

PROHIBITED BEHAVIOUR ORDERS BILL 2010

Second Reading

Resumed from 17 August.

MR P. PAPALIA (Warnbro) [1.24 pm]: The Barnett government has sent a very clear message to the people of Western Australia over the past couple of weeks; that is, the Barnett government does not care about the people of Western Australia. We already know that it does not care about people who are the victims of child abuse; we already know that it does not care whether people die as paupers and they or their family cannot afford a funeral; and we certainly know that the Premier and the his government do not care about pensioners or people doing it tough under the massive increase to household costs they have imposed on them. We therefore know all of that. But this legislation tells us a little more about just how much the Barnett government does not care about people; the Barnett government is reinforcing the message. This message is particularly directed, firstly, at young Western Australians. I am glad that this afternoon in the public gallery there is a group of fine young Western Australians from the electorate of the member for Rockingham and from my electorate to witness this debate, because one of the key messages of this legislation is that the Barnett government will only ever talk about a young person in negative terms. The only time that those people in that gallery and other young Western Australians around this state will ever hear the Barnett government talk about them is how bad they are, how much of a threat they are and how the Barnett government has to impose legislation like stop-and-search —

Point of Order

Mr R.F. JOHNSON: It is the house rules that any member on his or her feet giving a speech directs his or her comments to the Chair and not to the public gallery.

The ACTING SPEAKER (Mr A.P. O’Gorman): I thank the Leader of the House. I ask the member for Warnbro to direct his comments to the Chair.

Debate Resumed

Mr P. PAPALIA: Through you, Mr Acting Speaker, to the entire Western Australian community, I point out that the only time young people will ever hear this government—the Barnett government; the uncaring, mean and nasty Barnett government—talk about young people is in derogatory, negative terms. It suggests that an elderly person should be afraid of a young person. That is the message that the Barnett government has conveyed by this legislation. This legislation has nothing to contribute to the wellbeing of Western Australia. The only thing that this legislation contributes to is the ability to name and shame children who are 16 years of age or older. That is all that it is designed to do. That is the only change that this legislation will bring about to the capacity of the Western Australian judiciary to respond to an offence that is committed right now. Sadly, the other message that the Barnett government is conveying is that it does not care about elderly Western Australians. We already know that the Barnett government does not care about pensioners doing it tough under the massive impost of huge increases in household costs; we know that. The Premier has derided people’s concerns. The Premier has made fun of pensioners’ concerns in the public domain.

Several members interjected.

Mr P. PAPALIA: The pensioners of Western Australia are getting another message. The only thing that this legislation says to pensioners of Western Australia—the elderly people of Western Australia—is that they should be very, very afraid. The Barnett government does not want elderly people and pensioners in Western Australia to feel safe; it wants them to be afraid. It illustrates exactly what the recently retired former Chief Judge of the District Court, Antoinette Kennedy, said. This illustrates exactly the reason she criticised the government’s law and order agenda. It tells older people in Western Australia: be afraid of younger people. It does not tell them that the Barnett government is going to do something about it. It says that we want them to be afraid. Older people should be afraid because that is what the Barnett government wants them to feel. The Barnett government does not want them to think about what is best in the field of law and order. It does not want people to think about whether the current legislation works. All it wants elderly people to do is be afraid of young people. That is the message that the government is conveying, and that is the purpose of this legislation. This legislation brings to the people of Western Australia the message that we should be afraid of young people and children; the Barnett government says that young people are dangerous and have nothing to offer other than a fear factor that the government can use on the elderly. The Barnett government wants to turn Western Australians against each other and that is what this legislation is designed to do.

The Barnett government did not invent this idea; it is an ageless idea to create fear and anxiety and get people to sacrifice their freedoms as a result. Governments can get away with pretending to be doing things by making people so afraid that they place all their trust in the government to solve the “problem”. That is what the Barnett government is doing; it is trying to stop people from thinking.

Let us reassess what the Attorney General has introduced into this place—shamefully, in my opinion. He has introduced a law that was an abject failure in the United Kingdom where it was introduced by the Blair government in 1999. We know that it did not stop antisocial behaviour; we also know that it became a badge of honour for many of the sorts of individuals that the Attorney General is trying to target. It actually encouraged their poor behaviour. We also know that it diverted scarce police resources from serious, high-priority crime to small incidents that did not constitute real antisocial behaviour. It ended up being a diversion from priority police activity. We know this not only from media reports and official reports and analysis by the Home Office in the United Kingdom; even the incoming Conservative government is going to dump this legislation because it does not work.

This state has the highest percentage of migrants from the United Kingdom of all the Australian states. We know that the legislation did not work in the United Kingdom, because the moment it was mentioned or discussed in the public domain and on talkback radio, scores of Western Australians of British background called in to say, “This is a joke. It was a joke for a decade under the Blair government, and I can’t believe they’re introducing it here”. Our own Western Australian citizens, who have lived through the application of this failed legislation that the Barnett government is trying to introduce here, have openly criticised it. They have said that it did not work, that it was a joke and that it did not create any benefit for the people.

Mr J.M. Francis interjected.

Mr P. PAPALIA: I have a few British migrants in my electorate, member, and all the ones with whom I have discussed this legislation have laughed at it. They know that anti-social behaviour orders were a joke. Prohibited behaviour orders in Western Australia will be the next joke. We will call them “PBOs”, and they will be a joke! They will be the punchline; the Minister for Police is the current punchline. The bumbling Minister for Police, the “Invisible Man”, who is not allowed to come anywhere near any election campaign, let alone the current federal election campaign, has been the butt of everyone’s jokes until now; but this legislation will become the butt of jokes from here on in.

I want to refer to an excellent article written by Hylton Quail, president of the Law Society of WA, that appeared this morning on the Wangle website; members will no doubt be aware of it. He reiterated all the arguments that my esteemed colleague the shadow Attorney General advanced yesterday. All the arguments proffered in this place by the shadow Attorney General were endorsed by the president of the Law Society. The Law Society condemns —

The ACTING SPEAKER (Mr A.P. O’Gorman): Members, there is only one member in this place who is supposed to be speaking, and that is the member on his feet. It is not appropriate for there to be conversations going across the back of chamber, so I ask members to desist and allow the member on his feet to get through his speech.

Mr P. PAPALIA: The Law Society condemns this legislation, and I recommend Hylton Quail’s article on the Wangle website to all members of the house and anyone else who might care to have a look at it.

There has also been commentary by other people in the community. The Aboriginal Legal Service has distributed a very fine paper, an analysis of the legislation, to all members, and no doubt most members have read it. Once again, I felt that the arguments it put against this legislation reflected those of Hylton Quail and the shadow Attorney General, and they cut to the chase. The arguments advanced by the ALS identified all the flaws in the Attorney General’s reasoning behind the introduction of this legislation. It has become irrefutable. Apart from the fact that the legislation has failed in the UK—there is no reason to suspect that the Attorney General has applied any great insight into coming up with a way in which to make it work in Western Australia—these authorities and the shadow Attorney General have identified the fact that there are already avenues and powers in place, available to the courts, to enable almost all of what will be introduced by this legislation, with the exception of attacking the young people of Western Australia. Beyond that, everything else the Attorney General is trying to introduce is already available. Misconduct restraining orders have been identified by the ALS, as they were by the shadow Attorney General and the Law Society. Courts are empowered to impose MROs.

Mr A.P. Jacob interjected.

Mr P. PAPALIA: Is the member going to get the call later on, or is he going to just interject from the back bench like a fool? He has indicated that he is too cowardly to stand in this place and put his opinions on the record. Instead, he would rather try to interject and take the soft option. I actually hold the member for Ocean Reef in higher esteem than I do the member for Wanneroo; that is the sort of behaviour I expect of the member for Wanneroo. I expect more from the member for Ocean Reef; he is a deeper thinker, he has seen our jails and he understands what is going on in this state. I would have thought that he might have restrained himself just a little during this debate, or else get the call, stand and defend these laws.

We know that misconduct restraining orders are available to the courts already; that component of the legislation is therefore not necessary. We also know that there are existing criminal offences available to the courts, which were referred to extensively by the shadow Attorney General yesterday. He referred to section 557G of the Criminal Code, under which a person can be charged for possessing a thing with the intention of using it to cause damage consisting of graffiti and be liable to a fine of \$6 000, or for selling a graffiti implement to a child for which there is a maximum fine of \$12 000 for a second or subsequent offence. We know that those laws are available; those offences already exist, so this legislation is not necessary, despite the false and inaccurate claims made by the Attorney General in an interview with Geoff Hutchison on 720 ABC. We know that he was misleading the public of Western Australia at that time.

I am referring to the document prepared by the ALS, because I think it is valuable. When a court is determining an appropriate sentence, the court may consider —

Several members interjected.

The ACTING SPEAKER: Member for Riverton and Attorney General, I am going to call you both to order. I have asked that we hear the speaker on his feet in silence, and you have both ignored that. Member for Riverton and Attorney General, you are both called for the first time.

Mr P. PAPALIA: The document reads —

When a court is determining an appropriate sentence, the court may consider factors such as the seriousness and circumstances of the offence. Additionally, the court will consider aggravating factors and have regard to the offender's criminal record or any previous sentence that the offender has received which has not achieved the purpose for which it was imposed. Therefore, it is already open to the court to sentence an offender more gravely for subsequent offences despite the nature of the offence being relatively minor.

That is a good analysis and it completely reflects the shadow Attorney General's contribution yesterday. That analysis comes from the Aboriginal Legal Service, and I think that document by that organisation is an incredibly valuable and worthwhile contribution to the debate. Why would the Aboriginal Legal Service bother to contribute? Why would it go out of its way to put together such a comprehensive document? We all know, and it has been referred to by a number of people in this place on our side of the house, that Aboriginal people are a section of the population that is disproportionately impacted upon by our justice system. There is no doubt—the Aboriginal Legal Service fears it and has stated it very clearly—that Aboriginal people, if this law is accepted, will end up suffering more disproportionately as a result of this legislation. That is not necessarily because people will be doing anything more wrong. This legislation is acknowledged by a number of different authorities, and by people in the United Kingdom who witnessed it firsthand, as taking an otherwise lawful action and making it unlawful. It takes people who might otherwise not encounter the police or come to the attention of the police in a negative fashion and throws those people in the face of the police and encourages them to accumulate offences as a natural consequence of the legislation's very existence. That will happen. If the legislation targets young people, and if it targets people who have already come to the attention of the police once in the last three years—not 50 times as the Attorney General will have members believe, but once within the previous three years —

Mr A. Krsticevic: A second conviction.

Mr P. PAPALIA: A second conviction is what we are effectively talking about; it is not 50 convictions, as the Attorney General went out of his way to suggest was the case, as did the Premier.

Mr C.C. Porter: Read the legislation.

Mr P. PAPALIA: Two; it was two times in three years. If that is not the case, the Attorney General should increase the number. He should change the legislation to reflect what he is claiming.

In a moment, I will sit and enable other people from my side of the house to make a contribution. Before doing so, I point out another contradiction in relation to this legislation. The people of Western Australia, particularly young people and the elderly, will be impacted upon by this legislation. All of us will be impacted upon, but those two groups, as I have illustrated, will be especially impacted upon because they are getting a message; namely, that the Barnett government does not care about young people—the government fears them and it wants everyone else to fear them. Another message from the Barnett government is that it wants elderly people to be afraid, because that serves the government's purposes. To illustrate how contradictory the Attorney General is becoming, let us throw our minds back one week. One week ago the Attorney General was trumpeting his success in reducing crime in this state by 12.7 per cent. One week ago the Attorney General and the Premier of this state were telling us all that we were 12.7 per cent safer than we were last year. Of course, there is no mention of that this week. All we hear this week is how bad things are, how dangerous young people are and

how afraid old people should be. Why is that? There were some horrible, violent and offensive occurrences in Northbridge on the weekend, and people were hurt and maimed. As a result, the argument that we were 12.7 per cent safer thanks to the Barnett government did not really hold much water. It did not hold much water with any of us and it did not hold much water with any of the public because everyone was saying, “Don’t give us statistics, Attorney General, that tell us how much safer we are now that you’re the Attorney General. Don’t throw statistics at us, Attorney General, because on the weekend we witnessed how you’ve failed.” The Attorney General then flipped back into attacking young people and scaring old people. That is the heart of this matter. That illustrates the shallowness of this legislation, and the fact that this legislation has only one objective and will have only one outcome beyond those relating to all the laws and powers currently provided to the courts; that is, the ability to name and shame and photograph and print on the web forever the identities of children between the ages of 16 and 18 years.

[Member’s time extended.]

Mr P. PAPALIA: That is the only difference between current legislation and what the Attorney General hopes to introduce with this measure.

But there is another outcome. The one real outcome of such legislation was identified by the Home Office in the United Kingdom. Apart from the fact that everyone laughed at the ASBO system there and it provided a lot of punchlines in comedy shows on television, and helped T-shirt sales as everyone got their “I’ve got an ASBO” T-shirt, the UK legislation served to show that the UK government was trying to do something about crime; it was not that the government did anything about crime or achieved a safer society, or that the government told elderly people that they could be safe, or that the government tried to direct young people towards positive and beneficial outcomes for society—none of that. The only outcome that the Attorney General wants to achieve, and the only outcome that he is guaranteed to achieve if he passes this legislation, is that he will be seen to be trying to do something about crime. That will be the case unless members on this side oppose him vehemently, along with other people in society who are thinking about this legislation, and the bill does not become law. The Attorney General is all about talk and no action. This government does not like the people of Western Australia. It has indicated that it does not like young people, and this government is scornful of the hardships faced by elderly people and wants them to be afraid. The Attorney General is just a very, very shallow politician.

MRS L.M. HARVEY (Scarborough) [1.47 pm]: I support this legislation. In my electorate of Scarborough, I have Scarborough Beach, Trigg Beach, Stirling train station and the Glendalough train station. I also have the busiest public transport route in the metropolitan area, aside from the circle route in the City of Perth. The bus service running down Scarborough Beach Road is so popular because young people frequent that service. Young people also use the train stations because Scarborough Beach is a huge attractor of young people. The vast majority of people who frequent the beach are wonderful, law-abiding, decent young people who want to go about their business, to enjoy the beach and to enjoy the company of each other without being put upon by other people who engage in antisocial behaviour. Every summer at Scarborough Beach, we usually get a new group of kids who come down and taunt other children, and they deliberately and publicly deface private and public property. They cause a continuous problem throughout the whole summer to other young people who are trying to use the beach, enjoy themselves and enjoy the company of their friends. These prohibited behaviour orders will be a very useful tool in helping to eradicate that kind of activity from the beach and to allow other young people and other users of the beach to go about their peaceable enjoyment.

Mr J.R. Quigley: Why not prosecute them all—is it because the police cannot catch them?

Mrs L.M. HARVEY: The member has had his turn.

Business owners in Luna Shopping Centre in my electorate are also very much looking forward to these prohibited behaviour orders. We have had problems with adult vagrants, people exhibiting antisocial behaviour, urinating in public and behaving in a drunk and disorderly fashion in Luna Shopping Centre. The shopping centre management went down the path of getting a misconduct restraining order against some of the perpetrators. It is a lengthy, time-consuming process that involves considerable costs by way of time and preparation by the owners of the shopping centre and by business owners. One of the problems is that these orders need to expire before they can be put back in place. The police are saying that they look forward to these prohibited behaviour orders coming into play, because they will then be able to use them for some of these repeat offenders—people who routinely break into cars, people who engage in petty theft, and people who intimidate shoppers and other users of the shopping centre, including the young people who go there in summer. The police are saying that this will be a very good tool, because it will enable these people to be banned from the shopping centre and from the Scarborough foreshore area —

Mr J.R. Quigley: So you have spoken to the police about this?

Mrs L.M. HARVEY: Yes, I have.

Mr J.R. Quigley: Which police?

Mrs L.M. HARVEY: I am not going to name them in this place. I am not like the member for Mindarie. I respect the privacy of the police.

The local business owners and other people in my electorate, particularly elderly people, who feel intimidated when they walk into the shopping centre to do their shopping and are confronted by these people, welcome this legislation. They welcome it because it will mean that these repeat offenders may be subjected to a prohibited behaviour order, and that will make my electorate a safer and more pleasant place in which to live.

I repeat that young people have the right to go to train stations and to use public transport. They should not have to feel intimidated by people who are already known to the police and are repeat offenders, and who give those young people who are decent, law-abiding citizens a bad name. I welcome this legislation, because it is part of a suite of new legislative measures that this government is bringing in to make people in our community feel safer. The reason people will feel safer is that these measures will make our communities safer.

I commend the Attorney General for bringing this legislation to the house. I look forward to seeing reduced costs, and perhaps a reduced presence of security guards and transit guards, and perhaps even a reduced presence of policing in some of these areas if we can get rid of the problem elements in our community and use these prohibited behaviour orders as a useful tool.

MR M. McGOWAN (Rockingham) [1.51 pm]: I begin my comments on the Prohibited Behaviour Orders Bill 2010 by acknowledging the young people from Rockingham, Safety Bay and Comet Bay senior high schools, and their teachers, who are in the gallery today to witness Parliament in session.

It has been very interesting to hear the logic that has been used in this debate. We have just heard from the first government speaker on this legislation, the member for Scarborough. The logic that was used by the member for Scarborough was that if these prohibited behaviour orders are put in place, we will need fewer security guards, fewer transit guards and fewer police officers out there in the broader community. So, okay. We have a group of people in the community who have had a prohibited behaviour order made against them, and, because of that, we will need fewer police officers to enforce that law. The logic of that is somewhat confusing. According to statements by the government, the people against whom a prohibited behaviour order may be made—these repeat offenders—are people who need constant supervision. These are people who need to be corralled and managed. However, according to the member for Scarborough, this legislation will mean that we will need fewer people to manage these repeat offenders. That goes to the exact point that we have been making in this debate. The government is coming out with a statement that sounds good. But it is not putting in place the resources that will be required to enforce what it is seeking to put in place. I watched the look on the Attorney General's face when the member for Scarborough made that comment. He is normally impassive. But I saw his eyes squint a bit and his eyebrows lift as he tried to follow the logic of what the member had said. I look forward to the Attorney General following up on that when he speaks later today on this legislation.

The true reason behind this legislation is that it is part of an ongoing campaign by this government, using this Parliament and using the resources of government, to try to tar the opposition—the Labor Party—as being soft on crime. That is what this debate is about. Just so that the people in the gallery will know, this is politics 101. It is about making the opposition look as though it is soft on crime. Never mind the fact that on our side of the house we have two members who served in wars on behalf of our country. We have a member who served in the defence forces. That is me. We have a reserve Army officer, the member for Victoria Park. We have a former life member of the police union, the member for Mindarie. We never know! He might become a life member of the police union again. It would defy logic that someone could be a life member and then not be a life member, but he might become a life member again. Sure, he got an innocent man out of serving life in jail, and people took offence at that. But, seriously, if we ever want to judge the heroism of people, there is a lot of heroism in the member for Mindarie. On our side of the house, those are the sorts of members we have. In the Parliament overall, we have good people. On the other side of the house, sure, there is no-one in those categories, apart from the member for Jandakot —

Mr I.C. Blayney: I was a reservist.

Mr M. McGOWAN: Okay. So we have a reservist in the member for Geraldton. On all sides of this house, we have good people. But to try to paint members on our side of the house as being soft on crime, when we have people who have undertaken that sort of service on behalf of this country, is nothing short of pathetic. That is the case particularly when we look at our record in government. We introduced DNA laws. We introduced hoon laws. We introduced serious sex offender laws to keep in prison people who have a propensity to commit a sex offence again upon their release. We introduced those laws. Those laws are now the law of our state. We introduced the toughening of the Evidence Act. We introduced the law that is known as Jess's law, to crack down on drink drivers who kill people. Those are good laws.

Extract from Hansard

[ASSEMBLY - Wednesday, 18 August 2010]

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Mr Paul Papalia; Mr Rob Johnson; Acting Speaker; Mrs Liza Harvey; Mr Mark McGowan

I want to quote a member who was in this place a moment ago, the Minister for Planning and member for Kalamunda. Not many people will recall this, but at one time the member for Kalamunda was the police minister in Western Australia. He was not the most dynamic police minister we have ever seen, but he was a cut above the current occupant of that position. I recall that the member for Kalamunda and then police minister said in a speech that I attended that the key to dealing with crime is to make sure that people are caught. Of course that can happen only when we have a sufficient number of police officers. There is a lot more to it, too, such as having a society in which people feel valued and all the rest of it. But I recall the member for Kalamunda saying that it is not about toughening the law; it is about the fear of getting caught. The member for Kalamunda is nodding. He said it. I heard him say it. He is a sensible man. He is a fine human being. He took a reasonable and rational approach to these issues. That is the way we should deal with the problem of antisocial behaviour.

In the gallery today we have students who are in year 11. They are 15 or 16 years of age. Under these laws, just so that they know, they may, upon having committed two minor offences —

Mr C.C. Porter: Not true.

Mr M. McGOWAN: Okay! I admit it is not 15-year-olds. But it is 16-year-olds.

Mr C.C. Porter: Still not true.

Mr M. McGOWAN: I look forward to the Attorney General's explanation. I am sure it will be a twisting and turning explanation to try to get around this one.

These young people can, upon having committed two minor what are deemed antisocial offences, have their picture put on the internet, with a description of them, and the suburb in which they live, and they can then have a prohibited behaviour order attached to that. No matter how good they may behave for the rest of their life, and no matter when that order may be withdrawn, it will stay with them forever, because once it is on the internet, it is there for good. Not only that, but it may be taken from that site and put onto another site. It may be, as we all know with cyberspace and young people, dramatically and awfully misused. The young people in the gallery from Safety Bay, Rockingham and Comet Bay senior high schools need to know that for minor transgressions that they committed when they were young and impressionable, they can have their details published on the internet —

Several members interjected.

The SPEAKER: Thank you, members!

Mr M. McGOWAN: Let the record show that members of the government think this is a joke. They think it is funny that these young people, 16 and 17-year-olds, can have that record for the rest of their lives. We all know that children—that is what they are—do things that an adult would not do. They do not have the balance of adulthood or the wisdom that experience brings. They might not have the guidance of two parents who sit down with them every evening and read the encyclopedia, watch television and help them do their homework, as some families do. Perhaps they do not have those experiences and they go a bit wayward. If that is the case, there is a presumption that a magistrate will place the child's name, face and suburb on this website, which will then be made publicly available.

Debate interrupted, pursuant to standing orders.

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