DANGEROUS SEXUAL OFFENDERS LEGISLATION AMENDMENT BILL 2015

Third Reading

MRS L.M. HARVEY (Scarborough — Minister for Police) [12.17 pm]: I move —

> That the bill be now read a third time.

MR J.R. QUIGLEY (Butler) [12.18 pm]: I rise to speak on the third reading of the Dangerous Sexual Offenders Legislation Amendment Bill 2015. As I said in my second reading contribution, two features of this bill were very important to the opposition. The first was raised by the Attorney General in the other place but, as we have now been advised by the government in this place, he phrased himself incorrectly—I think that is the kindest way to put it without impeaching the integrity of the Attorney General. He referred to the power under section 6 of the original act; that is, any reference to the Director of Public Prosecutions is also a reference to the Attorney General and any act that the DPP can do, the Attorney General can do. It has been made clear to us by the government in this Legislative Assembly that perhaps the Attorney General put it wrongly. The government said that this preserves the Attorney General's power to bring appeals and applications under the act, whereas the Attorney General probably confused himself in the other place when he started talking about reserve powers and being able to bring applications only when the Director of Public Prosecutions had not made a decision either way. If the DPP had made a decision not to appeal, the Attorney General's assertion was that he could not appeal. That raised the opposition's concern because that was never the intention of the legislation. Indeed, when I read from the report on this legislation that was prepared by the government for the government, it referred to this matter specifically. It stated that following the act's proclamation in 2006, the protocol between the Office of the Director of Public Prosecutions and the Attorney General was that the office would advise the Attorney General of exactly what it was doing. To read from page 15 of the report —

> 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.

That is, the procedure formulated under the act. It continues —

> 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.

That made it absolutely clear that under the DSO legislation as it operated under the previous Labor government, the DPP recognised the Attorney General's authority to bring an application when the DPP had decided not to bring an application. We were very comforted by the minister's repeated reassurance that this had not changed and that the Attorney General could bring an application in circumstances in which the DPP had elected not to bring an application. That is clear in the act and it is clear from the procedures agreed between the DPP and Attorney General as the act operated between 2006 and, as far as we know, up until the time that the present Attorney General took office. We know that since then, the present Attorney General has refused to exercise his power and has disingenuously told victims that he does not even have that power. We know from what the Minister for Police said that that is wrong. It is in *Hansard* and it has been sent to all commentators so that never again can it be put out that the Attorney General does not have that power. It is a nonsense. In the past, it has been his way of avoiding responsibility.

The first part of the opposition's concerns was that I believed—wrongly as it turned out and I was corrected by the minister—that in introducing new section 7A, all applications henceforth would be brought in the name of Western Australia. I, wrongfully as it turns out, was given to believe from the words of the Attorney General in the other place that what the minister was doing was coming into the Legislative Assembly in a mode of abject surrender and surrendering the power of the Attorney General that this Parliament conferred on the Attorney General. I apologise; the minister set me to rights. She sat at the table and said that nothing has changed; the Attorney General still has that power and he can bring that power to bear. When the DPP decides not to appeal, the Attorney General can still appeal. I should not waste any more time on that issue. It is clear as crystal. It is now in *Hansard* in the minister's own words and it is clear to the commentators.

I now turn to the second crucial area of the legislation, which is the circumstances that should prevail when an offender is before the court upon an application of the DPP for review. What circumstances should prevail? The Attorney General quite rightly said that he had commissioned the report back in 2014 because of the publicity surrounding the release of TJD. The Attorney General then sought, as he always does, to personally belittle those who disagree with him or cause him some degree of difficulty or discomfiture. As I mentioned, he personally belittled the opposition spokesperson in the other place, Hon Adele Farina, when she was

simply asking questions—zip your lip and you will learn something, he barked at her. That is shades of misogyny. He then attributed the controversial publicity surrounding the release of dangerous sex offenders to Labor opposition stirring. May I remind him that what really got the issue cooking back in 2014 and which caused him to seek the report, was the remarkable—he is a kook, but it is remarkable by a normal person's thinking—decision of TJD to be interviewed by Channel Nine. That brought the house down; of course, that was going to get a response! It was not the Labor opposition that went slinking around with a dangerous sex offender, pushing him in front of a camera; this was the pervert himself, and that brought a rain of controversy down upon him. Subsequently, victims came forward to complain about the release of other perpetrators. One of those victims was Angela Johnston, who has emailed me during the course of these proceedings. As I explained, she had been trying to contact the government about Mr Ugle's release on bail. Members should remember that Ugle is the dangerous sex offender whose offending is usually marked with the feature of consuming cannabis and/or alcohol immediately prior to offending. One of the orders of conditional release was that he abstain from alcohol and cannabis. It is remarkable that that order was made, given that he had not abstained from those things while in prison. As I have detailed before, when he was in prison, he would get so anxious about the impending court proceedings for his annual review that he tested positive for cannabis on four occasions—3 July 2008, 4 November 2009, 16 September 2013 and 28 October 2013. Paragraph 59 of the Supreme Court judgement reads —

> In relation to his recent prison charge for cannabis use, —

His most recent prison charge —

> the respondent stated that he succumbed to constant peer pressure while experiencing stress related to his upcoming DSO annual review.

It goes on in detail about Ugle having 10 to 15 bongs a day in prison. Ugle was then released on a supervision order, a condition of which was that he does not have a bong on the outside. He had one, and the urine analysis showed that had happened. He was arrested and immediately put to bail. The victim, whom he raped and did other depraved acts upon in her home at night-time while her children were asleep in an adjoining room, came out to complain about her tormentor, the offender, being released and smoking cannabis and then being put to bail immediately. She came to see us to ask what could be done.

Mr P. Papalia: Who else would she have seen?

Mr J.R. QUIGLEY: That is the other thing. I forgot to mention Ms Hoffman. She tried to see the so-called Commissioner for Victims of Crime, but she saw the Attorney General with his lackey Ms Hoffman. She described Ms Hoffman's presence as guarding the Attorney General from giving advice and batting away Ms Johnston. As it turns out, only this morning other victims came to meet with me at Parliament on an unrelated matter. I said to them, "Have you taken this to the victims' commissioner?" One of them said, "Don't talk to me about that woman. We went to see her but we got to see her with the Attorney General. She did not say anything. She was just guarding the Attorney General." In the minister's reply to the second reading debate she asked why the member for Butler was attacking the Commissioner for Victims of Crime. I have nothing personal against Ms Hoffman. She is a legal practitioner and she is probably a diligent worker in the public service, but to call her or hold out to the public that she is a victims' commissioner is a fraud by the government. Go through the legislative tomes of this Parliament and show me any statute that creates the office of Commissioner for Victims of Crime. There is none. The Victims of Crime Act does not mention a victims' commissioner—not at all! There is no gazetted position of victims' commissioner and, indeed, Ms Hoffman—that is her proper title—does not put a report into this Parliament about the activities of a victims' commissioner. This office of a victims' commissioner is a fraud. It is an absolute fraud practised by this government on the victims of Western Australia. Have a look at the newspapers to see whether she even performs the role performed by other victims' commissioners in Australia; that is, critique government legislation to see whether it is promoting the causes of victims or being disadvantageous to victims. She would never do that because she is an employee of the Attorney General simply for the term of his office. Think about it: the Information Commissioner does not go out when the government changes because it is a statutory office with a term of tenure. The Commissioner for Children and Young People is appointed under the Commissioner for Children and Young People Act and has tenure. There is no victims' commissioner. What has happened is that the Attorney General has got a bit of paper and written "victims commissioner" on it and stuck it up on a door and said, "Behind that sits the victims commissioner." The Attorney General and this minister can call Ms Hoffman what they like but I will call her Ms Hoffman. She does not hold any office.

The ACTING SPEAKER (Ms L.L. Baker): Member, I will just interrupt you and say that this is the third reading debate and not consideration in detail.

Mr J.R. QUIGLEY: I understand. I am responding to what the minister said. In this chamber during the debate the minister relied upon the authority of and being advised by the Commissioner for Victims of Crime. During debate she said, "This is what the commissioner for victims said", which is what a public servant advised, that is all.

Mrs L.M. Harvey: She consulted with victims and she was —

Mr J.R. QUIGLEY: She is a public servant. You can deal with that. She is not a commissioner for victims.

Mrs L.M. Harvey interjected.

Mr J.R. QUIGLEY: Can you protect me from interjections? I have only 30 minutes. Call her —

The ACTING SPEAKER: I am sorry, minister.

Mr J.R. QUIGLEY: Thank you. This public servant —

Mrs L.M. Harvey interjected.

Mr J.R. QUIGLEY: She is talking again.

The ACTING SPEAKER: I am sure you can keep talking.

Mr J.R. QUIGLEY: The government holds out Ms Hoffman to be the commissioner for victims. As I said, she is a public servant employed for only the term of the Attorney General's tenure. Members can go to the Attorney General's website to prove that she is not an independent commissioner for victims. On the organisational chart she does not report to Parliament like a normal commissioner. She reports to the chief executive officer of the Department of the Attorney General, the same as the head of court services. She is just a public servant. She sat in here and the minister said that she had been advised by the Commissioner for Victims of Crime.

Mrs L.M. Harvey interjected.

Mr J.R. QUIGLEY: I am pleading with the Chair. I do not want to argue with a woman in the chamber. I am pleading with the Chair. I want to be —

The ACTING SPEAKER: Minister, please do not interject. Your interjections are not being accepted. Member, please go ahead, but I bring you back to the consideration.

Mr J.R. QUIGLEY: She goes back to the authority and says, "We are relying upon the victims commissioner" when they are relying upon just a public servant who has spoken to some victims. Angela Johnston came to see us. She said that she had gone along to see Ms Hoffman and it was just hopeless—this is a victim speaking. She subsequently tried to contact Ms Hoffman several times. I read out the email she sent Ms Hoffman yesterday to which she never got a reply. Ms Johnston did say that she had read Labor's proposed amendment; that is, to put the onus upon offenders to prove to the court their sincerity and resolve to walk the straight and narrow when they get out of jail and not assault women or take the precursors to assaulting women—alcohol and drugs; and to do something to demonstrate to the court, not beyond reasonable doubt but on the balance of probabilities, that they would not go out there and just reoffend again, as the police allege Wimbridge has gone out and done, and to come forth and say to the court something to convince it. What has happened? The victims and their group, Enough is Enough, examined our amendment and said that it was fantastic and that we should take this into the Parliament. I promised them I would. What was the government's response? Before it saw my amendment, both the minister in this chamber and the Attorney General told the media and anyone who would listen that anything I did would be unconstitutional. I went onto the steps of Parliament and promised two things to the women of Western Australia: one, that what we proposed would be constitutional; and, two, that all female victims and other females in Western Australia would be happy with our proposal. I eventually divulged the proposal to Angela Johnston and—I cannot remember the names—the other women in the Enough is Enough group. They examined it and said it was fantastic. Angela Johnston emailed us again yesterday, as I read out in Parliament, and said that the group was 100 per cent behind Labor's proposals. The government then shifted its position realising that I had kept my promise to the female victims of Western Australia and other females who were concerned about what was happening. What I had come up with was an entirely constitutionally sound amendment. Not being able to argue that point any more, like a thief in the night the government shifted its position. It never again raised the issue of constitutionality; it shifted its position and said that this simple provision would confuse the judges. The government maintained that the amendment that the Labor opposition was advocating would confuse the judiciary, and the changing onus of proof would confuse the judiciary. How little respect and how little faith the government has in the judiciary to be able to deal with a shifting onus of proof! The government abandoned its first point of opposition that the amendment would be unconstitutional when it saw what I had drawn up and realised that it was constitutional, and it then fled to this other resort of saying that it would confuse the judiciary.

Who was advising the minister of this all the time? Who was sitting at the table advising the minister to go against what the victims wanted? Ms Hoffman was the one at the table passing the notes to the minister, urging her to resist Labor's amendment. As I said, she is not a victims commissioner; she is a public servant. The government has just written "Commissioner for Victims of Crime" on a piece of paper and stuck it on her door with sticky tape. What a joke! In this Parliament, she has the temerity to sit there and speak against what Angela Johnston and her group, Enough is Enough, are 100 per cent behind. I did not have a public servant protecting me from Angela Johnston; she is a lovely woman. She came along and told us about the dreadful circumstances of Ugle's offending, and we came up with a proposal that she and the other women were 100 per cent behind. But then Ms Hoffman is here, passing notes to the minister advising her not to accept the amendment.

I have nothing against Ms Hoffman. This should not be read as a personal attack on Ms Hoffman. I feel sorry for the woman; she has been put in the position of being held out by this government, which is too cheapskate and too scared to appoint a commissioner who would have the independence to individually and independently critique legislation. Ms Hoffman will not do that because she is an employee of the Attorney General and, as I said, in the organisational chart, she reports not to this Parliament but to the chief executive of the Department of the Attorney General. In the organisational chart, the chief executive is shown as Cheryl Gwilliam. She is a very good operator, but she has been poached by Hon Christian Porter to run his office, so the present incumbent is acting in the position. Ms Hoffman acts at the direction of whoever is acting in that position. This is not an attack on the person; this is an attack on the government for failing in its election promise to have an independent victims commissioner who would look after victims. The victims who came to see us today on an unrelated matter were just scathing, saying that they did not get any help from this woman at all; she was just protective of the Attorney General.

Is it any wonder, therefore, that the opposition does not accept for a moment the government's pathetic excuse that the Labor amendment would confuse the judiciary? I do not know why the minister says that the legislation is finely balanced; the legislation is there for all to see. But there are competing interests. That was set out in Wimbridge's case. Just remember that this alleged rapist—recently alleged—was denied a supervision order in 2008, and in 2009 another judge denied him a supervision order. In 2010, Justice Blaxell gave him a supervision order, and in 2011 the then Mr Justice McKechnie, QC, now the Corruption and Crime Commissioner, cancelled that supervision order because of his breaches, and then Wimbridge came up for further review. The judge said that, in his view, it was not desirable for Wimbridge, or for the community, for Wimbridge to be held in custody for the rest of his life if conditions can be set to ensure that, on his release, the community is adequately protected. The police would allege that we have not been adequately protected, under the administration of this act by this government.

Another thing about the government's amendments to the act is that they have increased the period of review from 12 months to 24 months. As came out in estimates, this is in part a response to the workload of the Supreme Court in dealing with these every year, because they are cumulative. I think that 40 offenders will come up for annual review at the moment. When asked in estimates how the Supreme Court would deal with that without an extra judge, the government said that it would double the length of the review period. There are unintended consequences to this. Will this see more offenders released, because, looking at this judgement that I have just been reading from, judges might be more reluctant to order that a person go back into detention when it is known that he will not be reviewed for two years? In McGarry's case, he was denied a supervision order and sent back into detention because there was no suitable place for him to live. The judge would have felt comfortable, because that gave the government 12 months to find accommodation for him. If the same judge was looking at the case again and thought that if he did not give the supervision order, the offender would go back into custody for two years until the government could find accommodation, it might well be an unintended consequence of this well-meaning amendment by the government that more people will get supervision orders because more judges will feel that they are obliged to put the least restrictive regime upon the offender. That is already in case law, and I have already read to the chamber on several occasions about a judge saying that he must approach the case giving full respect to the offender's rights to freedom, balancing them against community safety. A two-year period might see more offenders out on the streets.

Finally, our amendment that would have denied the opportunity for bail for anyone charged with breaching an order was inexplicably cut down by the government. The government comes into this chamber and says that people commit offences on bail and that too many people are out on bail, yet when we are dealing with the most serious of offenders—dangerous sex offenders—we say that if they are charged on reasonable belief that they have breached an order, the court should not be allowed to release them on bail.

MR P. PAPALIA (Warnbro) [12.48 pm]: I rise to contribute to the third reading debate on the Dangerous Sexual Offenders Legislation Amendment Bill 2015. I share the shadow Attorney General's

concerns, particularly about the unreasonable response by the government to very well considered and broadly supported amendments—particularly well supported amongst the community of victims of the crimes of these types of offenders—without any real justification. As the shadow Attorney General indicated, the government's position on its refusal to accept the amendments has shifted. Initially it was based on the grounds of unconstitutionality, and it abandoned that line when it was demonstrated to be false. It then shifted towards a combination of weird justifications around the finely tuned nature of the legislation. No-one knows what that means. I still have not found out. I am not a lawyer, but there were a few lawyers in the chamber, none of whom, I think, were able to explain the meaning of that term used in this debate.

Beyond that, we heard that, essentially, the government is in favour of releasing dangerous sex offenders if we consider what is proposed. Firstly, as indicated by the shadow Attorney General, the opposition did not want people who breached their conditions to be allowed to continue to wander around; we wanted to ensure that they went straight to incarceration until their matters were decided. We wanted the onus of responsibility to be shifted to those offenders when they wanted to be released so that they have to come before the courts and explain themselves and convince the court that they will comply with the conditions. That was a reasonable request, and the government opposed it. The government stood with the dangerous sex offenders and supported the sex offenders. The government opposed the amendment on behalf of sex offenders.

Debate interrupted, pursuant to standing orders.

[Continued on page 4459.]