond their sentence. The only power that the Attorney General or the state of Western Australia has is one derived from an enactment of a sovereign Parliament. The Dangerous Sexual Offenders Act 2006 says, quite specifically, that the Attorney General can take any action that the DPP can take and any reference in the legislation to the DPP is also to be read as a reference to the Attorney General.

Now I turn to the government's heavily redacted report, which states —

> How the Attorney General is to exercise power under section 6 of the DSO Act in practice has been central to the recent controversy regarding this legislation.
>
> The submission from the DPP to this review referred to the original procedure for applications for DSO orders, formulated by the State Government in 2006. Under this procedure, the DPP would provide advice on applications being made to the Attorney General, and also provide advice and all documentation on offenders against whom the DPP had decided *not* to make an application. In the latter circumstances, the Attorney General would consider the level of risk posed by the offender, and could initiate the DSO process himself.

What the minister is saying is in direct contradiction to the government's report. She is saying that a reserve power could be exercised or used only when the DPP had not made a decision either way—that is, if it had not made a decision to bring an application or if it had made a decision to bring an application. Although the first instance is probably not to the point, if the DPP had made a decision to bring an appeal, there would be no reason for the Attorney General to make an application—or if the DPP had made a decision not to bring an appeal. The minister says that in those cases there is no role for the Attorney General because the DPP has made a decision either way—that is, to bring an application or bring an appeal or not bring an application or not bring an appeal. As soon as the DPP has made a decision, there is no room for the Attorney General to bring an application because, in the minister's words, a reserve power can be exercised only when the DPP has failed to make a decision either way. Here we have the very submission from the director himself, saying that this was not how the act was originally intended or how the act originally worked. I return to the government's report, which states —

> Under this procedure, the DPP would provide advice on applications being made to the Attorney General, and also provide advice and all documentation on offenders against whom the DPP had decided *not* to make an application.

Mr P. PAPALIA: This is a crucial matter and I wish to hear more from the shadow Attorney General.

Mr J.R. QUIGLEY: When the DPP has decided not to make an application or when the DPP has decided not to do an appeal, in the latter circumstances—this is in the government's report, which contradicts what the minister said at the table—the Attorney General would consider the level of risk posed by the offender and could initiate the DSO process himself.

Up until the time that the Liberals came to power, the Attorney General, under the procedure acknowledged by the DPP, had a crucial function to perform. When the DPP decided not to take action, he would advise the Attorney General of his intention not to take action and provide all the documentation for the Attorney General, who could then decide whether he wished to take action himself. This is contrary to what the minister put to Parliament this evening—that is, that the Attorney General can act only when the DPP has not made a decision either way. That is not what the DPP said used to happen. The report continues —

> At that stage, the State Solicitor would make an application to the Supreme Court and provide advice to the Attorney General of the outcome of the application.
>
> As stated by the DPP in his submission to the current review:
>
> > *The difficulty with the entire approach is that it conflates the role of the Director of Public Prosecutions as the independent prosecution agency of the State and as a legal office such as the State Solicitor's Office undertaking non-prosecutorial work.*

What I am putting to the minister and why we will be opposing this clause is that there has been a dramatic change from what the director acknowledged was the procedure under Labor and the proper function of the

Attorney General. The proper function of the Attorney General was set out quite explicitly in section 6 of the legislation. That explicit function was to bring any application that the DPP could bring. We will just go back to it because it is worth going back to the actual words of the legislation to see how the DPP himself understood it to operate. Section 6, "Attorney General may perform functions of DPP", states —

> (1) The Attorney General may make an application that the DPP may make under this Act and may give a consent that the DPP may give under this Act.

It does not say "only in circumstances in which the director has not made a decision to do it or not to do it". It does not put that caveat on it at all; it is quite explicit. It continues —

> (2) In connection with the exercise by the Attorney General of a power of the DPP, a reference in this Act to the DPP includes, as an alternative, a reference to the Attorney General.

It does not say what the minister has put to this Parliament this evening: that this power can be exercised only when the DPP has failed to make a decision to do it or not to do it—that is, when the DPP has remained silent. I put it to the minister that she is wrong. Her government's own report states —

> The controversy that surrounded the release of Mr TJD on a supervision order largely centred on a view that the Attorney General should have exercised his powers under section 6 of the DSO Act and taken over the role of the DPP in the court proceedings.

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

Mr J.R. QUIGLEY: The report has got that wrong, because the proceedings had concluded by the time the public knew; a decision had been made to release on a supervision order. The controversy was not saying that he should take over; the controversy was that, subsequent to his release, which the Director of Public Prosecutions agreed with, it was open to the Attorney General to initiate an appeal or to initiate proceedings to revoke the supervision order. There was something for the Attorney General to do and, as we know, this Attorney General is indolent and he seldom does anything.

I will go on with the government's report —

> In the case of Mr TJD, the perspective of some members of the community, the Opposition, and some sections of the news media, was that the decision of the DPP to not oppose the application, at the annual review of Mr TJD's continuing detention order for a supervision order, should have led to the Attorney General exercising his powers and taking over the application from the DPP.

That is wrong. There was never a suggestion by the opposition or anybody else that the Attorney General should have taken over the proceedings, because by the time everyone found out, there was a judgement to release, not to take over the proceedings. Our criticism of the Attorney General and the Barnett government is that they failed to protect the community by either the Attorney General exercising his powers under section 6 of the legislation and instituting an appeal or, if he agreed with the release of TJD, the Attorney General explaining to the community why TJD should have been released. But he did neither of those things, which caused there to be great disquiet in the community, prompted not by the opposition but by the victims who were not given voice by the person who bears the title of Commissioner for Victims of Crime. There was not a word from her on behalf of victims; it was the victims who said, "This is outrageous; we want the government to do something."

The interesting point is that the report has been redacted. The government does not want Parliament or the people of Western Australia to be informed of what the DPP says is a contentious issue. It does not want them to see how it was resolved in the report. It wants it to be redacted. As the Leader of the Opposition said, it is unprecedented that a redacted report on a review of an act of Parliament has been tabled in either house of Parliament. One of my colleagues in the upper house made an inquiry of the clerks whether they had ever seen a report on legislation tabled by the government that had been redacted like this. I have never seen it in the Assembly and the clerks of the Council advised my colleagues that they had never seen it in that place. This is a secretive Attorney General and this is a government that wishes to misstate the Attorney General's powers. Why does it wish to misstate them? It is for this reason: the Attorney General does not want the responsibility of initiating an appeal and, in the alternative, he does not want to explain to the public why it is appropriate to release TJD. All he wants to do is criticise the opposition and any other person, including the victims, whom he describes as a Labor rent-a-crowd. We did not hear the so-called Commissioner for Victims of Crime speak up on behalf of the victims. The Commissioner for Victims of Crime was prominent by her silence.

Mr P. PAPALIA: I am keen to hear more from the member for Butler.

Mr J.R. QUIGLEY: It was the victims who came onto the steps of Parliament and who held a rally in Forrest Chase and said that this was not good enough and that the government was failing the people.

The minister has said that nothing will change. If nothing will change, the minister would not have used the words she used this evening—that is, that the Attorney General can take action only when the DPP fails to decide either way. That is a ridiculous proposition; as the DPP and the government's report have identified, the Attorney General will always have that power. In fact, up until Hon Michael Mischin became Attorney General, the procedure was, as I have detailed, that the DPP would provide the Attorney General with all the paperwork on an offender against whom he had decided not to take action or mount an appeal so that the Attorney General could mount the appeal if he wished to. That is not what the minister is telling Parliament. She is telling Parliament something quite different. Interestingly, the Attorney General said that proposed section 7A will clarify the situation and will mean in effect that any decision taken by—this is what the minister is saying and has said this afternoon —

Mrs L.M. Harvey: No; you have misinterpreted what I have said.

Mr J.R. QUIGLEY: No; I will go back to *Hansard*. The minister said that any decision taken by the Director of Public Prosecutions will bind the state of Western Australia, and that is exactly what the Attorney General said in the other place. The effect of this amendment is to clear up the controversy to make sure that it is understood by everyone that the DPP, in making a decision, will bind the state of Western Australia. The minister said that the Attorney General cannot use his so-called reserve power once the DPP has made a decision to make the application or not to make the application. She has also said this evening that the Attorney General cannot exercise his authority under section 6 in relation to appeals if the DPP has decided not to appeal. Section 6 is operable only when the DPP has made no decision. I will read what the Attorney General is reported to have said on page 1696c of *Hansard*.

The ACTING SPEAKER (Mr P. Abetz): Member, may I perhaps suggest that, as you are saying a lot of things and you are starting to go over the same ground, it might be wiser to let the minister respond and then perhaps ask another question.

Mr J.R. QUIGLEY: I will just finish this to see whether the minister agrees. The Attorney General said —

> There is this view, if you like, or perception, that the director is acting in some way that is divorced from being the representative of the state in these matters. The purpose of the introduction of this proposed section is to make plain, in the same way as any indictable matter that is brought before the court, that it is done in the name of, and on behalf of, the state. It makes plain the relationship—the authority that the director has under this bill. He is not acting simply in his capacity as director; he is acting also as the agent of, and the authority on behalf of, the state of Western Australia.

In other words, once the director has made a decision, it binds the state of Western Australia. Does the minister agree with what the Attorney General has said?

Mrs L.M. HARVEY: I think the member is making a complicated argument about something that is quite simple. If the Attorney General had chosen to remove himself from the process, we would be deleting section 6 of the existing act, which specifically allows the Attorney General to perform the functions of the DPP.

Mr J.R. Quigley: When?

Mrs L.M. HARVEY: Section 6 provides —

> (1) The Attorney General may make an application that the DPP may make under this Act and may give a consent that the DPP may give under this Act.
>
> (2) In connection with the exercise by the Attorney General of a power of the DPP, a reference in this Act to the DPP includes, as an alternative, a reference to the Attorney General.

Proposed section 7A provides that the —

> **DPP may take proceedings in the name of the State**

The DPP acts on behalf of the state of Western Australia. This makes it clear that the DPP in bringing forward these proceedings is acting on behalf of the state of Western Australia, not the DPP. It does not change the opportunity for the Attorney General to also make an application in lieu of the DPP. The Attorney General's responsibilities or opportunities under section 6 of the Dangerous Sexual Offenders Act have not changed. All this does is clarify that there can be only one representative of the state of Western Australia, whether that is the DPP or the Attorney General, acting on behalf of the state of Western Australia. It can be only either/or bringing an action on behalf of the state of Western Australia under this legislation. The opportunities for the Attorney General have not changed. Section 6 of the original act has not been deleted.

Mr J.R. QUIGLEY: If the Director of Public Prosecutions elects not to bring an appeal—that is his decision if he elects not to bring an appeal—can the Attorney General nonetheless bring an appeal under section 6?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: In view of the minister's answer, what did the Attorney General mean by these words —

> … a power to make an application under that legislation if the DPP has not made a decision either way on the matter. If the DPP takes or chooses not to take proceedings under the DSO act, that choice is one made on behalf of the state of Western Australia, and not one that can be circumvented or overridden or ignored by an Attorney General of the day who may take a different view of the case, and certainly not for political reasons.

Mrs L.M. HARVEY: To go back to Hon Jim McGinty talking to the original legislation when it was brought to this place in 2005, the functions of the DPP and the Attorney General are clearly defined and section 28 of the DPP act states —

> (1) Where in a particular case the Attorney General has performed a function that is vested in both the Attorney General and the Director —

The Director of Public Prosecutions —

> the Director shall not, without the consent of the Attorney General, perform that function inconsistently with the action of the Attorney General.

Mr J.R. Quigley: Is this the director's act now?

Mrs L.M. HARVEY: Yes. Section 20(2) of the DPP act provides that —

> … the Director may for the purpose referred to in that subsection —
>
> (a) exercise any power, authority or discretion relating to the investigation and prosecution of offences that is vested in the Attorney General, whether by a written law or otherwise;
>
> (b) where under a written law the consent of the Attorney General is required to a prosecution for an offence, give that consent;

Hon Jim McGinty made reference to that in the original debate on the bill in the context of section 20(3) of the DPP act, which provides that —

> (3) The provisions of this Act do not derogate from any function of the Attorney General.

In understanding how the DPP act intersects with this legislation, the Attorney General can perform the functions of the DPP acting on behalf of the state or the DPP can take proceedings in the name of the state, and that has not changed. The member is saying that we are diluting the power of the Attorney General, but the Attorney General's powers are clearly outlined in section 6. Section 6 has not been deleted and the ability of the Attorney General to perform the functions of the DPP with respect to appeals et cetera under this legislation remains.

Mr J.R. QUIGLEY: It remains, but the Attorney General is saying, is he not, that once the DPP has made a decision not to appeal, it cannot be circumvented by the Attorney General instituting an appeal? That is the bottom line, is it not, minister?

Mrs L.M. HARVEY: Understanding the separation of the functions and the authority of the Attorney General and the DPP —

Mr J.R. Quigley: I understand them.

Mrs L.M. HARVEY: I hope the member's understanding is the same as my understanding.

Mr J.R. Quigley: It comes from statute law.

Mrs L.M. HARVEY: I would like to finish my sentence now. Understanding the separation of those two functions, the DPP can make a decision about bringing an appeal under this legislation. Once the DPP has made that decision, although it is unlikely that the Attorney General would override that decision of the DPP and bring forward proceedings under this legislation—it is unlikely and it would no doubt play into the relationship between the Attorney General and the DPP—section 6 allows for that to occur. I have detailed it and I will not repeat it, but under section 6 of the act the Attorney General may perform the functions of the DPP, and that allows for the Attorney General to do so.

Mr J.R. Quigley: To do what?

Mrs L.M. HARVEY: To bring forward an action when the DPP has made a decision not to do so.

Mr J.R. Quigley: Is that still permitted?

Mrs L.M. HARVEY: It is still permitted. It is there.

Mr J.R. QUIGLEY: Then why did the Attorney General say that the purpose of this section is to clarify it and —

> If the DPP takes or chooses not to take proceedings under the … act —

Which can include an appeal —

> that choice is one made on behalf of the state of Western Australia, and not one that can be circumvented or overridden or ignored by an Attorney General …

That is how the Attorney General describes the purpose of proposed section 7A. Why does the Attorney General say that when the minister says the contrary?

Mrs L.M. HARVEY: My previous answer stands. My advisers have advised me that section 6 of the act, which details the Attorney General's ability to perform the functions of the DPP, allows for that to occur.

Mr J.R. QUIGLEY: I agree with the minister, but the Attorney General does not. The opposition and I agree with the minister, but we do not understand why this Attorney General, who does not have a sound grasp of the law—which was evident in the Bell Group case when he thought that he could argue that there was not a conflict between the laws of Western Australia and the laws of the commonwealth, which is as plain as the nose on my face—is saying that an Attorney General cannot do what the minister just said the Attorney General can do. Let us be clear again. In the case in which the DPP decides not to appeal a court's decision, the minister says that under section 6 of the legislation, the Attorney General can make that appeal. The Attorney General says in the Legislative Council, "No, I can't." We agree with the minister. Why has the Attorney General got it so wrong, I ask?

Mrs L.M. HARVEY: I am advised that proposed section 7A applies only when the DPP takes proceedings in the name of the state, not when the DPP does not.

Mr J.R. QUIGLEY: The minister's advice to the Attorney General, Hon Michael Mischin, would be that he has got it wrong when he says that the DPP chooses not to take proceedings—that is, does not take proceedings in the name of the state of Western Australia, does not do anything in the name of the state of Western Australia. The Attorney General can exercise his power to appeal under section 6 of the Dangerous Sexual Offenders Act, whereas the Attorney General says that when the DPP chooses not to take proceedings under the DSO act, that choice is made on behalf of the state of Western Australia and is not one that can be circumvented or overridden by an Attorney General appealing. The minister is explaining to the chamber this evening that the Attorney General has got it dead wrong. I agree with her. Is the minister confirming it?

Mrs L.M. HARVEY: No, I am not, member. I have a copy of the *Hansard* extract of when the Attorney General was debating this. Perhaps the member for Butler could assist me by referring to the section in it where he is saying that the Attorney General's explanation of this clause is in conflict with what the advisers have said to me.

Mr J.R. Quigley: Certainly; can I give you the page number?

Mrs L.M. HARVEY: That would be fantastic, thank you.

Mr J.R. Quigley: It is the last sentence in the third paragraph down on page 1511.

Mrs L.M. HARVEY: I do not have that.

Mr J.R. Quigley: I can hand it to you. Can the attendant take a photocopy and I will mark a paragraph at the side for the minister's easy reference because this is crucially important to the legislation and the way we go forward.

Mr P. PAPALIA: To ensure that we are not sitting around looking at each other, this is a critical point regarding the whole debate on this legislation. At the time of TJD's release, controversy surrounded the lack of appeal by the Director of Public Prosecutions and inaction by the Attorney General in response. I recall listening to former Attorney General Jim McGinty on Western Australian talkback radio when he was being interviewed about this legislation and what his understanding was of its intent. He stated clearly in the media that he believed that the Attorney General had the authority to appeal regardless of the DPP. Had the DPP chosen not to, he believed that the Attorney General could have appealed the release of that individual. That was very controversial at the time and that is what initiated this entire discussion, which was subsequently delayed and extended as a consequence of the Attorney General's slow action. In the meantime, as a consequence of numerous other dangerous sex offenders being released and multiple breaches of the conditions—despite multiple breaches by individuals, very few offenders were returned to prison—there was wider debate around whether this legislation was adequate and

whether it had been employed appropriately or effectively. That is why this is a crucial point. If the Attorney General in the other place is telling the opposition in the other place that he cannot act and, effectively, the passage of this legislation as it is drafted will result in him definitely not being able to act, that is not good enough. That will be a failure on the government's behalf and it will be letting down the people of Western Australia, who expect more. It will also add to the murkiness around this whole debate. It took two years to get this legislation into this place, despite the government trumpeting its intention to introduce it in the spring session of 2014, and effectively deriding the opposition and suggesting that, at the time, we were being unfair in our criticism—that we were being somehow hypocritical or deceptive—but it was the Attorney General and other ministers who were actively engaged in the debate and suggesting that the judiciary had made mistakes and had failed, when it appears that the Attorney General was not conducting his role appropriately. If that is the case, we want to know. We need to know now whether the intention is to cement it in place so that he cannot play that role in future because he has failed to perform his role adequately to date. That is the key point.

Mrs L.M. HARVEY: Thank you, member for Butler, for providing me with the Attorney General's comment. I draw the member to further clarification on the following day in *Hansard* of Wednesday, 23 March 2016, page 1696c to 1704a. I will read it out. In clarifying his remarks, the Attorney General said —

> The Director of Public Prosecutions is vested with the authority to deal on a day —

Mr J.R. Quigley: I am trying to pick up where you are reading from. There are a number of 1696c pages. What number is at the foot of the page? Is it five or six?

Mrs L.M. HARVEY: It is number 4. I have already detailed the Attorney General quoting, and I have indeed, myself quoted, Hon Jim McGinty on the clarification of the roles of the Attorney General and the DPP when the legislation was first brought forward. Those roles have not changed. Over the page at page 4, it states —

> The Director of Public Prosecutions is vested with the authority to deal on a day-to-day basis with individual cases in accordance with the law, his professional judgement and experience, and accepted norms of how one assesses the public interest and the viability of cases. It is essential that the director be given free range to make the appropriate decisions in particular cases. That transfers into the operation of this bill as well, necessarily. However, there is that reserve power. They are not collateral powers in the sense that two of them act independently of each other and in conflict with each other. That would render a nonsense the idea of them representing the state. What is not clear is that in this legislation at the moment—it seems to have caused some confusion—the director appears to be acting in his own name, which is what is prescribed, rather than the name of the state. There is this view, if you like, or perception, that the director is acting in some way that is divorced from being the representative of the state in these matters. The purpose of the introduction of this proposed section is to make plain, in the same way as any indictable matter that is brought before the court, that it is done in the name of, and on behalf of, the state. It makes plain the relationship—the authority that the director has under this bill. He is not acting simply in his capacity as director; he is acting also as the agent of, and the authority on behalf of, the state of Western Australia. The issue of reserve powers is already present in the legislation and has been since its passage, and it seems to have been well understood at the time that the legislation was passed. It is consistent with the total regime involving the relationship between the Attorney General of the day and the DPP. That also was recognised by Hon Jim McGinty back when he was carrying the bill in the other place back in 2005.

In effect, the legislation will not change the functions of the Attorney General. We are merely clarifying that the Director of Public Prosecutions takes proceedings in this area in the name of the state, not in the name of the DPP. It is a simple amendment that does not change the functions of the Attorney General.

Mr J.R. QUIGLEY: I have listened with interest to what the minister said. I will go back to the question I posed. After hearing what the minister read out, is she saying that if the DPP decides to not appeal a release, the Attorney General may institute his own appeal?

Mrs L.M. HARVEY: Sorry; can you say that again?

Mr J.R. QUIGLEY: I will repeat it. I listened intently to what the minister said and I followed what she read out. The minister implied that the director, in making a decision, binds the state. I ask this question: if the director makes a decision to not appeal a Supreme Court judgement in this area, can the Attorney General circumvent that by instituting his own appeal using his powers under section 6 of the Dangerous Sexual Offenders Act?

Mrs L.M. HARVEY: I am advised that although it is very unlikely that the Attorney General would take proceedings after the DPP chose not to, proposed section 7A will not preclude the Attorney General from taking those proceedings. But this needs to be taken in the context of the Director of Public Prosecutions Act as well.

Mr J.R. QUIGLEY: Where shall we start? I refer to part 3 of the DPP act. Can the minister point out where in part 3 of the DPP act or otherwise in that legislation the DPP derives the power to which the minister referred? I have carefully read the functions of the director. Where does he derive the power under the legislation to bind the state in the manner to which the minister referred?

Mrs L.M. HARVEY: We have not said that the DPP binds the state. Those are the member's words.

Mr J.R. QUIGLEY: Did the minister not read out —

> There is this view, if you like, or perception, that the director is acting in some way that is divorced from being the representative of the state in these matters. The purpose of the introduction of this proposed section is to make plain, in the same way as any indictable matter that is brought before the court, that it is done in the name of, and on behalf of, the state. It makes plain the relationship—the authority that the director has under this bill. He is not acting simply in his capacity as director; he is acting also as the agent of, and the authority on behalf of, the state of Western Australia.

Does the DPP not bind the state when he makes a decision?

Mrs L.M. HARVEY: No; it is binding on the state when he takes action.

Mr J.R. QUIGLEY: Not when he makes a decision.

Mrs L.M. Harvey: No.

Mr J.R. QUIGLEY: Can the minister please explain to me what the Attorney General meant on page 1511 of *Hansard? I* previously handed a copy to the minister and she has given me the context of a further explanation. When the DPP makes a decision to not proceed—we will go back to it—that choice is made on behalf of the state of Western Australia and cannot be circumvented. What does that mean? That means exactly what I put to the minister, does it not?

Mrs L.M. HARVEY: The government has not drafted the legislation in the context of the DPP and the Attorney General of the day being at war with each other. If the member goes to the context of what the Attorney General said, he made reference to the Attorney General not taking action to override a decision or an action of the DPP for political reasons. I think that we have canvassed this properly. I have nothing further to add.

Mr P. PAPALIA: I seek clarification. Earlier on—I am trying to recall the words the minister used—in response to the question about whether or not the Attorney General could appeal a decision after the DPP decision not to appeal that decision, I recall the minister saying words to the effect that it would be unusual or highly unusual.

Mr J.R. Quigley: No, that is when the DPP decides to take action; it would be highly unusual for the Attorney General to take action.

Mr P. PAPALIA: No, I am referring to the words that the minister used in response to the member for Butler's question that in the event that the DPP decided not to —

Mr J.R. Quigley interjected.

Mr P. PAPALIA: I want to know.

Can the minister clarify whether, in the event that the DPP chooses not to appeal, it is the government's view that the Attorney General still has that avenue of appeal in DSO cases?

Mrs L.M. HARVEY: Yes. Section 6 of the Dangerous Sexual Offenders Act 2006 allows for the Attorney General to perform the functions of the DPP, although conventionally this has not occurred. Section 6 of the Dangerous Sexual Offenders Act 2006 allows for that and proposed section 7A will not preclude that from occurring.

Mr P. PAPALIA: Effectively what the minister is confirming is that the only thing that stopped the Attorney General from appealing the release of TJD, or any of the other DSOs who were identified as still representing a threat to the community at the time of their release, was his decision not to. He did not have the inclination to protect the people of Western Australia by intervening in the process because he felt that protocol prevented him from offending the DPP. That is the only justification I have heard from the minister. It is not a matter of law evidently; he can do it. But it has not been done under this legislation because it has only been in force since 2006. There probably have not been too many occasions upon which an Attorney General has had an opportunity to act in defence of the people of Western Australia until the cases that came before the current Attorney General who, not surprisingly, did not act. It appears that he does not do much at all of anything. Is that the case; was the only thing that stopped him from acting was his decision not to?

Mrs L.M. HARVEY: First of all, I will not comment on individual cases. This is not the appropriate forum to comment on individual cases. We are commenting on broad legislative amendment.

Mr P. Papalia interjected.

Mrs L.M. HARVEY: Hey, I listened to you without interjecting. Just let me get two sentences out, please. I am getting a bit tired of it.

The independence of the DPP is hardly a protocol; it is enshrined in the DPP act. It would be unusual for an Attorney General to perform the functions of the DPP and to exercise that authority under section 6 of the act, but there is the ability to do so. I was not privy to the reasons behind the DPP's decision about TJD. I will not comment on that. To say that the independence of the DPP, which is enshrined in legislation, is some sort of protocol that should be observed really undermines that piece of legislation and it undermines what we doing at present. The legislation is there to set the rules. The Director of Public Prosecutions Act is set to have the DPP operate separate from political interference. That is hardly a protocol.

Mr J.R. QUIGLEY: I wonder whether the minister could take me to the section of the DPP act that relates to this legislation. It is a very fundamental question. I do not know where the DPP derives his power from in any event. Can the minister take me to the section of the DPP act where his functions in relation to the Dangerous Sexual Offenders Act are set out? I have read part 3 of his act carefully. I note that when a piece of legislation was introduced by a Liberal government around the confiscation of the profits of crime not as a consequence of a prosecution but after his administrative application, specific amendments were made to the DPP's legislation to give him authority relating to the confiscation of profits. The Attorney General has said—the minister read it to us this evening—that the purpose of the introduction of this proposed section is to make plain, in the same way as an indictable matter that is brought before a court, that it is done in the name of and on behalf of the state. People say I was a Queen's Counsel; no, I was only a humble solicitor. I want to know whether the minister can take me to the section of the DPP act from which the DPP derives the power to which the minister has referred this evening. Where does he get the power to act in the DSO legislation in the same way as he does in indictable matters, which is all set out in the director's functions? Could the minister take me to that section, please?

Mrs L.M. HARVEY: The functions of the DPP with respect to the Dangerous Sexual Offenders Act are defined in the DSO act. However, the functions of the DPP need to be considered in the context of the DPP act. The relevant sections—we referred to them earlier and they were referred to when Hon Jim McGinty brought in the legislation in November 2005—are sections 28 and 20(2). Section 20(3) is where it is defined how the functions and the powers of the DPP, in the context of that act, have some influence over the functions of the DPP in the Dangerous Sexual Offenders Act. However, the functions of the DPP are clearly defined in the DSO act.

Mr J.R. QUIGLEY: Yes, but what the minister has referred to in the DPP's act are his functions and powers—it is stated specifically—for prosecutions and appeals and then, by further amendment, his functions and powers for the confiscation of the proceeds of crime. Does the minister agree that in the DPP act there is no function or power legislated for the Dangerous Sexual Offenders Act?

Mrs L.M. HARVEY: Member, I will say it one more time. The DPP act defines the relationship between the Attorney General and Director of Public Prosecutions. The Dangerous Sexual Offenders Act clearly defines that there is a function for the Attorney General to potentially perform the functions of the DPP, and under proposed new section 7A that we are considering the DPP may take proceedings in the name of the state. I think I have clearly articulated what is implied by proposed section 7A. We are not deleting section 6 of the original legislation. The functions of the Attorney General will remain intact and the independence of the DPP will remain respected. However, should there be a difference of opinion, there will be an opportunity for the Attorney General to perform the functions of the DPP in the context of the DPP act. Yes, it is complex—the intersection of legislation often is—but I do not think I can articulate it any more clearly for the member's satisfaction than I already have.

Mr J.R. QUIGLEY: If in a contentious case the DPP decided not to act and said, "I'm not going to appeal", would it be proper for the Attorney General to say, "Well, I will. I'll appeal"? Is that how he can use his power?

Mrs L.M. HARVEY: Yes, but in the context of the DPP act: provided that the Attorney General did not impinge on the independence of the DPP as prescribed in the DPP act.

Mr J.R. QUIGLEY: As long as under the DPP act the Attorney General does not offend against section 27, which states that after consultation with the director he cannot issue a direction on any specific matter but only on general policy questions, if the Attorney General does not give the DPP a direction to appeal, but says, "Fair enough; you're not going to appeal", is the minister saying that the way is open for the Attorney General to appeal if that is what he chooses to do and that there is nothing improper in doing that?

Mrs L.M. HARVEY: Once again, member, the relevant issue is the relationship between the Attorney General of the day and DPP; it is prescribed by the DPP act. I say again that the member is over-complicating what is very simply clarifying that the DPP may take proceedings in the name of the state. I refer the member to the explanatory memorandum, which is pretty clear. It reads —

> Clause 7 proposes to insert a new section 7A into the DSO Act—headed "DPP may take proceedings in the name of the State"—which provides that proceedings and applications under the DSO Act taken by the Director of Public Prosecutions (DPP) may be made in the name of the State of Western Australia. This is appropriate given that the DPP takes proceedings under the DSO Act on behalf of the State of Western Australia.

Mr J.R. QUIGLEY: Yes, but in his address to the Legislative Council the Attorney General said that a former Attorney General was potentially corrupt. The Attorney General said —

> Hon Jim McGinty, about a year or so ago, said that in at least one case where a dangerous sexual offender had been released, he spoke to the DPP and told the DPP to appeal, and if the DPP did not appeal, then he, the then Attorney General, would. Hon Adele Farina has focused very much on transparency in the process. The question arises of whether the Attorney General of the day, or should I say Hon Jim McGinty, was simply making that up for political advantage in the furore at the time over the release of TJD, and was simply trying to big-note himself, or whether he actually did that sort of thing, in which case one must ask: in that case, was that not improper influence on the Director of Public Prosecutions? If it was a direction—even a guarded or veiled one …

Let us think of the "guarded or veiled" influence: "If you don't appeal, I will!" That is his guarded or veiled influence on a particular case. The Attorney General continues —

> Was there ever any mention of the fact that he had pulled the DPP aside and told the DPP that if the DPP did not do what Jim McGinty wanted, then Jim McGinty would do it himself? Is that the way the Labor Party operates behind the scenes?

The minister is now saying, is she not, that that is the way the act is intended to operate. She says that if the Attorney General asks the DPP whether he is going to appeal and, if he says he is not, it is open to the Attorney General to institute the appeal. What did Mr McGinty do wrong? Why is he being criticised for doing what the minister says the act provides?

Mrs L.M. HARVEY: Let us go back to the comments made by the Attorney General. My understanding of the Director of Public Prosecutions Act and the advice I have received is that should the Attorney General direct the Director of Public Prosecutions to act, a report needs to be tabled in Parliament detailing that direction under the DPP act. That did not occur because that has not occurred, as I understand it, in the situation of the former Attorney General Hon Jim McGinty. To summarise: either the DPP or the Attorney General can act under the Dangerous Sexual Offenders Act, and section 6 of the DSO act provides that either acts on behalf of the state and the state is bound by the acts taken—that is, where either acts, the other will not act; the state cannot speak with two voices. If one does not act, the other can. However, the AG will not generally act when the DPP has chosen not to. The DPP act creates a climate of independence to protect his office and its functions from political interference. This independence extends to the DPP's functions under the DSO act. Although the DSO act does not absolutely prevent the AG from second-guessing the DPP and acting when the DPP has chosen not to, it creates a climate in which it is very unlikely. Proposed section 7A will intensify this climate, but it still does not preclude the Attorney General from performing the functions of the DPP under section 6 of the DSO act.

Mr P. PAPALIA: Effectively, if proposed section 7A is going to intensify this climate—the climate within which it is not generally likely that the Attorney General will act when the DPP has chosen not to—the minister is saying that the shadow Attorney General has been right all along and the intent of this change is to ensure that the Attorney General in the other place does not have to act when the people of Western Australia would expect him to act in defence of vulnerable people in society when these dangerous sexual offenders are being released and are still deemed to be a threat to society. The Attorney General has failed to act for the last two years and three months whilst this debate has been going on. The minister is saying that this legislation will make it easier for the Attorney General to deny he has the opportunity to act.

Mrs L.M. HARVEY: I have argued for an hour to the contrary on this and I have nothing further to add to the member's statement.

Mr J.R. QUIGLEY: In relation to the government's own report—heavily redacted as it is—is it not the case that in each of the other states it is either the ministry for justice or the Attorney General that makes these applications? I now turn to the table set out on pages 18 and 19 of the government's own report, "Review of the Dangerous Sexual Offenders Act 2006". In Queensland, the Attorney-General makes the application. In Victoria, it is the secretary of the Department of Justice who determines whether or not to apply for the supervision order

or refers the matter to the DPP to determine whether the application should be made, so the DPP makes the orders, but under the direction of the Department of Justice. In New South Wales, the legislation originally provided for the Attorney General to make the application but was changed, permitting the AG to act on the application. Do not tell me that page has been redacted as well? No, I am sorry, it has not been. The report states that in South Australia —

> Application for indeterminate sentence may be made by the prosecutor (at time of conviction) —

We all know that is the same here —

> … or by Attorney-General (while person under sentence) …

In the Northern Territory, the report states —

> Application for final continuing detention order or final supervision order may be made by Attorney-General …

In each of the states other than Western Australia, the person who has the final call is the Attorney General, whereas the Attorney General says that the purpose of proposed section 7A is that if the DPP chooses not to take proceedings under the DSO act, that choice is made on behalf of the state of Western Australia and is not one that can be circumvented, overridden or ignored by the Attorney General. That is the purpose of this proposed section 7A, is it not, minister?

Mrs L.M. Harvey: No.

Mr J.R. QUIGLEY: The Attorney General has got that wrong. We will mark that and use it in the next press release when the Attorney General refuses to answer.

The other question I would like to ask is: if the Attorney General is saying that he is making the choice not to act—we are using double negatives here—and not to take proceedings under the act, that choice is made on behalf of the state of Western Australia, so where in the DPP's legislation does he derive the power to make a decision? I say this to the parliamentary draftsperson or in his presence: where does the Director of Public Prosecutions derive his power under his legislation to make a decision not to act, such decision binding the state of Western Australia?

Mrs L.M. HARVEY: I have said repeatedly that a decision not to act does not bind the state.

Mr J.R. QUIGLEY: That is what the Attorney General, Hon Michael Mischin, said it does do. I am just clarifying with the minister that he is wrong. I agree with the minister that the Attorney General is wrong and I am clarifying with the minister that he is wrong at page 1511 of *Hansard*, 22 March. The Attorney General gets so much of the law wrong, but I agree with the minister on this.

Mrs L.M. HARVEY: We are arguing in circles and I am not prepared to comment further. I think I have canvassed this ad nauseam and I have nothing further to add.

Mr J.R. QUIGLEY: Dennis John Lyddieth is the western suburbs rapist who committed 48 serious sexual offences against 13 young women, in each case breaking and entering their dwelling house to do so. In the case of 12 of his victims, the offences were committed in the night-time. After being released on a supervision order, his case came up for review. This was all western suburbs offending, and up my way as well. At Cottesloe Beach and Hillarys dog beach he was in the habit of masturbating in front of people. He was described as having a high risk of future serious sexual offending. The court noted that in his submission, his counsel and the psychiatrist said that as he was getting older, perhaps he had diminished capacity to commit serious sexual offences.

The court noted what the psychiatrist said—that is, that his limited exercise, smoking and excess weight present physical limitations to rape offending. However, the judge noted that it was later revealed that he was walking around the oval five times a day, that he recently acknowledged that he remains sexually active and that he retains an interest in future sexual relationships. The judge considered the respondent had a propensity to commit serious sexual offences against female victims in the future in the way described in the risk scenarios. He found that the likelihood of the respondent committing serious sexual offences remained very significant, less so because of the respondent's ongoing ageing and recent associated health problems. This was the case that caused the minister to make the comment, "I'd throw away the key." Would she ask the Attorney General to repeal that decision to release Lyddieth on parole using his powers under section 6 of the act?

Mrs L.M. Harvey: I'm not going to answer hypotheticals. I've already said that.

Mr P. PAPALIA: It is not a hypothetical. This legislation does not come into this place in the absence of context. The context was a cavalcade of ministers on the minister's side of the chamber, including the minister herself, who chose to insert themselves into the public debate and claim that there was nothing they could do about these dangerous sex offenders being released. The Attorney General had no power to act. The Minister for

Police, the Minister for Corrective Services and the Attorney General all suggested that there was no power for the Attorney General to act in these cases in which the release had been approved and the DPP had chosen not to oppose them. If that is the case, that is the context within which we arrive in this place.

This process began in March 2014, two years and three months ago. Ever since then, the minister and other ministers in her government, including the Attorney General, have been making this claim that it was not possible for anyone to do anything about the judgements and the release. That does not appear to be the case. In the course of this debate tonight, the minister has confirmed that there is an opportunity for the Attorney General to appeal, to take action and, despite what this Attorney General says, to try to change the decision and appeal against the release of these individuals. That is the context. This legislation does not come into this place without context. It is not just a nice debate about a few words on the paper. It comes in light of the public debate that has been going on for longer than two years and in light of the government being seen as being absolutely soft on these dangerous sex offenders and failing to act in the defence of vulnerable Western Australians. That is the case. If it is not the case, the minister should stand up and deny it; she should stand up and explain why the Attorney General has not taken that action. If it is only because it is not generally the case that he would, that is not enough. That is not what she was saying. She has told the people of Western Australia that if it was up to her, she would lock these offenders up forever. The Minister for Corrective Services said the same thing. The Attorney General has suggested that there is no option for him to act. Is that the case or not?

Mr J.R. QUIGLEY: Will the Minister for Police ask the Attorney General to bring an application to cancel the supervision order in relation to Lyddieth? Will the Attorney General do that?

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

Mr J.R. QUIGLEY: I asked the minister whether she would ask the Attorney General to do that. She just sat mute and shook her head sideways, indicating no. This great big lead that Dixie Marshall would have been happy with—"I'd throw away the key"—is nothing more than a bit of puff. When asked whether the Minister for Police would ask the Attorney General to exercise the power that she said is reposed in the Attorney General, she said no. She sat there and shook her head from side to side mouthing the word "No". Let that be on *Hansard*. This was a piece of puff—a piece of nonsense. When the people were asked to lay their cards on the table so we could see what was in their hand—when the dealer asked for that—the minister went to water and said, "I wouldn't ask the Attorney General that."

Let me ask the Minister for Police this question. Given that the police have obviously formed the view that there are reasonable grounds to believe that Mark Bradley Wimbridge committed aggravated sexual assault after having consumed alcohol whilst released on a supervision order, will the Minister for Police concede that the system being administered by this government for dangerous sex offenders is failing the community? Will the minister agree with that in view of the police's very serious step of telling a court they believe that Wimbridge raped someone after having consumed alcohol whilst on a supervision order? Would she agree that the system being administered by this Attorney General is failing the community?

Mrs L.M. HARVEY: We have amending legislation before the house. We are improving the legislation that the Labor government put in place when it was in power. What can I say? We are trying to improve it. The member for Butler said that he supported the legislation. He said he would not delay its passage through Parliament because it was important to get this legislation enacted. That is what we are trying to do here—improve existing legislation so that it can work more effectively. That is our purpose.

With respect to my comments about locking people up and throwing away the key, that is in the context of keeping offenders in prison for longer. That is what our mandatory penalties regime was all about. Yes, that is my personal opinion, but the Constitution prevents us from doing that, and I canvassed that in the second reading debate.

Mr J.R. QUIGLEY: In the case of Lyddieth, he received 19 years. That is longer than the government's mandatory minimum. Would the minister agree that her comment that she would throw away the key and the article that followed on page 3 of *The West Australian* directly related to the release of Lyddieth on the supervision order? That is question one. That relates not to general deterrence. He got 19 years, which is four years longer than the statutory minimum. The article on page 3 relates directly to Lyddieth's release on a supervision order. My question to the minister was, and remains: will the minister ask the Attorney General to bring proceedings under his powers in section 6 of the act to cancel Lyddieth's release on a supervision order?

Mrs L.M. Harvey: Member, I am not commenting on individual cases; I have told you that before.

Mr J.R. QUIGLEY: The minister previously shook her head and said no. Having been pleased with getting a comment on page 1, now that we are in Parliament talking about the realities of the law she does not want to comment on the case at all. I return to the case of Wimbridge, about which the agency for which the minister is

responsible has said, "We believe he has committed rape on the weekend after having consumed alcohol." Does she agree that the system that her government is administering for community safety from dangerous sexual offenders is failing this community? Does she agree with that?

Mrs L.M. HARVEY: What I will agree with is that I will not comment on an ongoing investigation and potentially compromise it, member, whether or not under privilege.

Mr J.R. QUIGLEY: We are not talking about an ongoing investigation; we are talking about Mr Wimbridge's —

Mrs L.M. Harvey: You referenced an incident on the weekend.

Mr J.R. QUIGLEY: That is an allegation; he has the presumption of innocence. I am not commenting on whether he is guilty or innocent; I am commenting on what the police allege and what the police believe. They do not arrest someone unless they have a reasonable ground to believe it. There might be a perfect defence to it all. They might have the wrong chap. Does the minister agree that this case is of great community concern and exemplifies the proposition that this government is not administering the Dangerous Sexual Offenders Act in a manner that secures community safety? Does the minister agree with that?

Mr P. PAPALIA: It will become clear in the course of this debate and subsequently that whenever a dangerous sex offender is released under the current legislation, or under the amended legislation, and the Attorney General fails to act in the event that the DPP has not appealed, it is this government that will not take action on this issue. It will be very clear, because we will assist the community to understand that. We will continue to state, as we have already, that it is this government that has not acted when these dangerous sex offenders have been released. This legislation took two years to get to Parliament after receipt of the inquiry report, which the government has redacted because, I suspect, as does the shadow Attorney General, if it is not critical of the Attorney General, it at least puts the lie to most of the claims that he has been making about his ability to act or about the commentary made by the opposition. As the Leader of the Opposition has indicated, if we win the election and take office in March next year, we will release that document and it will be clear, and all the stuff that has been covered up and hidden from the public domain will be in the public space and people will be able to make their own judgements. But I think people will judge the government before then. The people will decide. In numerous discussions in the media in response to a series of releases, breaches and failures of the system, they have consistently asked whether the Attorney General could have taken more action and whether he could have done something. It has become abundantly clear from the minister's contribution tonight that not only could he have done that, but also it was the expectation that he would have done that. That is what Hon Jim McGinty was referring to when he entered the debate around the time of the release of TJD. As the person who introduced the law in this place in 2006, his expectation was that that is what the Attorney General would do in the cases in which this Attorney General has been failing. This Attorney General does not do much of anything as far as we can tell, and he certainly does not intervene to protect the people of Western Australia from dangerous sex offenders.

The ACTING SPEAKER (Mr N.W. Morton): Member, you have just spoken for two and half minutes and did not ask a question. In future, can we make sure that we are asking questions.

Mrs L.M. HARVEY: Just to be clear, my understanding is that since the legislation came into being in 2006, section 6 has not been used. Even though there is the potential for it to be used, it has not.

Mr P. PAPALIA: The power has not been used?

Mrs L.M. Harvey: By either Attorney General.

Mr P. PAPALIA: Of course, but we lost office in September 2008. In what month in 2006 did the legislation come into force? How many dangerous sex offenders were at the end of their sentence between the time that the legislation came into force in 2006 and September 2008? Actually, it was before then, because Parliament was prorogued before then, so the then Attorney General was not capable of acting from the time that Parliament was prorogued, which was probably in mid-July 2008. There is not much time there, minister. In the event that there were any cases, I would like to know how many; otherwise, that is a pointless observation. The truth is that this Attorney General currently has the opportunity and the power to act and has been claiming publicly that he does not, and the Minister for Police, the Minister for Corrective Services and, I think, even the Premier have been claiming that they would love to do something else but there is nothing more that they could do. It is not true. They have not acted and we will make sure that people know about it.

Clause put and passed.

Clause 8: Section 7 amended —

Mr P. PAPALIA: I reiterate the observation that this legislation did not arrive in this place in the absence of any context; it came here following two years of debate and controversy around whether or not the government could act. It is very clear now that the government not only could act, but also should have acted.

The ACTING SPEAKER: Member, I have already made a ruling. I am starting to get a sense that perhaps that is filibustering. If we are not asking questions, we need to direct our comments to the clause.

Mr P. PAPALIA: I will cede the floor to the member for Butler.

Clause put and passed.

Clauses 9 to 16 put and passed.

Clause 17: Section 17 amended —

Mr J.R. QUIGLEY: I move —

Page 15, after line 19 — To insert —

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

(5) The offender has the onus of satisfying the court as described in subsection (4) and the court has to be satisfied —

(a) by acceptable and cogent evidence; and

(b) to a high degree of probability.

(6) In deciding whether to make an order under subsection (1)(b), the court must disregard the fact that the person will be subject to electronic monitoring if an order under subsection (1)(b) is made.

The minister has said this evening that the government is trying to improve and make safer legislation that was introduced by the Labor government in 2006. In 2006, the Labor government introduced legislation that in most part replicated legislation which already existed in Queensland and which had been approved by the High Court in a challenge based on constitutional grounds. The minister made the plaintive plea not 10 minutes ago that the government is trying to improve this legislation. One of the obvious things that needs to be improved is the offender accepting responsibility for their offending and convincing the court that should they be released, they will comply with every condition of the order.

I know the minister does not want to look at any particular case, because she wants to skate over the surface and say, "Let us not look at cases. Let us just look at the words on the paper." I go back to the case of TJD, for example, which was the jump-off point for the controversy in this area. We know that TJD was a previous offender and had broken orders in the past, but here he comes; he was released. What worries the opposition and what the opposition finds totally unacceptable is that offenders can go to trial, plead not guilty, deny the offence, go to jail and remain in denial, come up for review before the Supreme Court on an application by the DPP, or the Attorney General under section 6, never have to give evidence, may remain mute with their own secret thoughts, and still be released. What would the opposition's concerns be about this? A member of Parliament approached me to say that TJD came into their office recently. The minister would know about this. I do not want to release the member's identity because that might reveal the area in which TJD is residing. However, on coming into the member's office, what was TJD's complaint? It was that he is a victim of the system—he is the victim!

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

Mr J.R. QUIGLEY: Our concern is that when offenders never embrace their criminal conduct—embrace it in the sense that they know it was qualitatively wrong; they know it was not only against the written law but also morally wrong, in every fibre of their body, to assault a woman in the manner in which TJD did repeatedly—and they have not resolved to turn their face against that wrongdoing, they remain a potent danger to the community and should not be released. That is why we bring forward this amendment. I will address proposed section 17(6) separately.

What does the Attorney General say about this amendment? He says two things. Firstly, he says that it is not needed because the DPP has the onus of proving to the court that the person is a serious dangerous offender and has committed offences that can be classified as serious dangerous sex offences, and the Attorney General or the DPP under section 6 has to apply to the court to say that an offender's release on a supervision order would be too problematic and too risky for the community, so he should be kept inside, or, as the DPP says in so many cases, we consent to his release on a supervision order. The Attorney General says, first of all, that we have this very high standard in the legislation already. That is the high standard of satisfying the court that someone is a serious dangerous sex offender and there is a continuing danger of offending.

What the Attorney General did not address in his remarks in the other place on this proposed subsection is the fact that the offender may remain mute during the proceedings. Why should this be a concern? In report after report in the Supreme Court, the psychiatrists say that they suspect the offender may be saying things that the psychiatrist wants to hear. I will pull one out at random. The case of Lyddieth is one that concerns the minister so much. The psychiatrist in that case said that Lyddieth says things that he assumes people might want to know, and he takes a bit of bringing back on focus. This is a psychiatrist saying that he suspects that what the prisoner is saying is what he thinks the psychiatrist wants to hear. In almost all of these judgements, that is a feature of the psychiatrist's report—a caveat, if you like—that the offender is saying things that the expert witness wants to hear.

The people charged with the responsibility of making the decision of releasing these people in the community, which the minister does not agree with in Lyddieth's case, should have the opportunity of hearing from the prisoner, and should not make the decision to release until such time as the offender —

Mr P. PAPALIA: I am very interested in this amendment. I support it wholeheartedly, and I want to hear more from the member for Butler.

Mr J.R. QUIGLEY: The decision should not be made until such time as the offender has been able to convince the court that he will abide by all the decisions. The Attorney General says that the words in this amendment introduce a new concept, but that is not the case. The test in this amendment is the very same test that is in the legislation for the Director of Public Prosecutions; that is, the court will not be satisfied of a continuing risk to the community unless it has received acceptable and cogent evidence and is satisfied to a high degree of probability. I have taken those words straight out of the legislation on the test that applies to the DPP; no more, no less—exactly the words that are already in the legislation. In this instance, however, we have thrown the onus back onto the person seeking to be released to satisfy the court that he will comply with the conditions. The Attorney General said that it is confusing to introduce this onus on the offender, when the court has already placed the onus on the Director of Public Prosecutions. I am sure that would not confuse the minister, because she knows that, under the Misuse of Drugs Act 1981, there is a shifting onus. As the minister knows, in a trafficking case, if the charge is possession of methamphetamine with the intent to sell or supply, the onus is on the prosecution to prove that it is the prescribed drug—methamphetamine—and to prove, beyond a reasonable doubt, that it was in the possession of the accused. If the prosecution is able to establish that it was over the prescribed quantity, which in the case of methamphetamines is two grams from memory, he is deemed to be in possession with intent to sell or supply unless he proves to the contrary. There we have the shifting onus. The onus falls upon the accused to say that he did not have it in his possession with the alleged intent; he had it in his possession only for personal use. A moving or shifting onus is not an unusual concept. Another classic example, as the minister knows, is when a person is charged with an offence and by way of defence pleads insanity. Although it is for the prosecution to prove every element of the offence—sanity is considered to be there—it is for the accused person to establish on the balance of probabilities that he or she was insane at the time of the commission of the offence. There was another case of the shifting onus. When the Attorney General says in the other place this shifting onus will serve only to confuse the courts, this shifting onus is something that the courts deal with on a daily basis. We are saying that responsibility should fall upon the prisoner. We are not asking him to prove his innocence or anything, for heaven's sake; we are saying that before the court can make the conditional release order, under proposed section 17(1)(b), the court must be satisfied that the offender will comply with the conditions stated in that order. Most people in the community would think that was commonsense. The next subsection we propose is that the offender has the onus of satisfying the court that he will comply. What is wrong with having the accused come to court —

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

Mr J.R. QUIGLEY: What is wrong with requiring the accused to satisfy the court of his sincerity of resolve to comply with every condition of the order? We can imagine that someone like Ugle, who has broken an order, would have the greatest difficulty satisfying the court of that when, in the first instance, he had to satisfy the court to get his release order, then he broke it and came back on a breach. How would he satisfy the court? We agree that is a problem and the community thinks it is a great big problem that these people do not have to give any explanation. It would be the same in McGarry's case. In McGarry's case the judge was postulating what the accused might do. The court noted—how do you like this?—that the offender elected not to give evidence on the application, so the court was left to make certain assumptions or draw certain inferences, but the offender elected to say nothing. What was the offender hiding? Was it his vulnerability under cross-examination that it might come out that he did not have a sincere resolve? Was he trying to hide the fact that during the assessments by the qualified psychologist or psychiatrist he was doing what is illuminated in so many of these judgements—saying things that the psychiatrist or psychologist wanted to hear for the purposes of review? It is late at night and I am sure the minister does not want me to read every one of these cases. But time and time again the Supreme Court

notes that psychiatrists' reports state that offenders tell them things that they think they want to hear—in other words, self-serving statements. Courts and judges are particularly adept at evaluating these things because they assess witnesses on a daily basis. Why should an offender not come before the court and express his sincere resolve to comply with all the conditions of a supervision order and express his sincere resolve to the extent of satisfying the judge to a high degree of probability that he will not offend again? Why should Wimbridge not have to go before the court and satisfy the court to a high degree of probability—the civil standard—that he will not offend again? That is what the community expects. We all know that programs in the current prison system are optional—prisoners can take them or not take them. We know from Lyddieth and others that antilibidinal drugs are optional. Some dangerous sex offenders have been released after they have stopped taking them. Some start taking them three weeks before their application is heard to try to convince the court. Why should a judge not say, "One moment please, offender. A year ago you stopped taking antilibidinal drugs and you started taking them again only three weeks before the application was brought on before the court. Why should I believe you to a high degree of probability that you will continue to take the drugs and continue to obey all other conditions of a supervision order?" It is commonsense. The minister said in Parliament this evening that the government wants to improve the legislation. They said to us —

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

Mr J.R. QUIGLEY: The government asked the opposition to support this bill, and we did. But testing legislation is the job of the state's opposition. The government sees this as obstructionist. It is also the job of the opposition to try to improve government bills. We put forward a suggestion to the government—an improvement to the bill—and the government agreed that it was an improvement to the bill and accepted it. The improvement related to judges not having to give reasons for a decision at the time they make an order. We put that amendment forward, because had the government proceeded with the bill as it was, the inevitable consequence would have been a lack of confidence in the judiciary, because an order would be made for the release of an offender and the Supreme Court would not have to tell the populace why it released him. It would not have to give the population any evidence as to why the offender was being released until sometime further down the track, which would have been totally unacceptable. We brought forward our amendment and having seen that amendment on the notice paper in the other house, the government decided to not proceed with its amendment. It is the job of the opposition to scrutinise legislation and to try to improve it. I challenge members on the government benches: is there anyone who thinks that it is unreasonable to expect an offender before the court for review to provide the court with evidence to satisfy it to a high degree of probability that, if released, they will not commit further offences or break the conditions of their supervision order?

Is there anyone on the government side, sitting over there, who thinks that is unreasonable? They are all silent. No-one is challenging me. Does the member for Balcatta want to challenge me on that? Does he think that is reasonable?

Mr C.D. Hatton: I can't understand what you're saying. I don't know what you're talking about. You don't make any sense, so I can't challenge.

Mr J.R. QUIGLEY: He cannot understand it, but he is going to vote against it.

Mr C.D. Hatton: You don't make any sense. All we're doing is providing good parameters and we're strengthening it. I don't know what you're talking about. It's already working.

Mr J.R. QUIGLEY: Well, for the member's edification, I will start that proposition again. When an offender is coming up for review, is it unreasonable for the offender to be required to convince the court that he will obey the conditions of the supervision order? Does the member think that is unreasonable?

Mr C.D. Hatton: I still don't know what you're talking about.

Mr J.R. QUIGLEY: No, but when the bells are rung, he will come and vote against it, as if he knows something about it. What a joke. All the people in Balcatta will know what the member's response to this amendment is because they will be leafleted on this and they will be told, as the communities in the other marginal seats will be told. That is why the opposition is bringing this amendment forward.

Finally, I turn to proposed subsection (6)—that is, that the court must disregard the fact that the person will be subject to electronic monitoring. The Attorney General pointed out in the other place the shortcomings of electronic monitoring. They include that the offender can go into buildings where the electronic monitoring does not work, such as shopping centres and hospitals; that, from time to time, the community corrections officer can ask for it to be turned off, for various reasons; and that the monitors are unreliable. If electronic monitoring is all of these things that the Attorney General criticises it for, it should not be included in the basket of considerations.

Mr P. PAPALIA: I want to speak in support of these amendments because, if nothing else, they impose a bit of responsibility on these dangerous sex offenders to actually convince the court that they should be released. As

the situation currently stands, clearly explained by the member for Butler, it is quite possible for one of these offenders to make no comment at all. We know that since this government took office, it got rid of the deniers program, which was introduced by a former very good Minister for Corrective Services, Hon Margaret Quirk. It was a unique, world-class program brought here from Canada to target individuals who deny that they did anything wrong when they committed these horrific offences. It was the only program of its type in Australia, it was introduced under the previous Labor government, and it was cut by this government. Under the current system if a dangerous sex offender who has gone to prison for committing one of these horrific offences denies they have ever done anything wrong, there is no intervention. Nothing happens to them unless they participate voluntarily in one of the other programs, which is unlikely, since they deny that they have done anything wrong. They can serve out their sentence and reach the point at which they are subject to this legislation, not even bother trying to convince the court that they should be released, and still be released, knowing full well that our weak Attorney General will not oppose the release if the DPP does not, and also knowing that, in all likelihood, the DPP will not oppose it either.

Mr J.R. Quigley: Even though the minister says you can.

Mr P. PAPALIA: And knowing that the minister in this place has confirmed that the Attorney General has the power to intervene, but chooses not to. This individual, who has denied all along that they have done anything wrong and denies that there is any problem with them and fails to comply with any intervention or rehabilitation program, will be released. I agree with the shadow Attorney General—at the very least they should be compelled to make their case. They should be compelled to try to convince the court that they will comply with all their obligations. They should be made to state their case and they should be made to provide their argument for why they should be released, noting that they are still seen as a threat to society. I cannot believe that the member for Balcatta could not understand that.

Mr C.D. Hatton: I couldn't understand the member!

Mr P. PAPALIA: Could the member for Balcatta not read the amendment on the notice paper? Could he not understand that the idea is to impose some degree of responsibility and to lift the bar a little higher than the government is applying? The Attorney General does not believe he can do any more. We know that he can. He chooses not to. The Attorney General opposed these amendments in the other place not because they were bad amendments but because he felt they would be confusing with respect to the onus of responsibility. Bad luck! Who cares about the onus of proof? I am not a lawyer. What does the member for Balcatta think the people in his electorate would think about this? Does he think that they would think it reasonable to ask a dangerous sex offender to argue his case? Does he think that it would be seen by his community to be wrong for us to impose just a little degree of responsibility on those people prior to the Attorney General letting them out, prior to the police minister letting them out, prior to the corrective services minister letting them out? Despite all the claims they have made to the contrary over the last two years and three months, there was something that they could have been doing about this. There was something the Attorney General could have been doing about releasing these individuals, but they all claim that there was not. They went out and were quoted in front-page newspaper articles as saying that if it was up to them, they would lock them up and throw away the key. That is not true, because it was up to them and they did not lock them up and throw away the key; they opened the door and let them out. I believe the Attorney General has opposed this amendment just to avoid embarrassment to himself—to avoid conceding that he did not think of the amendment.

Mr J.R. QUIGLEY: My concern is for the situation of victims. These amendments were shown to victims, and victims plural went out on the steps of the Parliament and supported this amendment and said that it is a good idea. What I want to find out from the minister is: What does the Commissioner for Victims of Crime think? Which victims did the Commissioner for Victims of Crime talk to? Did the Commissioner for Victims of Crime speak to Angela Johnston? Angela Johnston has said to me that she got nothing from the Commissioner for Victims of Crime. The Commissioner for Victims of Crime sits here in a conflicted situation. She is no more than a public servant working for the Department of the Attorney General. She is sitting at the ministerial table as the minister's adviser advising the minister on how to oppose this amendment, which was introduced for the benefit of victims. What is the Commissioner for Victims of Crime doing? She is sitting there advising the minister on how to defeat an amendment that is for the benefit of victims. The idea that we have a Commissioner for Victims of Crime in this state is a joke. The only time I have seen her speaking is when she is supporting the minister on this and other legislation. Where was she when the Enough is Enough group started with their concerns about this legislation? Did we hear one peep from the Commissioner for Victims of Crime? No, because the Commissioner for Victims of Crime is an employee of the Attorney General's department. As they used to say, "You accept the Queen's shilling, you become the Queen's man"! If you accept the Attorney General's salary, you become the Attorney General's woman! You are not an independent commissioner! I want to hear from this minister who the Commissioner for Victims of Crime has spoken to. Has she spoken to the 13 victims in the Lyddieth case? Has she spoken to the victims of Ugle, including

Angela Johnston? Has the Commissioner for Victims of Crime spoken to the victims of McGarry? Has the Commissioner for Victims of Crime spoken to the victims of TJD? And, specifically, has the Commissioner for Victims of Crime elicited the views of these victims, who went onto the steps of this Parliament and supported this legislation—Angela Johnston and others—or is she here just to peddle the line of the government?

Mrs L.M. HARVEY: Now that the member has stopped attacking the Commissioner for Victims of Crime, I will respond to his question. The Commissioner for Victims of Crime has assured me that she has met with a large number of victims, and contacted them by email and on the phone —

Mr J.R. Quigley: On this amendment?

Mrs L.M. HARVEY: — including a number of the names the member mentioned. She went through the draft legislation with a number of victims who wanted to have input into the bill before it was brought to the house, and they were happy with the legislation. With respect to the member's assertion that the opposition inserted an amendment to the current section 27 of the Dangerous Sexual Offenders Act, requiring the court to give reasons when making a continuing detention order or supervision order —

Mr J.R. Quigley: We didn't put that in; you put that in.

Mrs L.M. HARVEY: No; the member said the opposition put an amendment on the notice paper to insert it. That is incorrect. A recommendation of the review was to delete the current section 27; the government chose to override that recommendation and leave section 27 intact, so the court is still required to give reasons. It was not an opposition amendment.

The matter at hand is the opposition's proposed amendment. The government will not support it for a number of reasons. The review was comprehensive. The member has alluded to the time it has taken to review the legislation and draft it; that is because the legislation is finely balanced. This proposed amendment is likely to throw that out of balance. Our interest is in ensuring that this legislation goes through, taking into consideration the views of the High Court and other bodies. What the member is proposing does not add anything to the operation of the act. In determining the risk and making a decision, the sort of evidence the court must have regard to is set out in section 7(3) of the current legislation; for example, criminal history, previous conduct, the service of the previous criminal conduct, the expert evidence available to the court presented by the applicant on behalf of the state, and also any evidence presented on behalf of the offender. There is a catch-all at the end of section 7(3)(j)—"any other relevant matter". There is no limit to the sorts of evidence and considerations the court can take into account, but the court is directed as to certain things it must take into account. The first thing, in fact, is that the court needs to be satisfied that the offender is, firstly, a dangerous sexual offender within the meaning of the act, and —

> … be satisfied that there is an unacceptable risk that, if the person were not subject to a continuing detention order or a supervision order, the person would commit a serious sexual offence.

To that end, if the court is satisfied to a high degree of probability that unless the offender is detained or subject to supervision they will commit a serious sexual offence, the court then decides whether the person ought to be detained in custody for a further period indefinitely or released subject to conditions the court considers appropriate to manage the risk in the community. It is not a question of balancing the onus of proof or prescribing an onus of proof; the court must have regard to the evidence and if its finding is that there is a serious risk, then that can be managed in one of two ways—either a continuing detention order or a supervision order with appropriate conditions.

The court can, on the material available to it, regardless of who has the persuasive onus, come to the conclusion that the risk and the need to ensure the safety of the community can be managed by a supervision order; its option available under the act is a continuing detention order. The government's view is that the proposed amendments would not add anything to the current legislative scheme and that it would complicate it, requiring the court to make sense of how that shifting onus of proof might work. The government opposes the amendment.

Mr P. PAPALIA: Have there been any cases in this government's time in office in which a dangerous sex offender has been considered by the court likely to not comply with the conditions of their release, yet they have been released anyway?

Mrs L.M. HARVEY: The court's requirement is that the paramount consideration is safety of the community. I am not aware whether the courts have determined that an offender is likely not to comply or is likely to reoffend. I would need to seek advice or clarification via a question on notice about that.

Mr P. PAPALIA: That relates to proposed section 17(4) of the opposition's amendment. The minister's observation was that the amendment brings no benefit and would serve only to complicate the legislation. Nevertheless, I am aware of cases reported in the media in which the observation has been made in court that the likelihood of reoffending and of breaching conditions was high. I have certainly heard ministers say that in all likelihood

individuals will breach their conditions; in fact, I have heard the minister responsible for monitoring release conditions say that the individual who was being released was likely to breach, and if he did, he would be back in prison quick smart—of course, he was not. The observation I make is if that is the case and it is for the court to make a finding or a consideration or come to the belief that in all likelihood the individual before them will breach or fail to comply with conditions, why would it be so terrible to impose or insert this amendment? It states —

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

In other words, why not just ask the court to not let them go, unless the court is satisfied they will comply with all the onerous obligations it is placing on them, rather than expect the onerous obligations to trip them up and catch them, because they will be released regardless?

Mrs L.M. HARVEY: I draw the member's attention to debate in the other place on this amendment in which the case of Mr McGarry was quoted. The Attorney General referred to remarks in the judgement in which an order was made for continued detention. The judge stated —

> Mr McGarry remains a serious danger, however the essential issue is whether he can be adequately managed in the community on a supervision order. The judgement goes through a range of psychiatric and psychological assessments of Mr McGarry.

The judge concluded —

> In the circumstances I conclude that Mr McGarry is presently suitable for release on a supervision order but only if that can be to a place where the conditions of release can be effective. No such place has been found and I have no reason to believe that a suitable place is presently available. Accordingly, I am not satisfied that Mr McGarry can presently be released on conditions that would be effective in managing the risk that he would commit a further serious sexual offence if released, or in reducing that risk to an acceptable level.

Regardless of whether Mr McGarry had proved or had any onus to prove that he was unlikely to reoffend, the judge in that circumstance determined that he should be detained on a continuing detention order. Although Mr McGarry remained a serious risk and there was a view he could be managed on a supervision order, there were no geographical circumstances or a suitable place in which he could be managed so continuing detention was ordered.

That case was raised as a case to back up the amendments that the opposition put forward. It is irrelevant whether Mr McGarry had the onus to prove that he would not re-offend because, whether he was able to prove that or not, the judge still determined that there was no place he could be managed effectively. It is interesting that the opposition used that case to support its amendment. In any event, it does not change the government's position, which is that the proposed amendments would create confusion and would not complement the act or strengthen it and, as such, we will not support the opposition's amendments.

Mr P. PAPALIA: I was not referring to proposed subsection (5) of the amendment; I was referring to the first part of the amendment, proposed subsection (4), in which the onus of being satisfied that the offender will comply with the conditions is placed on the court and not on the offender proving to the court that he will comply.

I would have thought that the McGarry example that the minister gave is an example of what is intended by the first part of the amendment—that is, if the court cannot be satisfied that the individual will comply, then it does not release them. The outcome would be exactly that. I am wondering, as I asked before, whether that occurred at any stage—whether the court deemed that it could not be satisfied that the offender would comply but the offender was released. I have already asked that and I am wondering about that. If that had been the case in some instances, I would have thought that would provide a very good case for supporting the first part of the amendment.

I want to address the second part of the amendment. I do not have my copy of the upper house debate as it went off with my notes to Hansard after my second reading contribution, but that is fine. I am frustrated by the fact that the Attorney General who is responsible for this bill is in the other place and that the legislation is introduced there first and we do not get to personally question him about this legislation that is so important and of so much interest to the Western Australian community. I do not know whether the arguments that were made in the other place reflect the concerns that we have raised in this place. I am quite comfortable about pursuing any of the matters separately from that debate. In the event that the Minister for Police needs to seek advice from the Attorney General, it would be fine for her to respond. I am not convinced by the debate in the other place and the Attorney General's claim that this amendment will somehow complicate things or does not add to or confuses the legislation. I do not buy that. If I were to place before the people in the community who have been following this debate now for two years and three months and who have been waiting for the Attorney General to get off his backside and do something the suggestion that, firstly, the court should satisfy itself that the guy is going to comply before he is released secondly, that the offender must provide reasonable, acceptable and cogent

evidence to a higher degree of probability to the court that he is going to comply and, thirdly, that he at least acknowledges what he has done and says that he is going to change his behaviour, then I think people would think that was reasonable. Finally, in deciding whether to make an order under subsection (1)(b), the court may disregard the fact that the person will be subject to electronic monitoring if an order under subsection (1)(b) is made. That amendment was fundamental to our contribution to this debate from day one. From the moment Hon Terry Redman introduced the changes to enable GPS tracking of dangerous sex offenders to be a consideration for release, our spokesperson in this place said that that would likely see the release of more dangerous sex offenders onto the street. The minister of the day said words to the effect, "Yes, you're probably right." The Labor Party has made that contention ever since. I do not buy the Attorney General's claim, in percentage terms, that fewer dangerous sex offenders have been on the streets since the change to the legislation. If it represents one year, then I want to see every single year of the legislation being enforced to make comparisons between the time of the change to the current time. We will then see whether a select moment in time was chosen by the Attorney General to make his argument, because I do not believe it and I do not think that most people in the community would believe it. More dangerous sex offenders seem to have been released in recent times than at any time in history. That makes sense, of course, because as time goes on, more people are reaching the ends of their sentences and they become subject to this legislation.

Mr D.J. KELLY: I would like to hear more from the member for Warnbro.

Mr P. PAPALIA: I am finishing. I do not have much more to add other than to say that I think the three proposed subsections moved by the member for Butler are quite reasonable. Were we to place them in the public domain and ask people what they think—the people who are threatened by dangerous sex offenders when they are released—I think they would all say they are quite reasonable. They would not say, "That's an onerous thing to impose on the poor old government, which has taken two years and three months to introduce something." I do not think that they would feel sorry for the Attorney General. I think that they would be pretty critical of the Attorney General for opposing those amendments right now. I also think that they would be pretty critical of the Minister for Police and the Minister for Corrective Services, who both joined in and garnered easy publicity by criticising the judiciary when they said how terrible the court's decisions were. They undermined the rule of law in Western Australia and got themselves some cheap publicity. The minister then said that it was not up to her; she had no choice and there was nothing else that her government could do when, in reality, as we discovered tonight, that was not the case. All along, the Attorney General had the power to act and the minister could have got him to act, but she did not bother. I think that the people of Western Australia will disagree with the minister.

Mr J.R. QUIGLEY: The minister said that this amendment adds nothing. The minister then read out what the court already has to consider in the legislation. At no time did she read out—because it is not in the legislation—that the court has to be satisfied on the balance of probabilities that the offender is going to comply with the conditions. That is not in there and nor did the minister read it out or say that it will be inferred in the legislation. It is just not there and that is why we have moved this amendment. The offender should convince the court that they will comply with the conditions. As the member for Warnbro said, most people in the community would say that that is reasonable. As I said, the victim of Ugle, Angela Johnston, stood outside this Parliament holding a copy of this amendment and saying, "This is what we want." We did not hear anything from the Commissioner for Victims of Crime on that. The victim went out there and said, "This is what we want." Did the victim get any support from the commissioner? Not a word. The minister said that even if we take all that into account, this shifting onus will confuse the court. I have already addressed the chamber on a number of matters in which there is a shifting onus; the fisheries bill has them in it as well.

Dr A.D. Buti: It confused the member for Balcatta.

Mr J.R. QUIGLEY: Anything will confuse the member for Balcatta.

What we want to know, as the opposition, is in what way does the government contend that having this shifting onus will confuse their honours, the justices of the Supreme Court? In what way does it have the capacity to confuse Supreme Court judges?

Mr P. PAPALIA: Is it the intention of the minister to not answer any more questions with respect to the amendment that has been moved?

Mrs L.M. Harvey: The questions take 15 minutes to be put. Perhaps you can succinctly ask a question.

Mr P. PAPALIA: The last one I heard was fairly short and succinct: in what way would the court be confused by the amendments that are being put?

Mrs L.M. HARVEY: Because it takes the focus off community safety. The whole purpose of the legislation is for it to all work together. It is finely balanced. The member for Butler alluded to the fact that it has taken a long time to review the legislation and bring it forward. That is because it is finely balanced. Under section 7 of the act, "Serious danger to community", a range of factors need to be considered in determining if the person might commit

a serious sexual offence. I put it to the member that an offender could be very convincing if the onus was put on them with respect to their ability and willingness to comply with an order. Ultimately, section 7 of the legislation requires that the court consider a psychiatrist's assessment of the ability of the offender to comply. The court must also have regard to psychological reports and information indicating whether the person has a propensity to commit serious sexual offences in the future et cetera. It is all in the legislation. We believe that the intention is there. We do not believe that inserting this amendment after such a thorough review process in which this reverse onus was considered and rejected is the appropriate way forward. As such, we will not be supporting the amendment.

Mr J.R. QUIGLEY: The minister took us to section 7 of the legislation. Let us go back to that. In deciding whether the person is a serious danger to the community—this is not deciding whether the person will behave once released—the court will take into account paragraphs (a) to (j), which includes propensity to commit offences and whether or not there is a pattern of offending. This is about deciding whether or not the person is a continuing danger. It is not directing the court's mind or requiring the court to decide whether the person, on the balance of probabilities, will comply with the supervision order. These are the considerations to take into account when deciding whether the person is a continuing risk—that is, requiring detention or a supervision order. Section 7 does not address the issue of whether the prisoner is going to comply with any order. That is what the community wants and that is what the victims want. The minister, on advice of the so-called Commissioner for Victims of Crime, says, "Don't give it to the victims. Don't give them this reassurance. Don't do it." When Angela Johnston, rape victim, says she wants this, the minister and the so-called commissioner say, "Don't give it to her. They are not deserving of this reassurance." There is nothing more that I can add. This is just a huge disappointment for victims.

Division

Amendment put and a division taken, the Acting Speaker (Mr I.M. Britza) casting his vote with the noes, with the following result —

Ayes (15)

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

Noes (30)

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

Pairs

Mrs M.H. Roberts	Dr M.D. Nahan
Ms J.M. Freeman	Mr D.C. Nalder
Ms L.L. Baker	Mrs G.J. Godfrey
Ms J. Farrer	Ms W.M. Duncan
Mr M. McGowan	Mr C.J. Barnett
Mr C.J. Tallentire	Mr D.T. Redman

Amendment thus negatived.

Clause put and passed.

Clause 18 put and passed.

New clause 18A —

Mr J.R. QUIGLEY: I move —

Page 17, after line 3 — To insert —

18A. Section 21 replaced

Delete section 21 and insert:

21. Warrant because of contravention

(1) A member of the police force or community corrections officer who reasonably suspects that a person who is subject to a supervision order is likely to contravene, is contravening, or has contravened, a condition of the order may apply to a magistrate for the issue of a warrant under subsection (3).

(2) A person who makes an application under subsection (1) must advise the DPP as soon as practicable that the application has been made.

(3) If the magistrate is satisfied that there are reasonable grounds for the suspicion described in subsection (1), the magistrate has to issue, in the form approved under section 46, a warrant directed to all members of the police force for the person who is subject to the supervision order to be arrested and brought before the Supreme Court for it to consider the suspected or anticipated contravention.

(4) The warrant may state the suspected or anticipated contravention in general terms.

(5) A magistrate cannot issue a warrant under subsection (3) for the arrest of a person unless the application for the warrant is supported by evidence on oath.

(6) A person arrested pursuant to a warrant issued under subsection (3) for a suspected contravention shall not be released on bail, and shall be remanded in custody until the suspected contravention has been the subject of a determination by the Supreme Court.

This new clause will take away the capacity of the court and the police to simply issue a summons for appearance if a person breaches a supervision order. Under this new clause, the person who is the subject of the supervision order can be brought before the court only by way of a warrant for arrest; and, if he is brought before the court on a charge of breaching the supervision order, he will be detained in custody until the matter is determined by the court, and bail will not apply.

The Attorney General said in the other place that arresting people on the basis of reasonable grounds to suspect that they have breached, are breaching or are about to breach the supervision order would be unreasonable, and that all sorts of people would be held in custody without recourse to bail simply because a police officer has gone to a magistrate and sworn that there are reasonable grounds. The Attorney General has said that some breaches are not very serious. If they were not serious conditions, they would not have been put on the supervision order in the first place. As I said in my contribution to the second reading debate, offenders keep pushing the envelope, and when they breach the order and there is no swift and salutary response, they push further.

Why have we brought this amendment forward? This is the very situation that caused such distress to the victim Angela Johnston, who travelled to Western Australia with her concerns. As we know, she was sexually assaulted by Ugle in her home in the night-time whilst her children were asleep in another room. More than one of the reports on Ugle provided to the Supreme Court on the director's application for review noted his propensity to use deleterious substances—cannabis, alcohol—that, as the shadow Minister for Police said, lowered his inhibitions and predisposed him to reoffending. The government has already opposed our amendments that would have required Mr Ugle to satisfy the court that he would obey these terms and conditions whilst on the supervision order. Whilst on the supervision order he offended again, it is alleged, by consuming drugs. He was brought before the court and immediately was out on bail. Here we have a person who was the subject of a supervision order. I go back to the judgement of the court delivered in November 2015 and the psychiatrist's report. It states the following —

> In his report, Dr Galloghly said that in relation to his history of sexual offending, the respondent contended that the primary issue was amphetamine use.

Mr P. PAPALIA: May I hear more from the member for Butler.

Mr J.R. QUIGLEY: I will go back to what I just quoted —

> In his report, Dr Galloghly said that in relation to his history of sexual offending, the respondent contended that the primary issue was amphetamine use. The respondent said that he tried not to think about the sex offences because 'the more you think about it, the more it gets to you', and he was unable to articulate any factors associated with his history of sexual offending apart from substance use and his own history of abuse … Dr Galloghly reported that the respondent openly discussed his substance use issues. He claimed that he was confident that he would not use illicit substances in the community

> should he be released. However, as mentioned earlier, the respondent … tested positive for cannabis. He had previously returned positive urinalysis tests for cannabis on four occasions: 3 July 2008; 4 November 2009; 16 September 2013; and 28 October 2013 …
>
> … In relation to his recent prison charge for cannabis use, the respondent stated that he succumbed to constant peer pressure while experiencing stress related to his upcoming DSO annual review …

That is the prison charge of using drugs in prison. The judgement continues —

> I interpolate that this does not inspire confidence in the respondent's prospects of complying with conditions prohibiting his use of drugs, given that the onerous conditions of the proposed supervision order are likely to cause the respondent a degree of stress.

This is the same person who, as soon he was charged, was released on bail. He was released on bail notwithstanding the fact that His Honour said he had no confidence in Ugle abstaining from drugs in the future and bearing in mind that Ugle said that when he uses drugs, he commits offences—that is the history he gave. Nevertheless, the respondent was then released on bail immediately. Does the minister not think that victims would be concerned? Then, on 24 November, His Honour determined that Mr Ugle should once again be released on a supervision order for a period of 10 years with the same sorts of conditions, which are that he is to report to the community corrections officer, not use illicit substances, not associate with any person known by him to have committed a sexual offence unless the association is authorised in advance by the CCO, not possess or consume alcohol, and attend for urinalysis for alcohol or prohibited drugs. This person was immediately released on bail when charged and the victim was very concerned. The government says that to hold these offenders in custody while these allegations of breaching the supervision order are outstanding would be too onerous, yet the government is prepared to hold people such as Ms Dhu in prison for an unpaid parking fine, and she died in prison. We know that she died in police custody. She was put in prison for an unpaid parking fine, but if a dangerous serial sex offender breaches their supervision order, it would seem the government is quite happy for such a person to be released on bail. Where is the balance? We are told that there are only about 40 of these people out there. That is what we were told in the minister's second reading speech.

[Member's time expired.]

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

Mr J.R. QUIGLEY: We could count on one hand the number of people who have outstanding unresolved charges of breaching supervision orders and are before the courts, waiting to be dealt with for an alleged breach. This is no imposition on the state. Think about all the Indigenous people the government is locking up on a daily basis for minor matters. Half of the inmates in Casuarina Prison are people on remand. Some of those people are on remand for relatively minor offences, but they did not have employment, were of no fixed abode and did not have anyone to go surety for them, so they are held in custody. The government has indicated in the upper house that it will oppose this amendment and that it is quite happy to see people who have allegedly breached their supervision order out on bail.

Mr P. Papalia: What was the argument again?

Mr J.R. QUIGLEY: That it would be too onerous on people to take them into custody on this basis.

Mr P. Papalia: Onerous on the individuals or onerous on the prison?

Mr J.R. QUIGLEY: Onerous on the individuals, not on the victims, member. The victims did not get a look-in. The Commissioner for Victims of Crime has never said anything publicly about these offenders being released on bail when they are charged with breaching their supervision orders and the distress that that causes the victims. The victims have come along in front of the media and said how distressed they are, but we have not heard a word from the Commissioner for Victims of Crime. It is remarkable. It is just wrong. The government will oppose this amendment, which would require people to be detained in custody while charges of breaches of supervision orders are outstanding. The member for Eyre is going to support releasing those people on bail. I am surprised that he does not take an independent stand. He is going to line up here, because he has been told to, and say that it is okay by him that serious sex offenders charged with breaching their supervision orders go out on bail. It is outrageous.

Mr P. PAPALIA: I want to speak very briefly, and join the member for Butler in reflecting on the apparent disparity between the government's concern over dangerous sex offenders being locked up for a short period of time while the matter of them having breached a condition is dealt with, and its willingness to lock up 6 340 Western Australians in the prison system today, around 1 100 a year of whom are there solely for fine default, and around 1 300 a year, according to the Auditor General, are there for about four days while their bail

management is arranged. One in three women going into our prison system is there solely for fine default. None of that seems to concern the government at all, nor does the fact that 1 900 of the people in prison today are on remand. As the member for Butler indicated, 40 per cent of Casuarina Prison, which is a maximum security prison, not a remand prison, is overflow for the Hakea remand prison. Women are sleeping three to a cell designed for one prisoner, with two women on the floor of a cell designed for one person. All of that does not seem to be of concern, but the Barnett government is concerned about onerous impositions on dangerous sex offenders who have breached their conditions, and does not want to put them in prison while that matter is dealt with. I find that extraordinary and I think we should be telling everyone in Western Australia about it. I will be taking every opportunity to alert the people of Western Australia to the concern of the Barnett government about the wellbeing of dangerous sex offenders, as opposed to its lack of concern for just about everyone else in the community.

Division

New clause put and a division taken with the following result —

Ayes (15)

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

Noes (30)

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

Pairs

Ms J.M. Freeman	Dr M.D. Nahan
Ms J. Farrer	Mr D.C. Nalder
Mrs M.H. Roberts	Mrs G.J. Godfrey
Ms L.L. Baker	Ms W.M. Duncan
Mr M. McGowan	Mr C.J. Barnett
Mr C.J. Tallentire	Mr D.T. Redman

New clause thus negatived.

Clause 19 put and passed.

Clause 20: Section 23 amended —

The SPEAKER: Member for Butler, are you going to oppose this clause?

Mr J.R. QUIGLEY: There is an amendment standing in my name to replace the proposed section with new section 23.

The SPEAKER: You can talk on your opposition to the clause and then you can move your amendment.

Mr J.R. QUIGLEY: Under proposed section 23(1), when a person breaches a supervision order, the court can —

(a) make an order amending the conditions of the supervision order, or extending the period for which the offender is to be subject to the conditions of the supervision order, or both; or

(b) if the court is also satisfied that there is an unacceptable risk that, if an order under this paragraph were not made, the person would commit a serious sexual offence, make a continuing detention order in relation to the person; or

(c) make no order.

We oppose this proposed section. In moving our amendment, we say that if the court is satisfied on the balance of probabilities that the person who is the subject of the supervision order is contravening or has contravened

a condition of the supervision order, the court shall make a continuing detention order in relation to that person. This will considerably stiffen up the government's bill in favour of victims. It provides that if there is a breach of the conditions of the supervision order, there will be a detention order. It makes it clear to offenders: "If there's a breach, you will go back inside. There will not be an amendment, an extension or otherwise of the supervision order. A breach of its terms will see you back in jail." Our proposed clause 23(2) provides —

> … 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 —
>
> (a) make an order amending the conditions of the supervision order, or extending the period for which the offender is to be subject to the conditions of the supervision order, or both; or

In Ugle's case there was a breach. He was not sent back inside; there was just an amendment to the conditions by extending the period and amending some of the other conditions. Here, we say that that could happen only in situations in which the court is satisfied that there is likely to be a contravention of the conditions of the supervision order, but that in situations in which there is a contravention of the conditions of the supervision order, there must be imprisonment. Extension of the terms of the conditions and the length of the supervision order, or amendment of the conditions of the supervision order, will apply only in circumstances in which the court is satisfied that the offender is likely to breach the contravention order, not circumstances in which he has breached it. Proposed subsection (3) reads —

> In considering whether it is satisfied as required in subsection (2)(b), the court must disregard the possibility that the person might temporarily be prevented from committing a serious sexual offence by imprisonment, by remand in custody or by the imposition of bail conditions.

That is, in situations in which the police come forward and satisfy a court that, on the balance of probabilities, there is likely to be a contravention of the terms of a supervision order, the court cannot take into account bail conditions or temporary imprisonment as being likely to reduce the likelihood of that contravention. Proposed subsection (4) reads —

> In deciding whether to make an order under subsection (2) —

That is, to amend the conditions of the supervision order or to extend its period of duration —

> the paramount consideration is to be the need to ensure adequate protection of the community.

I am sure the minister will agree that this amendment considerably stiffens the legislation.

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.