BAIL AMENDMENT BILL 2022

Second Reading

Resumed from 18 August.

HON NICK GOIRAN (South Metropolitan) [2.10 pm]: I rise on behalf of the opposition as the lead speaker, in my capacity as shadow Attorney General, to consider the Bail Amendment Bill 2022. This 10-clause bill before us seeks to amend the Bail Act 1982. The Attorney General has stated that the purpose of this bill is to mitigate the traumatic effect that the release on bail of alleged abusers has on victims. The opposition does not oppose the bill. However, I wish to draw three issues to the attention of the government, in particular the parliamentary secretary representing the Attorney General, who has carriage of the bill before us. Firstly, stakeholder consultation has indicated that this bill will fail to achieve anything meaningful; it will essentially maintain the status quo. Secondly, curiously, this bill appears to go beyond the Attorney General's stated purpose by including victimless offences in the schedule 2 list of serious offences. Thirdly, the bill fails to address decision-making issues that have been raised by key stakeholders in the past, particularly issues relating to the high number of people in custody on remand.

I turn to the first of those three issues. The Attorney General has boasted that there has been wide consultation on the bill before us. Regrettably, that is a false statement. There has not been wide consultation on this bill. Perhaps during Committee of the Whole House, we will unpack precisely who has been consulted and, more to the point, who has not. Notwithstanding the fact that some consultation on this bill has occurred, as distinct from wide consultation, the disturbing element is that the Attorney General hides the feedback from this consultation from members, from the opposition and from the Parliament, and, worse, he will not disclose the extent to which the feedback was incorporated in the drafting of the bill.

When the opposition received a briefing on this bill, I expressly asked what feedback was provided. I fully expected the government to say that it would not provide the information because, as is the pattern with this government, it says that its consultations are always conducted on a confidential basis. We have had discussions and debates about that previously in this chamber, including about other mechanisms that the government could use. Fully recognising that that would most probably be the response, I asked the government whether it would be prepared to provide a de-identified precis of the feedback. Essentially, I am encouraging the government to take two tools in its armoury out of its pocket and utilise them so that there can be transparency in the consultation process. Firstly, I am indicating that the information could be provided in a de-identified fashion. Therefore, we will not know who provided the feedback, if that is said to be such a point of concern. Secondly, it will be provided as a precis—in other words, a summary of the information that is provided. Even with those two caveats, this government—which is obsessed with secrecy—still refused to provide that information to the opposition. When questioned further whether the concerns of the stakeholders were taken into account, I asked the specific question: what are the concerns raised by stakeholders that have not been addressed in the bill, and what is the rationale for not addressing those concerns any further?

Rather than providing a substantive response to that question so that members in this place—the house of review—might be properly informed of any remaining stakeholder concerns stakeholders that the government, in its limited consultation process, thought it necessary to contact, the government responded with —

> Stakeholder feedback was considered throughout the drafting of the Bill, and was incorporated into subsequent drafts where appropriate and consistent with the policy objectives.

In other words, one reads into that that there is a range of concerns—one or more—that have been raised by stakeholders that the government had not incorporated into subsequent drafts. In its view, that feedback was not appropriate and consistent with the policy objectives. We would like to know what that matter was, and the people of Western Australia would like to know what that matter was. But, as has become the norm in this forty-first Parliament, we will not know—no-one will know—because it is hidden under lock and key in the McGowan government cabinet or somewhere else. Now, as I say, these simple requests, including utilising two basic tools to ameliorate any concerns about confidentiality, were not taken up by the government. Such is its adherence to its promise of gold-standard transparency.

The issue of consultation is not the only concerning element about the general context of this bill. I draw to members' attention that on Friday, 12 August this year, I received a courtesy telephone call from government informing me that the case associated with the genesis of this bill may now be the subject of a suppression order. I was grateful for the receipt of that courtesy telephone call on Friday, 12 August 2022. That particular date will become relevant for reasons that will become apparent momentarily.

On that same day, I wrote to government to request a copy of the suppression order. On the next business day, Monday, 15 August, I received a response in effect declining to provide a copy of the suppression order. The very next day on 16 August, which was the first available parliamentary sitting day after having received the courtesy

information on 12 August, I asked in question time for the Attorney General to provide a de-identified copy of the suppression order. Members will be aware that some two days later, on Thursday, 18 August 2022, the hardworking parliamentary secretary representing the Attorney General tabled that de-identified suppression order. That is a document that is available for inspection by any member. When one looks at that suppression order report in the de-identified fashion, it becomes clear that a suppression order relating to a particular matter was made on 11 May 2021, albeit it is unclear what matter that relates to. It also becomes clear, pursuant to that tabled document, that the terms of the order are as follows —

> The publication or disclosure to any other person of the name, address, image or any other particular which would enable the identification of the accused or any witness or victim in these matters is prohibited until further order of the Court.

As I said, that suppression order is redacted and it is unclear what matter it relates to.

In a confusing speech in the other place on 16 August this year, the same day that I asked that question, the Attorney General falsely stated that I had notice of the suppression order prior to the issuing of a media statement. For the record, the date of my media statement was 10 August. Evidently, the Attorney General is confused; 10 August is a date prior to 12 August in the Gregorian calendar. As Justice Lee recently said, the Attorney General is "not a reliable historian of events". I was not made aware of this order until after the media release was published. I was not provided with a copy of the suppression order until after the Attorney General made this misleading and confusing allegation in the other place. In fact, to date, as we are here now on 30 August, it is still unclear exactly what matters the redacted order pertains to.

Due to the unreliability of the Attorney General in Western Australia, I have sought advice from the Director of Public Prosecutions on this matter. Many articles have been published that refer to the name of the deceased who is at the heart or the genesis of the bill and the reforms before us. I note that *The West Australian* published an article on 28 May 2021 entitled "Honours for young guns". I note that the *Bunbury Herald* published an article on 1 June 2021 entitled "Young reporters in running for awards". I note that *The West Australian* published an article on 17 June last year entitled "The West's young stars pick up major awards". I note that the *Bunbury Herald* published an article on 22 June last year also entitled "The West's young stars pick up awards". I further note that the *Harvey–Waroona Reporter* published an article on 22 June last year entitled "Scoops on hospital woes clinch award".

Further, I note that WAtoday published an article on 28 July 2021 entitled "'We lack cultural competence': Why Australia's $90 million to curb Aboriginal suicide rates is destined to fail". I also note that *The West Australian* published an article on 6 August last year entitled "Ten out of ten: The West dominates nominations for press awards". In more recent times, *The West Australian* also published a document on 26 May this year entitled "WA Attorney-General John Quigley admits soccer star Danny Hodgson's attacker shouldn't have been bailed". In all those articles—that is just a small selection that I have been able to quickly ascertain—the name of the deceased is published.

On 14 June, this year, the Attorney General referred to the deceased's name in the other place. That is the very same day that he claimed he was made aware of the suppression order. Members may like to familiarise themselves with an extract of *Hansard* from the other place on 14 June 2022. This *Hansard* extract is a response from the Attorney General of Western Australia to a question that had been posed to him by what appears to be the member for Belmont. It is question 345 in the other place and I imagine, knowing the ordinary custom and practice of the other place, that this would have been some form of prepared question and answer, as can occur from time to time, no matter who is in government in the other place.

In response to what I would assert was a prepared question and answer, the Attorney General went to some length to repeatedly mention the name of the deceased. This was on the same day that he allegedly received information about the existence of this suppression order. I also note that in response to the question that was put to him by the member for Belmont, the Attorney General not only decided to mention the name of the deceased on multiple occasions, but also proceeded to table a document. The tabled document was actually a transcript from the court proceedings.

I raise these matters simply to indicate that the Attorney General of Western Australia could spare us all his confused and unreliable lectures in the other place about suppression orders, when on the very day that he says that he became aware of a suppression order, he tabled a transcript of the court proceeding. He was not backward in the other place about the false allegations against me. When we were last sitting, the unreliable, confused Attorney General made entirely erroneous remarks in which, amongst other things, he mentioned my name. For the benefit of Hansard, this was on 16 August 2022. The Attorney General said —

> … is to deliberately keep his party in contempt of the court. He remains in contempt, having been put on notice of the suppression order to protect the family. He does not care a whit! He has been told about this, but he does not care a whit. He then has the hypocrisy to put out statements with headings such as

> "Unreliable Attorney General's Bail Bill fails victims" because I made a mistake in giving evidence about when I found out about something …

I have already spoken at length about the findings of the Federal Court, which determined that the Attorney General is unreliable. Today is not the day for me to do this, but it is grossly offensive for the Attorney General to give any indication, impression, assertion or statement that I have no regard for the family involved in this particular matter. I will speak more about that in a moment.

I note that following the death of the deceased, the mother of the deceased is on the public record as, in effect, pleading for her late daughter's story to be told, her name to be published and her image to be remembered.

I simply encourage members to familiarise themselves with an article from *The Australian*. I will not read out the name of the article because, according to the Attorney General, by doing so I might contravene the suppression order. With all due respect to the Attorney General, I anticipate that the suppression order relates to the matters that are presently before the court, including things like the court transcript that he thought it was appropriate to table in the other place. I find it an extraordinary stretch on his part to suggest that something like reading the title of an article in *The Australian* might be in breach of a suppression order, but such is the cautious approach that I have chosen to take on this matter—unlike the Attorney General. I simply encourage members to familiarise themselves with an article in *The Australian* of 22 October 2020. The author of that article is Paige Taylor, the Indigenous affairs correspondent of *The Australian*. That article makes reference to a ruling by WA Supreme Court judge Jeremy Allanson, who permitted media to identify the deceased's name after her mother, who is also named in the article, had made it known that she wanted her late daughter's story told, her name published and her image remembered. I further note that it was also reported in the media on 3 December 2020 that the deceased's mother was determined not to let her daughter die in vain.

The genesis of this matter is indeed a tragic event. This is no time for the Attorney General in Western Australia, who was recently found by the Federal Court to be unreliable, confused and confusing, to try to make political points. It distresses me, and has distressed me for the best part of two years, to understand that at the heart of this matter is an 11-year-old girl who felt that she had no option and no hope other than to take her own life. That occurred in circumstances in which it is alleged that some sexual offences had been committed against her. I ask members to pause and reflect on that for a moment and to try as best as they possibly can to stand in the shoes of an 11-year-old girl who felt in those circumstances that she had no other hope. The words "tragic" and "distressing" are inadequate to properly capture what has gone on here. Instead of trying to embrace the possibility of bipartisan support for some meaningful reforms in this space, what we have seen from the Attorney General is gross inaction. The Attorney General, embarrassed by his inaction, and now the presentation of a bill in Parliament that will do very little to move things beyond the status quo, has resorted to making false allegations in the other place.

Take, for example, what the Attorney General said nearly two years ago immediately after this tragic event had occurred. He said —

> … the protection of vulnerable children would be given the utmost priority.

He said also —

> "Our proposed amendments will ensure that, where a person has been convicted of an offence, either by a plea of guilty or a verdict of a jury, the presumption will be that the offender will be remanded in custody awaiting sentence," …

The sad reality is that the bill will achieve neither of those objectives. I would encourage the confused Attorney General to read clause 9 of the bill—which evidently he has not done—and, having read clause 9 of the bill, to apologise to the people of Western Australia and the deceased's family for misleading them that this would be one of the objectives of the bill. It is regrettable that we simply cannot put any weight or any reliance on statements made by the current Attorney General.

Meanwhile, the Attorney General has expressly stated that the purpose of this bill is to emphasise the importance of, and seek to mitigate, the traumatic effect that the release on bail of alleged offenders has on victims. In that respect, I draw to members' attention the second paragraph of the second reading speech of the Attorney General in the other place in which he says —

> I recognise the traumatic effect that the release on bail of alleged abusers can have on their victims and I believe it is critical that we emphasise the importance of, and seek to mitigate, this trauma whenever we can. This is especially the case when the alleged victim is a child. That is what the Bail Amendment Bill 2022 seeks to achieve.

Clause 10 of the bill will, in proposed clause 4, add new commonwealth offences to the list of serious offences in schedule 2 of the act, including drug-related offences. These offences do not have a primary victim. Members in the other place stated on multiple occasions that this so-called significant bill will preserve the presumption of

innocence. It would almost be the case, President, that some members in the other place made those statements to vindicate their failure to have read the bill. I find it extraordinary that it appears that members in the other place made contributions to the second reading debate while seemingly having failed to read the 10-clause bill before them, but the record seems to reflect that.

The opposition has received feedback from expert stakeholders outside of government that confirms this bill will preserve the status quo. Engagement with those stakeholders, who practise criminal law, advised that the bill is a kneejerk political response, an act of pure politics, because the act already fully facilitates the kinds of reforms proposed in the bill and the new provisions just spell out the type of considerations regularly employed by magistrates, police and prosecutors in almost every case of its kind, and the bill will not change the way magistrates respond to bail applications for adults accused of sexual offences against children.

Of course, this bill will not guarantee that no mistakes will be made in the future. That is no criticism of the government; no government, through the tool of legislation, is capable of ensuring that no mistakes will be made. This is important to note in this particular context. On 3 December 2020, the media reported remarks made following the tragic death to which I referred earlier. The remarks were made by Jo McCabe, the assistant commissioner of regional Western Australia. She said that police had made a mistake in initially granting the alleged abuser bail. The article specifically quotes the regional assistant police commissioner as saying —

> … an early assessment of this case, and the seriousness of the offences, tells me that police bail should have been opposed and not considered …

I acknowledge the honesty and transparency of the regional assistant police commissioner in making those comments at the time. Of course, they will be of little comfort to the family of the deceased; nevertheless, when mistakes have been made, they need to be acknowledged and steps need to be taken to ensure that as best as humanly possible they are not repeated. It is not at all clear to the opposition that the government has taken any of those steps and I simply give notice to the parliamentary secretary that that will be a theme for examination during consideration of clause 1.

Bail, and the Bail Amendment Bill 2022 before us, determines whether an individual may return home pending their trial or, alternatively, will remain in custody. It is a critical aspect of our rule of law and reflects key principles in our legal system, such as the presumption of innocence. A balance must be struck between freedom from arbitrary detention, the safety of the community, the interests of justice and the need for the accused to appear at trial. Unfortunately, there is a misconception that bail exists as a way to punish offenders who have not yet been found guilty or is used as a get-out-of-jail-free card.

It could be said that the antagonistic way that the media focuses on bail, especially for high-profile events, has caused people—not only those in Western Australia, but also the individuals we are concerned with at present—to distrust the bail process. It is important that our community understands that bail is a reflection of important human rights and rule of law principles, including, as I say, the presumption of innocence. This ensures that people are not punished before being found guilty, and is an important check on government power. A person on bail has not yet been convicted of an offence and is therefore considered to be innocent until proven guilty. Also, the principle to be free from arbitrary detention requires that a person be tried before a court within a reasonable period. It is critical that these principles be upheld.

In April last year, the Law Society of Western Australia issued a media statement urgently calling on the McGowan government to commit to, preferably, seven new courts for criminal trials. As I turn to that media statement, made on 20 April 2021, I note that the Law Society stated that the criminal court system was becoming unworkable due to a number of reasons. It listed those reasons as follows. Firstly —

- There is a backload of cases from the pandemic in 2020 and from the one week of lockdown in February 2021.

Secondly —

- The rate at which the Supreme Court is utilising the District Court buildings is increasing. For example, in the month of March 2021, there were six Supreme Court trials being conducted in the District Court building, most of which had multiple accused and were all lengthy in duration.

Thirdly —

- The increase in workload and jurisdiction in the District Court over the past number of years has resulted in the District Court needing all their courtrooms to manage their jurisdiction.

Fourthly —

- The nature of the prosecutions from historical sex cases, cold cases, significant improvements in forensic investigative techniques and an expansion of expert evidence have placed greater demands

> for interlocutory hearings and larger trials and an increase in trials and overall workload, more murder trials and applications and hearings under high-risk offender legislation. Ultimately this means that trials are more complex and lengthier and require more sitting days, and so each court is occupied for a long period of time.

So said the Law Society in April last year.

Then in June last year, the Law Society again expressed its concern about the shortage of courtroom availability resulting in trial delays. There, in fact, the Law Society even referred to an article in *The West Australian*. On 17 June last year, the Law Society said —

> *The West Australian* reported that trial delays in WA's Supreme Court were more than 60 per cent over target late last year—leaving victims and accused waiting an average of a year for cases to go before a jury.

I have raised this issue with the Attorney General on three occasions: question without notice 74 on 11 May 2021, question without notice 162 on 26 May 2021 and question on notice 144 on 27 May 2021. The question on notice was answered on 24 June 2021. I asked whether the Attorney General would table the briefing note or other documents received from staff or the department in preparation for the roundtable meeting. The Attorney General indicated that the preferred approach to address this courtroom shortage problem would be to convene a roundtable discussion with various stakeholders. I also asked whether the Attorney General would table the minutes or other documents recorded in the outcomes from the roundtable meeting held on 18 May 2021. The response to the three-part question was —

> (a)–(c) Material prepared for the roundtable discussion comprises documents which were prepared for the Attorney General's ultimate discussion with cabinet ministers. These discussions are yet to take place and the Attorney General is not in a position to disclose material which would form the basis of a submission to cabinet ministers. Once cabinet ministers have considered and made a decision, the Attorney General will make public the McGowan Government's response to the issues considered at the roundtable meeting.

As I say, putting to one side whether people think that meets the much-promised but yet-to-be-seen gold standard of transparency, this response was given on 24 June last year, so some 15 months have passed and we have heard nothing from the Attorney General about this urgent situation. I am not the first person in this place, and I will not be the last, to remember the saying that justice delayed is justice denied.

Meanwhile, the Attorney General, as I understand it, did not consult the Law Society of Western Australia about the bill before us. If he did, he would know that the Law Society is concerned about the number of people on remand in Western Australia, the lack of resources resulting in people who are granted bail being unable to meet the conditions and take up that bail, and the costs involved in holding people on remand.

It is in this context that the government is insisting in this bill on expanding the schedule 2 serious offences, by virtue of clause 10 of the bill, to include those types of offences that have no identifiable victim. I ask the government, either in the second reading reply or during consideration of clause 1, to ascertain or identify whether this change to schedule 2—that is, the expansion of the serious offences in schedule 2 to offences when there is no identifiable victim—will add any strain on the existing resources.

I note also as matter of historical record that the former Liberal government introduced a bill in 2016, which lapsed prior to the 2017 election, that sought to ensure that accused persons were not unnecessarily held in custody on remand for less serious offences. Members may recall a speech given at the time by Hon Michael Mischin, the then Attorney General, on 30 June 2016, when he said, in part —

> In June 2009, the Western Australian State Coroner handed down his findings in relation to the death in January 2008 of Aboriginal elder the late Mr Ward …

He goes on to note the —

> … significant "deficiencies in the initial approach to bail" …

He goes on to say that the Bail Legislation Amendment Bill 2016 —

> … amends schedule 1, part C, clause 3 of the Bail Act to provide that in the case of a serious offence, the views, if available, of any alleged victim of the offence or any family member of a victim are to be taken into account to the extent relevant to a concern that the accused person could, if released from custody, endanger the safety of victims, other individuals or the community.

It is not apparent that that particular matter is of interest to the government. I note that pre-election the bill that is before us was promised as a priority. That was the language used by the Attorney General in December 2020. However, post-election, this bill, this reform, has been given a lower priority than all the other bills that have come

before it, including a bill that makes it more difficult to build the Roe Highway extension, a road that I note the current government has made very clear it has no intention of building. Legislation to make it more difficult to build a road that the government has no intention of building received higher priority than the reform before us. I also note that this bill, which was promised as a priority in December 2020, has received less priority than a bill to change the electoral laws, which we were told prior to the election was not on the agenda.

After all that, we have a bill before us that I make no apology for describing as underwhelming. It is far from the sweeping reforms that the Attorney General promised as a priority in December 2020. This bill has evidently not been a priority for the McGowan Labor government, and it most certainly could not be described as delivering sweeping reforms. Meanwhile, the Attorney General is pressuring the opposition to effectively forget the young girl at the heart of this matter, whose death was the genesis of the bill before us.

Rather than the Attorney General making public remarks about prioritising legislation and bringing about sweeping reforms and then doing neither of those things, the government might be better placed, in situations like this in which the WA Police Force has acknowledged that a mistake was made, investing further resources into training police officers who will be making bail decisions to mitigate the prospect of mistakes being made in the future, and better resourcing the Director of Public Prosecutions' office so that the backlogs can be addressed. Perhaps even more importantly, the government should look at ways to enhance the supports that are provided to victims of crime.

I will finish by again asking members to put themselves in the situation of the 11-year-old girl who received the news that she did and then felt so hopeless that her only course of action was to take her own life. Surely in those circumstances, as a community, we have a responsibility, led by the government, to ensure greater supports for victims when they receive that information so that they can feel safe, rather than unsafe. Those are the types of supports for victims of crime that would be worthy of the government's attention. To be perfectly frank, the government would have been far better off enhancing supports for victims of crime than spending all that time, effort and energy on drafting this bill, which will effectively do nothing about the case that started all of this. With those remarks, I indicate that the opposition does not oppose the bill.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [2.54 pm] — in reply: I thank Hon Nick Goiran for his contribution to the debate on the Bail Amendment Bill 2022. He has raised a number of matters and has indicated that we will be entering Committee of the Whole House. Overwhelmingly, the matters that the member raised will be best dealt with and canvassed through that Committee of the Whole House. Of course, the member touched on a number of very political matters, and, as is my practice and for obvious reasons, I probably will not go into those in any great detail. I will make a couple of points on consultation because other members may be interested to know this before we vote on the second reading.

There were several rounds of consultation on this bill, including with the court and tribunal services division of the Department of Justice and each of the heads of jurisdiction, being the Chief Justice of the Supreme Court, the Chief Judge of the District Court, the Chief Magistrate and the President of the Children's Court. I note that it is not the government's position to disclose the content of consultation with heads of jurisdictions because it is up to each head of jurisdiction to make that choice and tell people their views; it is not for the government to disclose. We consulted with the Magistrates' Society, the State Solicitor's Office, the Commissioner for Victims of Crime, the Department of the Premier and Cabinet, the Director of Public Prosecutions, the Western Australia Police Force, the Legal Aid Commission of Western Australia and the Aboriginal Legal Service of Western Australia. We also engaged with the Northern Territory Department of the Attorney-General and Justice at an officer level on proposed clauses 3A and 3AB in schedule 1 of the Bail Act, although that department was not provided with a copy of the bill as that consultation constituted a discrete request about a single element of the reforms.

Government consultation processes are essential to the proper workings of government. Disclosure of feedback provided during that consultation process could be detrimental to the continued successful conduct of those consultation processes and thereby prejudice the proper workings of government. The government has been consistent in its description of this bill as a balancing exercise between elevating the voices of child victims and increasing the state's remand population. The honourable member recognised in his contribution that there are competing considerations in this bill—whether the legislation will achieve anything or whether it essentially ignores stakeholders' previous calls for reform to address an increase in remand population. The honourable member also made a number of points and canvassed some issues on the suppression order that is in place in the particular case that was the genesis of this bill. As members would be aware, and as Hon Nick Goiran himself mentioned, a de-identified copy of that suppression order was tabled in this place by me on 18 August 2022; that is tabled paper 1503 if members wish to refer back to it.

I refer to schedule 2 offences. Hon Nick Goiran is correct that the list of offences in schedule 2 goes beyond child sex offences. I note that a number of those additional offences that the honourable member described as "victimless" were previously identified as suitable for inclusion in the Bail Act by the previous Liberal–National government under the Bail Legislation Amendment Bill 2016, which lapsed with the prorogation of the thirty-ninth Parliament.

Given that those offences were previously identified in that process, the government took the opportunity to add those offences into this bill alongside the child sex offences that are also proposed to be included.

Hon Nick Goiran also suggested that the bill fails to address issues raised by stakeholders in the past, particularly in relation to the state's remand population. This again goes back to the balancing exercise that the government has undertaken for this bill. The Attorney General has previously made public statements to the effect that a broader package of reforms to the Bail Act is under development. That broader reform package will look at improving the operation and effectiveness of the Bail Act, including, where appropriate, increasing the availability of bail. As Hon Nick Goiran has indicated, this is a key concern of the Law Society and we are aware of those concerns. Noting recommendation 5 of the Law Society's briefing paper on what it means to have victims' views, if available, taken into account, the government is comfortable that insofar as it relates to taking into account the views of a child victim, the explanatory memorandum for this bill is detailed and clear.

The Bail Amendment Bill 2022 has a narrow focus on bail considerations that should apply when an accused is charged with a sexual offence against a child victim. That this bill is before the house is not a suggestion that those broader reforms are not being progressed. The government believes that the amendments proposed by the bill are both proportionate and appropriate to address the bail risks faced by child victims of alleged sexual offences.

With regard to the proposed amendments to schedule 2, the presumption against bail under clause 3A of the Bail Act 1982 is rebuttable and it allows for judicial discretion in determining whether any risks that may arise if the person is released on bail can be mitigated through appropriate bail conditions.

The bill tries to achieve a number of things. Hon Nick Goiran questioned whether the bill will achieve anything. No single piece of legislation can promise a stop to sexual abuse, but these amendments make it clear that when a child victim comes forward, their voice will be heard and their concerns will be specifically taken into account in bail decision-making. The proposed additional bail matters that must be taken into account will enable bail decision-makers to be better informed of the issues and risks relevant in each case. This may result in the denial of bail, if appropriate, or more tailored bail conditions, including protective conditions to protect the child victim. This bill will also provide a greater opportunity to intervene when an accused person is charged with a child sex offence, when they are already on bail for another serious offence or an early release order, by expanding the list of serious offences at schedule 2, which, of course, can result in a presumption against bail in certain circumstances.

In summary, this bill carefully balances the need to preserve the important element of our judicial system, the presumption of innocence, with the other measures that are required to protect the community and all the considerations that go into granting bail.

With those short comments, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon NICK GOIRAN: During the second reading debate, the parliamentary secretary might have heard me mention that it appears that the Law Society of Western Australia was not consulted on this bill. Can the parliamentary secretary confirm whether that is the case; and, if it was not consulted, why that was?

Hon MATTHEW SWINBOURN: Yes, I can confirm that the Law Society of Western Australia was not consulted about the bill. In terms of why not, I think that comes back to the narrow focus of the bill. It is a short bill; it has only 10 clauses. It is narrowly focused on dealing with offences in relation to children. As I indicated in my second reading reply, broader work on the Bail Act is going on and, through that process, the government will consult with the Law Society. It is also the case that, as the member indicated, the Law Society had a discussion paper, so its views on a number of issues were clear in some respects. The Law Society was not consulted and we do not resile from that.

Hon NICK GOIRAN: I thank the parliamentary secretary for the response indicating that the bill before us has a narrow focus. I certainly concur with him in that respect: it is a short bill. I think reasonable minds could differ on whether that would be sufficient reason to exclude the Law Society from the consultation process, but let us park that. Instead, I ask the parliamentary secretary to consider for a moment the fact that he indicated that the bill before us has a narrow focus. In fact, the focus is sufficiently narrow that in the breadth of areas of law, we can narrow it down to criminal law. Why has the government chosen not to consult with the Criminal Lawyers' Association of Western Australia about the bill?

Hon MATTHEW SWINBOURN: The way that the member has framed his question almost makes it sound as though we made a conscious decision not to engage with this particular organisation. A fairer characterisation would be that we were trying to focus on the exercise of decisions by—I am going to use this term just for ease of reference, but the member knows it is not a technical term—a bail decision-maker. That is obviously a magistrate, judge or police officer, but for the sake of short-circuiting the discussion at this early stage, I will refer to bail decision-makers. Consultation was targeted at those we thought were most likely to be able to provide meaningful input on that matter. I went through the list in my reply, but I will go through it again. Obviously, it includes the court and tribunal services jurisdiction, which is an internal division of the Department of Justice; the heads of each of the jurisdictions; the Magistrates' Society of Western Australia, the Director of Public Prosecutions, which is obviously the prosecutor of the state; and the Western Australia Police Force, which is also a prosecutor. We also reached out to and dealt with Legal Aid Western Australia and the Aboriginal Legal Service of Western Australia, both of which are defence organisations. The member could go through a list of people we did not consult and continue to ask me why we did not consult them, but it is not going to change the fact that this is the list of the people we did consult. As I say, it was not an active decision to exclude them because we were not interested in their concerns; it was simply about the work that we were trying to do. Hon Nick Goiran has criticised us about the pace with which we have proceeded with this reform. As I said, it was not an active decision to not consult further as it would delay the progress of this bill, but it would have further delayed this sort of thing. I also add that it was a notorious fact—again, the member mentioned it in his contribution to the second reading debate—that the government was working on bail reform in this area, so it was not a matter that had suddenly come out of nowhere when we tabled the bill in the other place.

Hon NICK GOIRAN: I hear what the parliamentary secretary is saying in terms of the narrow focus. Ultimately, the bail decision-makers will be particularly impacted by this bill. Obviously, the bill will have impacts on others, not the least of which being the accused, victims and so forth, but in terms of those who will now have certain, shall I say, enhanced, at best—we will probably get into the extent of any real enhancements a bit later—duties, responsibilities and factors to take into account when making the discretionary decisions, that is all with regard to the bail decision-makers. I can understand the government then saying that it has a narrow focus—that it will consult with the bail decision-makers and a few others, but it wants to get on with this priority piece of legislation. I do not think that the bill will change who is a bail decision-maker.

Hon Matthew Swinbourn: No, it will not.

Hon NICK GOIRAN: They will remain the same. Who can be a bail decision-maker?

Hon MATTHEW SWINBOURN: Sorry for the delay; we are trying to get an exhaustive list. The jurisdiction to consider bail may be exercised by an authorised officer or justice. "Authorised officer" is defined at section 3 of the Bail Act to mean an authorised police officer, which I understand in practice to be a person of the rank of sergeant or above, or an authorised community services officer. As I said, an authorised police officer is an officer who holds the rank of sergeant or above or the officer for the time being in charge of a police station or lock-up. The definition of "justice" under section 5 of the Interpretation Act 1984 means a justice of the peace appointed under the Justices of the Peace Act.

Hon Nick Goiran: Also magistrates.

Hon MATTHEW SWINBOURN: And magistrates and judges, of course.

Hon NICK GOIRAN: Just to clarify, every magistrate and judge is —

Hon Matthew Swinbourn: By way of interjection, yes.

Hon NICK GOIRAN: — automatically a justice of the peace?

Hon MATTHEW SWINBOURN: Sorry; they are judicial officers, so they are also included in that capacity. A judicial officer includes a magistrate and a judge. We are also saying authorised police officers, which means a sergeant and above, community services officers and justices of the peace.

Hon NICK GOIRAN: That is excellent. If we compare and contrast the list of stakeholders that have been consulted with the bail decision-makers, we can see that the Western Australia Police Force has been consulted—entirely appropriately so, given the history of this matter. We also see that the heads of jurisdiction have been consulted, as has the Magistrates' Society of Western Australia, both of which are entirely appropriate. Why was the Royal Association of Justices of Western Australia not consulted?

Hon MATTHEW SWINBOURN: As the member probably knows, the reality is that, as a matter of practice, justices of the peace no longer exercise the function of granting or not granting bail; they no longer perform that function. That practice changed on 3 July 2020 and was formalised through the issuing of practice direction 1 of 2020 by the Chief Magistrate, Steven Heath. That took effect on 1 August 2020. Essentially, the Chief Magistrate has the power to withdraw the authority of a justice of the peace to exercise the power to grant or not grant bail. If

I recall correctly, that came out of the recommendations from the inquiry into the death of Mr Ward. That is now the practice and, as I said, it took effect on 1 August 2020. The way that this legislation will practically affect bail decision-makers is it will no longer in practice include the cohort of justices of the peace.

Hon NICK GOIRAN: Why do we then retain them in the definition of "bail decision-maker"?

Hon MATTHEW SWINBOURN: I note that "bail decision-maker" is not a defined term under this legislation, but I get what the member means. I am not trying to quibble over that; I am just trying to be clear for the sake of *Hansard*. JPs have a much wider range of powers and responsibilities across the WA statute book than just considering bail. Any move to delete references to JPs in the Bail Act should more properly be considered in the context of a broader review of justice of the peace powers and responsibilities across the statute book. The advisers are not aware of such a review having been conducted at this stage. Really, the point was to not disturb it, in the context of it being a broader issue than just the Bail Act itself.

Hon NICK GOIRAN: I have a final question on the breadth of consultation. The parliamentary secretary mentioned that the bill has a narrow focus and is short, and that it also pertains to offences to children. Why was the Commissioner for Children and Young People excluded from the consultation process?

Hon MATTHEW SWINBOURN: Again, the member has put his question in a way that suggests that the government made an active decision to exclude the Commissioner for Children and Young People, which is obviously a very important role. It was not a matter of making an active decision to exclude; we consulted with the Commissioner for Victims of Crime, who we say is the person who would speak for child victims of crime. That is where the focus was on that particular issue. The Commissioner for Victims of Crime engages in many different methods of consultation, on both specific reforms as they are being developed, and on matters of general policy. The office receives daily feedback from victims on all aspects of the justice system and uses all this feedback in developing comments and recommendations for systemic changes. It is often not appropriate to consult with individual victims due to the nature of the traumatisation. I am just getting to more details here about the role of the Commissioner for Victims of Crime. So far in 2022, the office has had contact with over 500 victims about their contact with the justice system. In this case, the commissioner leveraged her extensive experience in and knowledge of supporting victims of child sexual abuse and their families, and provided feedback on the bill directly to the Department of Justice.

Hon NICK GOIRAN: Before I move on to my next question, I will make an observation at this point for the record and, I hope, for the future notice of government. In my view, it is not satisfactory to substitute consultation with the Commissioner for Children and Young People, who is an independent officer who reports to Parliament, with consultation with the Commissioner for Victims of Crime, who falls within government. Both individuals have an important consultation role to play, but given that this is dealing with offences to children, the Commissioner for Children and Young People ought to be consulted. That has not happened in this instance, and nothing will change that between now and the third reading of this bill. Given that the government sought to engage with the likes of Legal Aid, the Aboriginal Legal Service, the Northern Territory Department of the Attorney-General and Justice, the Director of Public Prosecutions and the Department of the Premier and Cabinet, amongst others, the Commissioner for Children and Young People should have been front and centre but was not. That is regrettable, but I would like to see that occur for future consultation processes.

Having dealt with the breadth of the consultation process, I want to look now, momentarily, at the depth of the consultation process. Following the briefing we received, the opposition had questions. I asked what concerns were raised by stakeholders, and we have not had a response to that. The response we got was that stakeholder feedback was considered throughout the drafting of the bill and was incorporated into subsequent drafts when appropriate and consistent with the policy objectives. At the very least, that indicates that the bill before us has been enhanced because there have been subsequent drafts. The subsequent drafts exist because the government decided that the feedback provided by individuals was appropriate and consistent with the policy objectives. What was the feedback from the stakeholders that led to the subsequent drafts of the bill that is now before us?

Hon MATTHEW SWINBOURN: This is a summary of the substance of the feedback provided by stakeholders. Stakeholders were generally supportive of the proposed mandatory bail considerations relating to child victims of alleged sexual offences and the proposed amendments to schedule 2. The following four key issues were raised by stakeholders and considered during the drafting.

The first issue was the potential impact of amendments to bail legislation on remand numbers, generally, and the impact on the over-representation of Aboriginal people in the justice system. The second was concerns about re-traumatisation—this is a word I will have trouble saying, and I thank Hansard for making me sound better; it is not something to be laughed at, of course, because it is a very significant thing, and I am not scolding anyone because I am the one struggling with the word, embarrassingly—of child victims, for example, if there was a requirement for the victim to make a formal statement or the necessitation of further reports. The third issue covered situations in which the prosecutor is made aware of a child's concern from another party, such as the child's primary guardian,

and the fourth was the schedule 4 amendments relating to the probable method of dealing with the accused and the impact of bail support programs on the probable sentence.

Sorry, there is a typo. It was supposed to be clause 4 not schedule 4, which makes a little bit more sense because I do not remember a schedule 4, which is probably what the member was just looking for when I mentioned it.

Hon NICK GOIRAN: We have danced this dance before, parliamentary secretary. I was about to ask: where is this famous schedule 4 in the bill? It is nowhere to be seen. The parliamentary secretary mentioned clause 4. Does he mean clause 9, "Schedule 1 Part C clause 4 amended"?

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: Did those four themes or key issues that were raised by stakeholders and considered during the drafting lead to subsequent drafts being prepared? We know that feedback was considered and incorporated into subsequent drafts when appropriate and consistent with the policy of the bill. Have each of those four key issues led to a revised draft?

Hon MATTHEW SWINBOURN: The member asked whether the feedback resulted in a new draft. I cannot say in each and every case whether it resulted in a new draft as such, but I can confirm that there were 11 drafts of the bill. I was sure that question was coming somewhere along the line; and, if not, I volunteer that information.

Effectively, there were three rounds of consultation over the drafting period. As I mentioned earlier, we received responses to particular issues arising from the consultation. Our response to the issue of the re-traumatisation of child victims is that under proposed clause 3AB, the bail decision-maker will be required to have regard to the information provided by the prosecutor rather than concerns expressed directly from the child victim. The intention is to provide for alternative avenues for a child victim's concerns to be expressed, not placing that burden solely on the child. In this way, it is provided that the child victim will not have to participate in the proceedings and testify as to their fear, or that the prosecutor will consider what the officer reports to them. That addressed the re-traumatisation issue.

Hon Nick Goiran: Is that again a reference to clause 3 in schedule 1 part C?

Hon MATTHEW SWINBOURN: It refers to proposed clauses 3AA and 3AB in clause 8 of the bill. It is confusing because, obviously, we have clauses in the bill but the Bail Act contains clauses in the schedule. I will try to be more precise so that it does not get confusing. I see that we are running into some confusion about those issues.

One of the other concerns that I spoke about was communicating the concerns of child victims. Proposed clause 3AB of the Bail Act has also been broadened in response to stakeholder comments about how a prosecutor is made aware of a child's concerns from another party. As a result, it will now provide that a family member of the child victim or a police officer investigating a relevant offence may inform the prosecutor that the child victim has expressed concern. We have broadened the net in response to how that information is given to the prosecutor and how the prosecutor is entitled to deliver that information to the bail decision-maker.

In relation to the concern raised about the potential increase in remand numbers, the government believes that the proposed amendments are proportionate and will appropriately address the bail risk faced by child victims of alleged sexual offences under the proposed amendments to schedule 2. The presumption against bail under clause 3A is rebuttable and allows for judicial discretion in determining whether any risks that may arise if the person is released on bail can be mitigated through appropriate bail conditions. Obviously, if we had gone ahead with the removal of bail or a much higher arrangement having to be satisfied, the remand risk would increase. Again, we have to strike a balance. It is about making sure that appropriate bail conditions, if bail is issued—for example, denying contact with the child and those sorts of things—are in the legislation. That was in response to particular concerns that were raised.

Hon NICK GOIRAN: One or more of the stakeholders has raised that the bill before us may have an impact on remand numbers generally. Did the government undertake any modelling as a result of that?

Hon MATTHEW SWINBOURN: I do not think any specific modelling was done because of the nature of the issue that we are dealing with. Modelling the impact of the bill with any certainty is not possible due to the discretionary nature of considering whether to grant an accused person bail. The granting or refusal of bail will be determined on the facts of each individual case. In order to estimate the possible impacts of the new bail considerations at clauses 3AA and 3AB, the government has considered information over the past three financial years that included the number of cases lodged in the Magistrates and Children's Court in which the most serious offences were sexual offences against a child, which was about 300 since the 2018–19 financial year up to the 2020–21 financial year. I will read out the number of cases for those financial years. There were 348 cases in 2018–19, 347 cases in 2019–20 and 417 cases in 2020–21. It sits around the 350 to 450 mark, although 450 is a bit high. I note that a case means one or more charges lodged at the same courthouse for the same accused on the same day. Therefore, effectively, a single accused could have multiple charges lodged against them at the same

time for a range of offences, which is probably the most likely case because I suspect that in most cases people are charged with multiple offences. Obviously, through the course of getting to trial, the number is often whittled away a little bit. That gives an indication to us, as a baseline level, about the scope we are dealing with.

Hon NICK GOIRAN: Those 1 112 matters that the parliamentary secretary referred to are all historical matters covering the last three financial years. They are the number of cases lodged in the Magistrates Court and the Children's Court in which the most serious offence in the case was a child sexual offence. Is it the case that all those 1 112 matters would be subject to consideration of bail?

Hon MATTHEW SWINBOURN: The short answer is no. The reason is that it should not be taken as an indication that the considerations under proposed clauses 3AA and 3AB would have applied to those 1 112 cases or would apply to every child sex offence case lodged in the future. That is because the application of those clauses will turn on the definition of "child victim" at new clause 1A, which states —

> … a person —
>
> (a) against whom a relevant offence is alleged to have been committed; and
>
> (b) who is under 18 years of age —

This is the important wording —

> when the discretion is to be exercised;

When dealing with historic child sexual offences, obviously the person who was a child at the time of the offence is most likely to be an adult at the time that bail is granted, but also, not even with historical ones, it could take some time for a matter to come before the court; the initial offending might have been when the victim was a child and continued until they became an adult. Those 1 112 cases are qualified by the fact that they would include cases of that kind.

Hon NICK GOIRAN: Of the 1 112 cases lodged in the Magistrates Court and Children's Court in the last three financial years, in which the most serious offence in a case was a child sexual offence, the parliamentary secretary is indicating that a proportion of those matters—it does not really matter what the proportion is for the purpose of this exercise—involved a victim who is no longer a child. They were a child at the time, but they are no longer. Those matters in which the victim is now an adult will not be captured by proposed clauses 3AA and 3AB. That means that the balance of the matters, whatever that might be—I suspect it will be a majority of the matters, but it really does not matter whether it is a majority or minority—were lodged in the Magistrates or Children's Court and the most serious offence in a case was a child sexual offence and the victim is a child. In the absence of this bill passing, would all those cases, whatever proportion they are of the 1 112, have been subject to the consideration of bail?

Hon MATTHEW SWINBOURN: I am a little confused by the member's question, so I will try to address it as best I can. If I am not on the right track, the member can let me know and we can try to reframe it. The general principle is that everybody who has been charged with an offence and is brought before the courts—the 1 112 cases are only in relation to courts, not in relation to when police might have granted bail—is entitled to have bail considered. As to whether bail was granted is a different issue. I do not know whether that was the member's question. We do not know, of that proportion, in how many instances bail was granted, but in each and every case the accused person would have been entitled to seek a determination of bail.

Hon NICK GOIRAN: Precisely. In other words, parliamentary secretary, whatever the proportion of the 1 112 matters, the same number of bail applications would have been considered by bail decision-makers, irrespective of whether proposed clauses 3AA and 3AB had been passed.

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: I hope the parliamentary secretary can see how that pertains to the issue of resourcing the judiciary in the consideration of these matters. It does not address—I think that is the indication from government—what the implication for remand services might be, in the event that proposed clauses 3AA and 3AB lead to a greater number of refused applications. I think that is what the government is indicating. It does not have a crystal ball; it cannot determine what that number might be because, importantly, this matter will be left to the discretion of the bail decision-makers.

The parliamentary secretary has helpfully set out the four themes that emerged from stakeholders that were considered during the drafting, and the extent to which the depth of the consultation has changed the bill that is before us, which has had 11 drafts. Were there any matters raised by stakeholders that were not considered by government to be appropriate and consistent with the policy objectives?

Hon MATTHEW SWINBOURN: I will not go into anything specific that has come from specific stakeholders because I think the member's question was of a more general nature anyway. The member will have noted the people

who were consulted; I went through this before. Obviously, there is a degree of internal government consultation with the State Solicitor's Office, the Department of the Premier and Cabinet, and those kinds of things. We also met with the heads of jurisdiction and the Aboriginal Legal Service and Legal Aid Western Australia. I can describe the issues with the bill as being that there are those who take the view that we are not going far enough and those who think we are taking it too far. In terms of that sort of stuff, people are always inclined to say what they would prefer the bill to achieve, rather than what it will achieve. In terms of anything substantial as to "this is what we are proposing to do", we did not have people running around saying the world is going to fall in, or other hyperbole like that. There was nothing of that nature where people were out-and-out opposed to the policy of the bill; it was about how it would be achieved. My wife hates me using this term, but there is more than one way to skin a cat, of course. That is really what it comes down to. As I say, some people would prefer that we made it more difficult for people to achieve bail; other people take the view that we should not make it too difficult, or the bill goes too far on that issue. There was not an issue of someone waving a flag and saying that the overall policy of the bill is wrong.

Hon NICK GOIRAN: I note that the bill that is before us is marked "74–2". What is the difference between this version of the bill and its predecessor?

Hon MATTHEW SWINBOURN: When a bill is numbered "–2" and onwards, obviously amendments have been made to the original bill. An amendment was made in the other place to add to schedule 2 of the Bail Act 1982 two offences under sections 5 and 6 of the Prostitution Act 2000. The first is seeking a child to act as a prostitute in or in the view of or within hearing of a public place. The second is seeking a person who is a child to be a client of a prostitute in or in the view of or within hearing of a public place. The reason that those words have been included is that the advisers identified that those words had been omitted during their preparation for the debate on the bill, so an amendment was moved in the other place to correct that.

Hon NICK GOIRAN: I suspect that the questions asked by the opposition during the briefing might have had something to do with this. We specifically asked for a comparison to be undertaken between the list of sexual offences in schedule 2 of the Bail Act and the list of like offences under the High Risk Serious Offenders Act. Of course, the High Risk Serious Offenders Act deals with what is referred to as serious offences; it is not, therefore, limited to sexual offences. However, I note that as a result of that reconciliation process undertaken by the hardworking officers, they identified some impacts on the Prostitution Act 2000, particularly sections 7 and 15. The rationale for not including section 7 was that this offence applies only to inducing adults to act, or to continue to act, as a prostitute. Children are expressly excluded from the operation of that act. I think it would be reasonable to assume that when that was identified, eyes were immediately cast to section 5, which has now been included. Did the parliamentary secretary also mention another section?

Hon Matthew Swinbourn: Yes, section 6.

Hon NICK GOIRAN: Yes, sections 5 and 6, which immediately precede section 7. The hardworking officers indicated that there was an appropriate rationale for its exclusion. I thank them for picking that up and ensuring that they persuaded the Attorney General to move amendments in the other place so we now have an enhanced bill. Parliamentary secretary, is it the case that the bill will result in amendments being made to court practice directions or rules?

Hon MATTHEW SWINBOURN: None were identified to us by the courts themselves. As the member knows, after the bill has passed, it will be a matter for the courts whether they choose to make further amendments to court practice directions or rules, but none were identified to us.

Hon NICK GOIRAN: I can leave this question until clause 2, if the parliamentary secretary would prefer.

Hon Matthew Swinbourn: Which is about commencement—you haven't told me what the question is, but I presume that is what it is about.

Hon NICK GOIRAN: It is a follow-on from the question the parliamentary secretary just answered—that is, that the courts have not at this stage identified any practice directions or rules. I will ask it now.

Hon Matthew Swinbourn: We can deal with it because I think I know where the member is going. Is it about the days?

Hon NICK GOIRAN: Yes.

Hon Matthew Swinbourn: We can give an answer to that.

Hon NICK GOIRAN: Why are we delaying for 28 days?

Hon MATTHEW SWINBOURN: The 28 days is a result of consultation with the Western Australia Police Force. It provides for a staged commencement of the substantive provisions of the legislation, clauses 3 to 8, to ensure sufficient time to make any required updates to the Western Australia Police Force information technology system, which we have discussed in great detail on previous bills, if I recall correctly, together with updates to guidance

material for bail decision-makers, such as the Western Australia Police Force bail manual and the bail opposition request form. That is where the 28 days comes from.

Hon NICK GOIRAN: I have a few more questions under clause 1. Is the Western Australia Police Force indicating that it wants to update its bail manual and procedures and that that will be done once this bill passes or, in any event, within that 28-day period?

Hon MATTHEW SWINBOURN: Thank you for the indulgence. I want to give a fulsome answer on this question. I can advise that the Western Australia Police Force has already made some progress towards introducing new bail policies and procedures in response to this bill's proposed reforms. A majority of the changes that will occur after the provisions in clauses 3 to 8 become operational will complement initiatives that have already taken place. The reforms that the WA Police Force has already undertaken include, for example, the WA Police Force prosecuting services division introducing a new form to assist authorised officers who consider bail applications. The form is titled the bail opposition request form or—this is a terrible acronym—BORF. I do not know why, but anyway! It outlines the statutory requirements for bail decision-making and guides police officers to provide relevant information to enable prosecutors to present the most fulsome argument for or against the granting of bail for the court, or an authorised police officer, to consider when determining bail for an accused. Police officers who have charged an accused with a serious offence under either section 3(1) of the Bail Act or section 142(1) of the Criminal Investigation Act 2006 follow this process: the officer will complete a bail opposition request form, attach the form to the prosecution brief as a cover sheet, add a brief note to the brief alerting the prosecutor to the existence of the form and ensure the brief note is included in the brief jacket. The Western Australia Police Force has put out a number of statewide broadcasts regarding the newly developed bail opposition request form—BORF—and the need for compliance with related processes. The WA police bail manual and the BORF will be amended to reflect the additional bail considerations proposed by the bill. Communication about these changes may involve additional broadcast or online training modules for police officers across the state. The exact content of those changes has not yet been finalised.

Hon NICK GOIRAN: The parliamentary secretary also mentioned that the police would like 28 days to deal with any IT issues or requirements. The opposition was told by the government, after the briefing that it had, that no IT or system requirements for the corrective services division of the Department of Justice had been identified to date; that is, at the time that we were provided a response. We had also asked whether there would be any IT requirements for the courts. On the assumption that there are no IT requirements for the courts and that nothing has changed for corrective services, why does WA police need to change its IT systems when the courts and corrective services feel no need to do so?

Hon MATTHEW SWINBOURN: I think that the WA police IT issue is not an infrastructure issue as much as it is an issue of perhaps uploading documents to its intranet and those kinds of things, so it is not a structural issue. WA police has not identified to us that it has structural IT issues; rather, it is just a precaution. It has identified to us that if anything arises, 28 days would be needed, so that is why it is in the bill. We listened to what WA police said about the time that it would need and the rationale for it. In most instances, I think 28 days from the commencement of the bill is a very reasonable period.

Hon NICK GOIRAN: Parliamentary secretary, in response to the question about feedback from stakeholders, one of the issues that was identified was the amendments to schedule 1, part C, clause 4 relating to the probable method of dealing with the accused and the impact of bail support programs on that probable sentence. What bail support programs are being referred to there?

Hon MATTHEW SWINBOURN: I am trying to give an answer to this. I think we talked earlier about bail support programs, and I am trying to find the probable method for dealing with that. It does not come back to the wording of the Bail Act or the proposed amendment to the Bail Act. If I understand what the member is saying, the issue we are talking about, notwithstanding if we put these provisions aside, is that between the time of conviction and sentencing when someone has been convicted and bailed, they may be entitled to participate in bail support programs. I understand that those programs are offered by the Aboriginal Legal Service and Legal Aid Western Australia, and that some may be offered by the Department of Justice itself, but I am not 100 per cent certain of that at the table. The member is saying that with the passage of this bill, these additional considerations of the court will mean that those people will not get bail and will be remanded and therefore will not be able to participate in those programs. That issue was raised by a stakeholder, which is why I am sure the member is raising it. Obviously, if those programs are available only to people on bail, there will be a reduced opportunity to participate in them, but the time those people are remanded for sentencing can be used as an opportunity to participate in alternative programs. I cannot identify any, but I will check and get more precise information, perhaps when we have a break. Obviously, the Department of Justice advisers whom I have here are the legislation team and the programs that we are talking about are run by the department of corrective services in the Department of Justice. We can confer with corrective services afterwards to be clear about which programs would be available throughout that sentencing

period for people who are remanded rather than bailed. I think that is the issue the member is trying to get at or to get information on. Is that correct? That was a very longwinded way of doing it.

Hon NICK GOIRAN: I thank the parliamentary secretary for the question without notice!

The question I was asking was: what are the bail support programs referred to by the stakeholders? I think the parliamentary secretary indicated that some are being provided by the Aboriginal Legal Service of Western Australia.

Hon Matthew Swinbourn: That is my understanding—and Legal Aid Western Australia.

Hon NICK GOIRAN: If those are the types of programs that stakeholders were concerned might be impacted by the provisions of this bill, that answers the question.

I mentioned in the second reading debate that the Attorney General was reported to have made some remarks in December 2020. In essence, he said that the proposed amendments to the Bail Act would ensure that, if a person has been convicted of a child sex offence, the presumption will be that the offender will be remanded in custody awaiting sentence. Which provision of the bill inserts this presumption?

Hon MATTHEW SWINBOURN: There is no provision in this amendment bill that deals with that particular issue.

Hon NICK GOIRAN: I will make an observation at this point. Once again, we have the unreliable Attorney General of Western Australia telling people that he is going to do one thing and then producing a bill that does the opposite. He told people in December 2020 that the proposed amendments would ensure that, if a person has been convicted of a child sex offence, the presumption would be that the offender would be remanded in custody awaiting sentence, and here in the house of review we find out that there is no provision before us that deals with that. The people of Western Australia have been misled yet again by the confused and confusing Attorney General, whom the Federal Court has found to be unreliable. This is unacceptable, yet the Attorney General has the gall, in the other place, to criticise the opposition about this bill. This is precisely why a media release was issued indicating that victims have been let down by this unreliable Attorney General. Once again, the house of review fulfils its task of scrutinising legislation and holding the government to account. That said, the parliamentary secretary will be pleased to know that I have no further questions on clause 1.

Clause put and passed.

Clauses 2 to 4 put and passed.

Clause 5: Section 6A amended —

Hon NICK GOIRAN: Clause 5 is curious. The explanation of clause 5 in the explanatory memorandum that accompanies the bill is very extensive, yet clause 5 itself is only one line. Someone has gone out of their way to try to explain at great length why it is necessary to delete the definition of "serious offence". To short-circuit that explanation, it seems to me that the entirely appropriate purpose of this deletion is to ensure that the meaning of "serious offence" is consistent throughout the Bail Act. Might I add, I am not making any criticism of the length of the explanatory memorandum. This is one of the rare occasions on which it is actually helpful. Often, the explanatory memorandum seemingly just regurgitates what is in the bill. But if I understand this correctly, we are being told that "serious offence" is defined at various points in the Bail Act in different ways. The removal of this definition from section 6A(1) will ensure that the one definition of "serious offence" that is found in section 3 of the Bail Act will apply in all instances. To the extent that this will have any particular impact on bail applications, it is my understanding that a consistent definition of "serious offence" will ensure that an accused will not be released without bail pending trial. Is that right?

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: As a result of clause 5, a person will not be released without bail pending trial —

Hon Matthew Swinbourn: For a serious offence.

Hon NICK GOIRAN: — for a serious offence. As I understand it, the tragic matter that was the genesis of this bill involved the release of an individual on bail by police. That person was released on bail by police. This provision before us will simply ensure that a person who has been accused of a serious offence will not be released without bail pending trial. If that is the case, how would this provision have changed anything that occurred in that particular case?

Hon MATTHEW SWINBOURN: I cannot speak to that particular matter. As the member knows, a suppression order is in place, but also I cannot speculate about a different outcome. I was not there, I was not privy to all the facts and qualifications, so I will not comment on whether there would have been a different outcome, because that is not what we are trying to do here in terms of that matter, if I can be clear. I am trying to dig a hole for myself and then dig myself out of it!

Hon Nick Goiran: I understand. It is difficult.

Hon MATTHEW SWINBOURN: Yes. However, we did identify that there were some child sex offences whereby a person could have been released without bail. This "serious offence" provision will make sure that those serious child sex offences require an application for bail and that bail will be considered under these provisions. If it helps the member, I can list the provisions that were not previously included, just for the sake of clarity. I do not know whether the member needs that level of detail, but I have it before me.

Hon Nick Goiran: Are any of those the ones that are found in the schedules?

Hon MATTHEW SWINBOURN: They will be added to schedule 2.

Hon Nick Goiran: Yes, that's fine.

Hon MATTHEW SWINBOURN: Is that okay?

Hon NICK GOIRAN: Yes. In that case, the person was released on bail. This provision will simply state that if a person is going to be released, they cannot be released without bail —

Hon Matthew Swinbourn: If it's a serious offence.

Hon NICK GOIRAN: — if it is a serious offence. In any event, had this legislation been in place then, I submit that it is reasonable to speculate that the outcome would have been the same, because the person in that case was released on bail. This provision simply states that if somebody is going to be released, they cannot be released without bail. That is irrelevant in this situation because the person was released on bail. As I indicated earlier, this is an appropriate provision that will provide consistency in the use of "serious offence" throughout the Bail Act 1982, and, as the parliamentary secretary indicated, it will, shall we say, scoop up some of the other sexual offences that were previously not captured. All those things are good and worthy of support, yet, sadly, it will do nothing to address the genesis of this matter. This goes to the point—this is more of a comment rather than a question—I made at the end of my second reading contribution that the better approach to dealing with the concerns that I think everybody in the community had at the time is to ensure that victims have proper wraparound supports, which is a catchphrase that is used a bit too glibly at times. We talk about wraparound supports, but in this particular context I am talking about making sure that the person feels that they are wrapped around—that the person receiving the news, particularly if they are 11 years old, feels supported in every sense of the word. Clause 5 will not do that. I am not criticising the government. The government cannot do anything in clause 5 that would enable that to occur. I am simply making the observation that that tragic matter would not have been affected by the passage of clause 5. That said, we support the passage of clause 5.

Clause put and passed.

Clause 6: Section 9 amended —

Hon NICK GOIRAN: To the extent that it might assist the progress of this matter, I have a small number of questions at clauses 6, 8, 9 and 10.

Does the power to defer a bail decision by up to 30 days already exist under the act?

Hon MATTHEW SWINBOURN: I am advised yes.

Hon NICK GOIRAN: That being the case, what is the benefit of amending section 9(1)(c)?

Hon MATTHEW SWINBOURN: The intended effect of this amendment is to highlight to a bail decision-maker that they may wish to consider deferring bail in order to consider whether there are particular grounds that could or should be imposed on an accused granted bail to enhance the protection of an alleged victim of a child sexual offence. This amendment is consistent with a recent amendment to the Bail Act 1982 made by the Family Violence Legislation Reform Act 2020, which highlighted a bail decision-maker's ability to defer bail for the purpose of considering whether particular conditions should be put in place to enhance the protection of an alleged victim when the alleged victim and the accused are, or are reasonably believed to be, in a family relationship.

To summarise that, it is signposting the provision and making it very clear that it is available; and, perhaps, it is also making clear Parliament's view about the 30 days and its applicability.

Hon NICK GOIRAN: This is one of those examples in which having a copy of the blue bill is important for members to properly appreciate what is going on. My respectful submission to members and the government is that nothing is going on here. Let us look at section 9 of the Bail Act 1982, which is headed "Bail decision may be deferred until more information obtained". Subsection (1) states —

> Subject to section 26(2) of the *Young Offenders Act 1994*, a judicial officer or authorised officer who is called upon to consider a case for bail may defer consideration of the case for a period not exceeding 30 days if he thinks it is necessary —
>
> (a) to obtain more information for the purpose of making a decision in accordance with this Act; or

(b) to take any step authorised by section 24(1) or 24A(1) or (2); or

Existing paragraph (c) reads —

> without limiting paragraph (a) or (b), in the case of an accused charged with an offence where the accused and an alleged victim of the offence are, or are reasonably believed by the judicial officer or authorised officer to be, in a family relationship — to consider what, if any, conditions should be imposed to enhance the protection of the alleged victim.

In other words, pursuant to section 9 of the Bail Act, bail decision-makers can already defer a bail decision for 30 days essentially for any reason. The only threshold that really needs to be met is that the bail decision-maker concludes that they would like to obtain more information for the purpose of making a decision, and that, in and of itself, is sufficient to enable the 30-day period to be invoked. All this is doing in particular, as the parliamentary secretary seemed to indicate, is expressly highlighting it in circumstances in which there is the family relationship to which I referred earlier and also in the event that the offence charged is a sexual offence and the alleged victim is under 18 years of age when the case for bail is to be considered. In other words, we are saying to the bail decision-makers that they already have this power to defer for 30 days and that if they think they need more information, without limiting anything that we have already said about that, they might want to do it in a case involving a family relationship or when there is a sexual offence that is alleged to have occurred against a minor.

This is perhaps indicative of why the opposition has taken the decision to not oppose the bill, as opposed to the option of providing full-throated, wholehearted support for the bill. Provisions like this do nothing. We do not want to associate ourselves with the unreliable remarks made by the Attorney General in December 2020 when he said that he was going to do one thing but now we have this underwhelming bill before us. That said, the provision before us will do no harm; it just will not take us anywhere. Based upon the consultation that the opposition has undertaken with experts outside of government, it is not our view that this particular provision will do anything meaningful. Nevertheless, it will do no harm, so it can pass without opposition.

Hon Dr BRIAN WALKER: The parliamentary secretary will be well aware that I am nowhere near a lawyer, but I have had experiences with patients who have come across the law. This is a genuine case, and I am sure there are others that mirror it. A father of six children had a 16-year-old daughter who was, as 16-year-olds often are, very difficult to manage, but who also had mental health conditions that were psychotic conditions—early psychosis. She made an accusation against the father of inappropriate sexual behaviour. That is quite right and I have no reason to suspect that we need to be supporting sexual offenders in any way, but we also need to find a balance. The Department of Communities took the child, the 16-year-old—actually, a full-grown woman—into care and the assumption was that the alleged offender was guilty. The police supported the accusation that he must be guilty on the say-so of a psychologically damaged teenager. He ended up in Hakea Prison on remand for a considerable time, under the provisions of the Bail Act 1982. In no way wishing to weaken the protection for children who have been exposed to heinous acts, the question I have for the parliamentary secretary is: will this amendment in the bill provide any protection above and beyond what is provided in the Bail Act 1982?

Hon MATTHEW SWINBOURN: We are on clause 6; the member's question is a very broad question that would have been more appropriately asked at clause 1, which allows a more free-ranging discussion of the bill and for us to deal with that stuff. As Hon Nick Goiran has indicated, this clause is actually quite narrow and is —

Hon Nick Goiran: You better not paraphrase me on this one.

Hon MATTHEW SWINBOURN: No, I will not paraphrase the honourable member. I ask Hon Dr Brian Walker to ask a question about clause 6 and how it might relate to the circumstances he has raised. That way, I will be in a position to answer it.

The DEPUTY CHAIR (Hon Dr Sally Talbot): I have two members on their feet. If one of you could sit down—you have both sat down!

Hon Dr BRIAN WALKER: I thank the parliamentary secretary. I was looking at the precise wording of the amendment in the blue bill, which will insert proposed new section 9(1)(c)(i) and (ii). Proposed new paragraph (c) is entirely applicable to the alleged offence, which is why I asked the question in relation to it.

Hon MATTHEW SWINBOURN: In the circumstances outlined by the member, the man was remanded in custody. That being so, this proposed new paragraph would not apply to him. I cannot talk about the circumstances of the case in any detail because I am not fully across them. I would hazard a guess that the member's witness in this case gave a particular version of events, which is always a particular side of the story, so there would be a lot of other factors involved. It is actually quite difficult to give the member anything more precise. As I said, this clause does not deal with a person who is on remand and how that is dealt with. All this clause will provide, in terms of amending this part of the act, is an opportunity for a bail decision-maker to defer that decision for 30 days whilst securing more information that will determine the decision. So, yes, a person might be on remand in a remand centre for an

additional 30 days and will have to cope with that, but that is the balance we have in our criminal justice system when we have to make a decision about these matters. It is for the bail decision-maker—the magistrate, the judge, the police officer—to consider all those bits and pieces. There are obviously matters that the bail decision-maker will take into account, including things like the strength of the case and other bits and pieces.

Clause put and passed.

Clause 7 put and passed.

Committee interrupted, pursuant to standing orders.

[Continued on page 3882.]