PROHIBITED BEHAVIOUR ORDERS BILL 2010

Returned

Bill returned from the Council with amendments.

On motion by **Mr C.C. Porter (Attorney General)**, resolved —

That the Council's amendments be considered in detail forthwith.

Council's Amendments — Consideration in Detail

The amendments made by the Council were as follows —

No 1

Page 3, lines 16 and 17 — To delete "Supreme Court or the District Court" and insert —

Supreme Court, the District Court or the Children's Court exercising jurisdiction under *Children's Court of Western Australia Act 1988* section 19B(4)

No 2

Page 3, lines 22 to 25 — To delete the lines and insert —

jurisdiction — the person referred to in the *Criminal Procedure Act 2004* section 20(3) who commenced the prosecution or another such person;

No 3

Page 10, line 26 — To insert after "Division 1;" —

or

(d) a youth community based order made under the *Young Offenders Act 1994* Part 7 Division 6; or

(e) an intensive youth supervision order made under the *Young Offenders Act 1994* Part 7 Division 7;

No 4

Page 23, lines 25 and 26 — To delete "anything that identifies, or is capable of identifying".

No 5

Page 23, line 27 — To insert before "a child" —

anything that identifies, or is capable of identifying,

No 6

Page 24, line 1 — To delete "any" and insert —

anything that identifies, or is capable of identifying, an

No 7

Page 28, after line 6 — To insert —

41A. Section 3 amended

In section 3(1) in the definition of ***child***:

(a) after paragraph (c) insert:

(d) a boy or girl dealt with under section 20(3)(b);

(b) after each of paragraphs (a) and (c) insert:

and

No 8

Page 28, line 12 — To delete "to a child." and insert —

to —

(a) a person who is under 18 years of age; or

(b) a person who has reached 18 years of age but who committed the relevant offence referred to in the *Prohibited Behaviour Orders Act 2010* section 8(2)(a)(ii) while he or she was under 18 years of age.

Mr C.C. PORTER: There are eight amendments. I am not certain whether my friend the member for Mindarie has any particular amendment that he wishes to consider; otherwise, I seek to move the amendments en bloc.

The SPEAKER: Members, is leave granted to move the amendments en bloc?

Mr J.R. Quigley: No.

The SPEAKER: Member for Mindarie, can you identify which amendment you will speak to?

Mr J.R. Quigley: I will speak to amendments 4, 5 and 6. Amendments 1, 2 and 3 can be dealt with en bloc.

Leave granted for the amendments 1, 2 and 3 to be considered together.

Mr C.C. PORTER: I move —

That amendments 1, 2 and 3 made by the Council be agreed to.

Question put and passed; the Council's amendments agreed to.

Mr C.C. PORTER: I move —

That amendment 4 made by the Council be agreed to.

Mr J.R. QUIGLEY: Amendments 4, 5 and 6 interrelate because they all deal with clause 34(3). Perhaps they could be dealt with en bloc because I would like to speak to amendments 4, 5 and 6 together.

The SPEAKER: We are dealing with amendment 4, member for Mindarie. Let us stay with 4.

Mr J.R. QUIGLEY: Amendment 4 is to delete the qualifying words in clause 34(3) —

Subsection (2) does not permit the publication of —

And then comes the caveat "anything that identifies, or is capable of identifying" the following three matters. Amendment 4 is to remove from subclause (3) "anything that identifies, or is capable of identifying" and then inserting those same words in front of subclause 3(a) and 3(c) but having them not applicable to 3(b). We oppose that. I think it might be more efficient to have the division now. As a party we disagree that the qualifying words "anything that identifies, or is capable of identifying the exact address of the constrained person" be removed. That is the effect of amendment 4. The qualifying words that comprise the caveat will no longer apply to subclause (b) but will apply to (a) and (c) by the specific insertion at the start of subclauses (a) and (c). We oppose the deletion of these words because in smaller communities the publication of a particular town or general locality where a person might live will of course be something that is capable of identifying the exact address of the constrained person. There is a collision between what the government is trying to achieve here and, for example, what it was trying to achieve in the matter of Mr Hart in Bunbury; that is, to protect anything that would give off the exact address of a serial serious sex offender. However, in relation to minor offenders, the publication of a PBO on the internet site run by the chief executive officer of the department can include matters that can lead to the identification of the exact address of a constrained person, albeit the relevant offences that led to that PBO might even be a non-criminal matter, but a low-grade matter—that is, just two minor offences. In Western Australia, material can be published that may lead to the exact address of the constrained person who is subject to a prohibited behaviour order for two minor offences, which are relevant offences under clause 8. However, the government is keen to protect the publication of the address of a serious serial sex offender. We believe that is unacceptable and we oppose amendment 4.

Mr D.A. TEMPLEMAN: I am greatly interested in the member for Mindarie's comments and I would like him to continue.

Mr J.R. QUIGLEY: We will oppose the deletion in amendment 4. If, after the division is called we are defeated, we will support the inclusion of those words in proposed section 34(3)(a) and (c) for the reasons I have explained. They should be there for all three circumstances; that is, the identity of a child who is a constrained person, the exact address and the offence for which the person was convicted in the Children's Court.

Mr M. McGOWAN: It is ordinarily appropriate, considering this amendment has come from the upper house and we have never seen it before, for the relevant minister to give a response and explain to the house the meaning of the amendment and outline why he believes it is justified that a bill that was already passed by this house should be so amended. I am interested in his answer because I would like him to participate in this debate.

Mr C.C. PORTER: The member for Rockingham stood so quickly that he did not give me a chance to explain the amendment. The amendment arises out of an issue identified by the member for Mindarie during the debate on the bill in this chamber. Obviously the matter was considered in the upper house. It considered the possibility that the legislation was structured so that it may well have been unworkable if nothing was able to be published that could lead to the identification of the exact address of someone. Electoral roll information is somewhat freely available and the names of adults can be cross-referenced to addresses. That is not the case for children. This amendment is designed to make the legislation function properly and reasonably. I understand members who have expressed their dislike for the legislation. However, I would say to the member for Mindarie, as we have said before, that two offences of an antisocial type is not a sufficient condition for the granting of a PBO. Significantly more would have to be shown than that. This amendment will make the provisions workable in the

best and most efficient way. Mr Hart was the subject of a suppression order by the Supreme Court judge in question. It is not necessarily the case that a dangerous sex offender who is the subject of a release order with supervision requirements will always have all or any details suppressed. That was peculiar to that particular case.

Mr J.R. QUIGLEY: Does the Attorney General agree that sexual assault falls within the definition of "anti-social behaviour", as now amended under clause 3(1), which means "behaviour that causes or is likely to cause harassment, alarm or distress"? If sexual assault falls within that definition, a serial sex offender could be the subject of a PBO.

Mr C.C. PORTER: There is no question that could be the case.

Mr J.R. QUIGLEY: Is this regime of PBOs to operate as a de facto sex offenders' register?

Mr C.C. PORTER: No. I am sure that we have much legislation to look forward to next year, among which is legislation that will bring in to play a sex offenders' register. This does not operate as a de facto sex offenders' register. The member for Mindarie might be pointing to circumstances in which it might be legally conceivable that someone who is the subject of a dangerous sex offender application upon his exit from court might also be the subject of a PBO, but I would find that situation very difficult to contemplate insofar as a dangerous sex offender would have been in prison for a considerable time when the order was issued. I cannot see the two running concurrently, particularly for dangerous sex offenders. In any event, this is not meant to set up a de facto register for sex offenders.

Mr J.R. QUIGLEY: Is it not true that at the time of the sentencing of a repeat sex offender an application can be made for a prohibited behaviour order?

Mr C.C. Porter: Correct.

Mr J.R. QUIGLEY: The Attorney General has kindly indicated from the table that that is correct. As a result of this legislation, material can be published that can identify the exact address of the constrained person, being a sex offender in this case.

Mr C.C. Porter: The material is potentially capable of doing that.

Mr J.R. QUIGLEY: It can be published. Prior to this amendment it could not be.

Mr C.C. PORTER: The name of an adult who is convicted of a sex offence is on the public record. The media is in court. Unless there is a specific suppression order, all the information that would otherwise be on a PBO could be printed on the front page of *The West Australian*. We are not doing anything in that respect that is not already being done in any event.

Mr P. PAPALIA: Although I acknowledge the Attorney General's strategy to try to desensitise the Western Australian public to the publication of juveniles' identities on the front page of *The West Australian*, I would like to pursue this further.

Mr C.C. Porter: That was my strategy, was it?

Mr P. PAPALIA: It appeared like a strategy. The Attorney General discussed the matter on the radio. I heard the Attorney General suggest that it was appropriate for those people's details to be published in that manner. It may have been a complete coincidence that *The West* was given that information and the Attorney General immediately talked about the subject of PBOs. That may just have been a coincidence. Nevertheless, it had the appearance of a political strategy. In light of the observation by the member for Mindarie, the government has effectively removed any constraint on the publication of the exact address of the constrained person, who could be a juvenile. Does the Attorney General not think that he should now declare that fact to the Western Australian public and to all the Attorney General's colleagues in the upper house who may not have realised the consequences and potential outcomes of the amendment that was passed through that place and is now before us? I do not recall anyone mentioning at any stage of the debate until now that the Attorney General would allow the publication of the exact address of a juvenile who was given a PBO.

Mr C.C. PORTER: In answer to the member's point about the front page of *The West Australian*, the Commissioner of Police, in conjunction with the Public Transport Authority, decided to release those details. The first I was aware of it—neither of those agencies being inside my ministerial portfolio—was when I woke up and took the plastic wrapper off the newspaper and read it. It was obviously a matter of some public interest and I commented on it. If it falls into a conspiracy theory, so be it. The member said that the upper house members did not know what was going on before they moved and passed these amendments because they had insufficient time to consider them. I understand they have been working on this bill for two and a half or three weeks. It has been a fairly laborious process and this has been discussed in great detail. The amendment makes sense and makes the legislation more workable than it was before. The government intends to accept it.

Mr M. McGOWAN: Just so I understand exactly how this will work, clause 34 allows the publication of details of people who are constrained by a prohibited behaviour order. The government's amendment to clause 34(3) will mean that nothing can be published that is capable of identifying a child other than a child who is restricted by a prohibited behaviour order.

Mr C.C. Porter: That's correct.

Mr M. McGOWAN: Therefore, if a child lives in a household and has brothers and sisters, publication on the website will identify the child because he or she has brothers and sisters. That will be prohibited by this provision. However, the rule will not apply to an only child in a household because the child will not be a child other than the perpetrator of the offence. Therefore, children in single child households will be vulnerable to the publication, whereas children in households with more than one child will not be vulnerable to the publication.

Mr C.C. PORTER: That is an argument that could be put in court, but I do not think it is an argument that would gain currency or be accepted.

Mr M. McGowan: But it's correct.

Mr C.C. PORTER: I tend to disagree.

Mr M. McGowan: Why?

Mr C.C. PORTER: Because it is just a matter of interpretation of the provision. I do not think it is an argument that would carry much currency in court.

Mr P. PAPALIA: Is that the Attorney General's only response? He has effectively said that it is okay to publish the address but not the identity of the child, or the offence that he or she has committed. If there is only one child living in a house, who else could it be who is subject to a prohibited behaviour order?

Mr C.C. Porter: It's not okay to publish the address.

Mr M. McGOWAN: I have set out the argument. Clause 34(3) states in part —

> Subsection (2) does not permit the publication of anything that identifies, or is capable of identifying —
>
> (a) a child other than the constrained person …

Obviously if a family is well known and lives in a house in which there are a number of children, in an area where they can be easily identified, they cannot be identified, because a child other than the one constrained by the prohibited behaviour order could potentially be identified. However, if there is only one child in the household, he or she can be identified. I do not know whether the Attorney General is an only child, but if he were, he would be more subject to the operation of this provision than a child in a family in which there is more than one child. I have a brother so if, when we were growing up, one of us had been subject to one of these orders, it would have been less possible for our household to have been identified, unless both of us had been subject to a PBO.

Mr C.C. PORTER: The two paragraphs (a) and (b) are disjunctive, so it is not permitted to publish anything that gives the exact address of the constrained person. It is also not permitted to publish anything that identifies or could identify a child other than the constrained person. I am still not certain about what the member for Rockingham is saying. If a child knows another child or is the sibling of another child, how would the publication of the PBO details of child A lead to the identification of other children? Their parents and the public know that they exist.

Mr M. McGowan: But what's the purpose of the provision?

Mr C.C. PORTER: The purpose of the provision is that if, for example, another child was involved in the offending with the child who is the subject of the PBO, the face of the publication of the PBO should not contain terms that identify the second child. The provision limits the face of the PBO material to one person who is specifically the subject of the PBO.

Question put and a division taken with the following result —

Ayes (18)

Mr P. Abetz	Mr B.J. Grylls	Mr A. Krsticevic	Mr M.W. Sutherland
Mr F.A. Alban	Dr K.D. Hames	Mr W.R. Marmion	Dr J.M. Woollard
Mr V.A. Catania	Mrs L.M. Harvey	Mr P.T. Miles	Mr A.J. Simpson *(Teller)*
Dr E. Constable	Mr A.P. Jacob	Ms A.R. Mitchell	
Mr J.M. Francis	Mr R.F. Johnson	Mr C.C. Porter	

Noes (14)

Ms L.L. Baker	Mr M. McGowan	Mr E.S. Ripper	Mr B.S. Wyatt
Dr A.D. Buti	Mr P. Papalia	Mrs M.H. Roberts	Mr D.A. Templeman *(Teller)*
Ms J.M. Freeman	Mr J.R. Quigley	Mr C.J. Tallentire	
Mr J.C. Kobelke	Ms M.M. Quirk	Mr P.C. Tinley	

Pairs

Mr I.M. Britza	Mrs C.A. Martin
Dr G.G. Jacobs	Mr P.B. Watson
Mr T.K. Waldron	Ms R. Saffioti
Mr T.R. Buswell	Mr A.P. O'Gorman
Mr M.J. Cowper	Mr J.N. Hyde
Mr C.J. Barnett	Mr M.P. Murray
Mr J.H.D. Day	Mr W.J. Johnston
Mr I.C. Blayney	Mr M.P. Whitely
Mr J.E. McGrath	Mr A.J. Waddell
Mr G.M. Castrilli	Mr F.M. Logan
Dr M.D. Nahan	Mr T.G. Stephens
Mr D.T. Redman	Mr R.H. Cook

Question thus passed; the Council's amendment agreed to.

Leave granted for the following amendments to be considered together.

Mr C.C. PORTER: I move —

That amendments 5 and 6 made by the Council be agreed to.

Question put and passed; the Council's amendments agreed to.

Mr C.C. PORTER: I move —

That amendment 7 made by the Council be agreed to.

Mr J.R. QUIGLEY: This is really by way of a question seeking an explanation, because I do not have the Children's Court of Western Australia Act open in front of me. This includes a new definition and adds "a boy or girl dealt with under section 20(3)(b)". I do not have in front of me 20(3)(b) of the act. What is the purpose of this amendment?

Mr C.C. PORTER: The purpose is for the odd or not-so-odd circumstances in which someone has committed an offence and falls under the jurisdiction of the Children's Court because the offence was committed before the person turned 18 years of age. This is to boilerplate that to make sure that such people are still dealt with as though they were under the age of 18 years.

Question put and passed; the Council's amendment agreed to.

Mr C.C. PORTER: I move —

That amendment 8 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

The Council acquainted accordingly.