CRIMINAL LAW (MENTAL IMPAIRMENT) BILL 2022

Second Reading

Resumed from an earlier stage of the sitting.

MR M. HUGHES (Kalamunda) [4.03 pm]: I wish to resume the comments that I had been making before the debate was interrupted for question time. The question of whether an accused is fit to plead in a criminal trial is determined on the balance of probabilities after the presiding judicial officer has informed themselves in any way they see fit about the fitness of the person to plead. If the accused is being tried in a court of summary jurisdiction and it is ruled that the accused is unfit to plead and will not become fit to plead within six months, the court can release the accused or make a custody order in respect of the accused person. In these circumstances, a custody order must not be made in respect of the accused unless the statutory penalty for the offence is, or includes, imprisonment. The court is also required to be satisfied that a custody order is appropriate having regard to four matters—the strength of the evidence against the accused; the nature of the alleged offence and the alleged circumstances of its commission; the character of the accused; and the public interest. If the offence is indictable, the accused is presumed to plead not guilty to the charge. If a superior court judge is satisfied that the accused is unfit to plead and will not be fit to plead within six months, the judge must make an order quashing the indictment, or, if there no indictment, dismissing the charge and quashing the committal, without having to decide whether the accused is guilty. In these circumstances, the court can either make an order that the accused be released or make a custody order for a statutory term that is identical to the custody order imposed in a court of summary jurisdiction. Even though the court has not made a decision about the guilt of the accused, the custody order that could be imposed by the court will still align with the potential punishment that would be triggered as a result of a criminal conviction.

State and territory jurisdictions, and the commonwealth, respond to findings of unfitness in two key and distinctly different ways. Under commonwealth law, and in the Australian Capital Territory, the Northern Territory, Tasmania, New South Wales and Victoria, a person found unfit to plead may undergo a special hearing in which the court makes a qualified finding on limited evidence. I will come back to that a bit later. The exceptions are South Australia, Queensland and Western Australia; special hearings do not currently exist in those states. In the Commonwealth of Australia there are different models of detention for people who are unfit to plead in the normal criminal justice system. These are grouped into four forms of forensic custody order—at the Governor's pleasure; nominal terms; limiting terms; and fixed terms. Since 1914, there have been safeguards at the commonwealth level to that ensure that a person is not detained indefinitely. That includes regular reviews of the need for the person to be in detention and ensuring that the detention period does not exceed the maximum period of imprisonment that could be imposed if the person had been convicted of the offence charged. In Western Australia there is currently no specific time limit for detention under custodial orders.

Under our current legislation, a court that deals with a person who has been found unfit to stand trial has one of two options—an indefinite custody order or unconditional release. This was mentioned earlier by the member for Landsdale. In contrast, a mentally impaired accused person who has been acquitted on account of unsoundness of mind may be placed on a community-based order, a conditional release order or an intensive supervision order. However, the rub is that the court has no discretion when a person has been acquitted on account of unsoundness of mind if the offence is listed in schedule 1 of the Criminal Law (Mentally Impaired Accused) Act. This schedule includes the offences of murder, manslaughter and sexual penetration. It also includes offences such as assault occasioning bodily harm, and criminal damage. In those circumstances, the courts have no discretion and an indefinite custody order must be imposed. The lack of judicial discretion in Western Australia is cited by the National Aboriginal and Torres Strait Islander Legal Services as a major obstacle to making the appropriate orders. It has observed that appropriate resolutions will seldom be reached by either of what are clearly two extreme options—unconditional release or indefinite detention.

In our state, we retain the traditional Governor's pleasure detention model. Our legislation has been the subject of criticism by the Law Reform Commission for lacking review mechanisms, which in practical terms means that a person may be detained at the pleasure of the Crown—that is, indefinitely. In our state, the discretion to release a person from a custodial order rests with the Governor, albeit acting on advice of the Mentally Impaired Accused Review Board. The power, therefore, and decision to release a person from a custodial order rests entirely with the executive branch of government.

The approach of Victoria and the Northern Territory is to set nominal terms after finding a person is unfit to plead. The legislation provides for the person to be brought back before the court for a major review. South Australia and New South Wales have a limiting term model. When there is a qualified finding of guilt, the court can impose a limiting term, which represents the time that the person must spend in forensic custody under supervision beyond which an individual's detention or supervision may not be extended. South Australia and New South Wales impose criminal-like sentences following conviction. The length of a limiting term is the best estimate of a sentence the

court would have considered appropriate if the special hearing had been a normal trial of criminal proceedings against a person who was fit to be tried for that offence, and had that person been found guilty. In other words, it generally matches the sentence of imprisonment a court would have imposed for the offence.

Piers Gooding and others were referenced by the member for Landsdale. Their 2017 publication *Unfitness to stand trial and the indefinite detention of persons with cognitive disabilities in Australia: Human rights challenges and proposals for change* acknowledged the advantage of using limiting terms. An end date to detention avoids the problem of accused persons choosing to plead guilty because the certainty of a limited term sentence is preferable to detention with no end in sight. At the beginning of my remarks, I mentioned that the percentage of persons of Aboriginal descent who had been subject to custodial detention in 2002 was about one in 10, and now it is slightly more than one in two. I would suggest the observation, which the member for Landsdale made, regarding the former Chief Justice of Western Australia Wayne Martin's commentary in 2015 when he was interviewed by the ABC, that those persons representing Aboriginal persons who have been brought before the court are inclined not to invoke the unfit to plea provisions within our legislation because of the fear that they will in fact receive unlimited detention, subject always, of course, to a review by a review committee. In evidence that then Chief Justice of Western Australia Wayne Martin gave to the Senate inquiry in Perth in September 2016, he said that the Western Australian legislation should be amended to give judges the option of imposing supervision orders or other community-based management orders on persons declared unfit to plead. Although he acknowledged that some people would have to be housed in a secure mental health facility, he was of the view that for many people the risk could be managed in the community and that custody ought to be an absolute last resort, noting that when we do not have middle ground between unconditional release and custody, we get to custody much quicker.

[Member's time extended.]

Mr M. HUGHES: These observations have been echoed by Peter Collins, the director of legal advocacy with the Aboriginal Legal Service of Western Australia. He has said that ALSWA lawyers run from fitness to plead at a million miles an hour, with ALSWA lawyers being acutely conscious and fearful of the prospect of a client found unfit to plead being subject to a custody order. The observation made is that Aboriginal people who are found mentally unfit to plead stay in custody for a very long time, and that custody is invariably in jail.

As I mentioned, the commonwealth and the Australian Capital Territory impose fixed terms for those judged to be unfit to plead, and it is argued that this appears to be the best approach for those persons subject to a finding of unfitness to plead in that it is most consistent with international convention objectives, again referred to by the member for Landsdale. The law in both jurisdictions provides for a maximum period of imprisonment and ensures that a person is not detained any longer than the period they would have been sentenced to had they been found guilty. It is worth noting that at the commonwealth level and in the ACT, a person may be released before the fixed term expires. In the ACT, a tribunal must review the decision every month and in the commonwealth jurisdiction, the decision is required to be reviewed by the Attorney-General every six months. Importantly, both the ACT and the commonwealth take into account the individual person's needs by regularly considering whether early release is possible. At present, under our current legislation, in which special hearings that result in limiting or fixed terms do not exist, a finding of unfitness to stand trial too often results in an order for indefinite detention. That needs to be remedied, and this bill proposes to do just that.

As mentioned, the Senate reference committee noted that indefinite detention regimes have disproportionately affected Aboriginal and Torres Strait Islander people. Evidence submitted to the committee indicated that of the 100 people detained without conviction under forensic mental health provisions, at least 50 were Aboriginal and Torres Strait Islander peoples. Clearly, this issue intersects with the overall high rates of incarceration of Aboriginal and Torres Strait Islander peoples, adults and youth, who, although making up 2.5 per cent of the Australian population, comprise at least 50 per cent, or one half of the people detained without conviction. None of us in this place can be happy with this situation. Quite rightly, in my view, indefinite detention following a finding of unfitness to stand trial has received international criticism from the United Nations' Committee on the Rights of Persons with Disabilities. This criticism has been levelled at Western Australia and our unfitness to stand trial regime, which, as an example, again as referenced by the member for Landsdale, resulted in the dreadful case of the detention of Marlon Noble for a decade. That was referenced in the Attorney General's second reading speech as one of the triggers for this necessary reform.

Calls for reform and the introduction of special hearings and the implementation of continuing care following the conclusion of a limiting term have been ongoing for 20 years or more. In 2014, as we have heard, the Australian Law Reform Commission recommended the introduction of limiting terms combined with regular reviews of detention orders for state and territory jurisdictions with indeterminate detention regimes being supported by the Senate reference group committee in its 2016 final report.

I note that the Western Australian Association for Mental Health is pleased to see that the bill will implement key recommendations from the 2016 statutory view of the 1996 act, particularly the creation of special hearings and

limiting custody orders to no longer than the term the person would likely have received had they been found guilty of the offence. The important reforms enshrined in this bill, which completely repeal the existing legislation, realised the very first election commitment made by Mark McGowan, then in opposition in 2016, at the inaugural WA Mental Health Conference hosted by the Western Australian Association for Mental Health. I am proud that the government has made good on that commitment made by Premier McGowan prior to the 2017 election. I commend the Attorney General for his continued implementation of WA Labor's reform agenda.

The Criminal Law (Mental Impairment) Bill 2022 will replace the 1996 act in favour of what is a completely new and balanced framework that will protect the community while upholding the human rights of mentally impaired accused. The bill will achieve this in several ways. It will provide for special court hearings to test the evidence against an accused who has been found unfit to stand for trial. One outcome could be that the person is found not guilty on the basis of mental impairment. If, however, the evidence does not support the allegation, they can then be found not guilty and exonerated—an avenue that is not currently available. In the event of a sustained charge, the court will still have the discretion to make a custody order when appropriate, thus ensuring the safety of the community. Importantly, however, such custody orders will no longer be able to be indefinite. Custody orders under the new regime must be limited to the court's best estimate of the term of custody that the person would have received had they been found guilty. Further, the court will have a new interim option of a community supervision order, bridging the gulf highlighted between the current binary options of indefinite detention or unconditional release.

The new Mental Impairment Review Tribunal will be established. It will be presided over by a retired judge and will include disability and mental health professionals, community members and corrections staff to manage and supervise people in custody and the community. In contrast to the workings of the existing Mentally Impaired Accused Review Board, the findings of the new tribunal will be able to be appealed and supervised persons will have a right to be heard by the tribunal. It is clear from the provisions of the bill that community safety is a factor that remains at the forefront of the proposed legislation. The principal consideration for any person performing a function under the bill will be the protection of the community.

The legislation has been subject to extensive consultation, as the Attorney General has made clear, with more than 40 stakeholders having input since the publication of the *Review of the Criminal Law (Mentally Impaired Accused) Act 1996: Final report* by the Department of the Attorney General in April 2016. As our Attorney General observed in his second reading speech, this has been an exhaustive and collaborative effort. The Western Australian Labor government, through the Attorney General, is committed to ensuring that the state's laws achieve adequate protection of the community while also respecting the inherent dignity of all who come before the courts. I am pleased that the bill presented to the Assembly will achieve those outcomes.

MRS L.M. O'MALLEY (Bicton) [4.23 pm]: I rise to add my contribution to the debate on the Criminal Law (Mental Impairment) Bill 2022. The CLMI bill represents significant and greatly anticipated reform. I would like to begin by acknowledging and thanking the Attorney General and advocacy organisations, including the Western Australian Association for Mental Health and Mental Health Matters 2, and the many other people who over a considerable period have worked and campaigned to bring about these important changes. In speaking to this bill, I will reflect on three main things—the bill itself and the important changes it holds, advocacy for those changes, and the matter of fitness, which is dealt with in detail in part 3 of the bill.

I will provide a bit of background and the historical context of the bill before us. WA Labor took a commitment to the 2017 election to reform WA's mentally impaired accused laws. The key elements of that election commitment were to: allow the judiciary the discretion to impose a range of options for MIA, such as community-based orders for those found unfit to stand trial; limit terms of custody orders so that they are no longer than the term the person would likely have received had they been found guilty of the offence; introduce new procedural fairness provisions that provide for rights to appear, appeal and review; and ensure determinations about the release of MIA from custody and the conditions to be attached to such release, if any, are made by the Mentally Impaired Accused Review Board with a right of review to the Supreme Court on an annual basis. This bill will implement, and in some respects go further than, our election commitment.

The current Criminal Law (Mentally Impaired Accused) Act 1996 deals with people who are unfit to stand trial or who are acquitted on account of unsoundness of mind under section 27 of the Criminal Code. This is more commonly known as the insanity defence. That terminology will change with this bill. Even reading those words is quite confronting. It is offensive in many ways to be speaking in, and using, those very outdated terms in reference to the bill that is before us today. In again acknowledging the Attorney General in bringing this bill into its more modern context, I think it is also important that we acknowledge the very important changes to language in this bill.

The CLMIA act provides that people who are unfit to stand trial and who will not become fit must either be unconditionally released or have a custody order. Members have already heard from the members who spoke before me that this is a binary concept; it is either/or. It also ignores the fact that mental health, in many situations,

can be fluid. Situations can change so that the person who may be experiencing mental health to the extent that they would be deemed unfit at one time could be deemed at another time to be fit or vice versa.

I have some other reflections on the current situation. A custody order is an order that a person be kept in custody in either a prison, a detention centre, an authorised hospital or a declared place until they are released by order of the Governor acting on advice of the Mentally Impaired Accused Review Board. There is no date fixed to a custody order; it is indefinite. People who are acquitted on account of unsoundness of mind—again, there is the use of that phrase—under section 27 of the Criminal Code may be unconditionally released, have a custody order made in respect of them or be placed on a community order under the Sentencing Act 1995. Another feature is that if the offence is a serious offence, as set out in schedule 1 of the current CLMIA act, a custody order must be made. Custody orders must be reviewed every year, but it is a matter for the Attorney General and Governor to determine whether a person should be granted leave of absence or conditional release. This has resulted in people being held on custody orders for significantly longer periods than they would have had they gone through the ordinary sentencing process. We have already heard some examples from the members before me. I will also share, and in fact probably repeat, a little later on some of those cases that we have already heard about because I think it is important that these things be put on the record to provide further context to why it is so important that this bill before us today be passed.

What this bill will do is repeal and replace the CLMIA act in its entirety. It will address the 2017 election commitment, along with numerous reports and recommendations since the legislation's enactment. Part 1 of the bill includes extensive objects and principles to which persons performing functions must have regard. The inclusion of objects and principles in any rewrite of the act was recommended in the 2016 review report by the previous government. The objects and principles include fair treatment, early identification, access to advocacy, procedural fairness and safe reintegration into the community. There are also several principles specifically targeted towards children with mental impairment. I think it is also important to place on the record, as the member for Landsdale has done, that there are young people and children in particular who have foetal alcohol syndrome disorder and that this bill will ensure that those children are treated fairly.

Part 2 deals with matters of general application, including the interaction between the bill and the Mental Health Act 2014. As is currently the case, a person living in the community under a CLMIA supervision order can be made involuntary under the Mental Health Act at any time. Part 2 also deals with hospital orders, which the court may consider making instead of granting someone bail. A hospital order is an order that requires a person to be taken to an authorised hospital and examined by a psychiatrist to determine whether an inpatient order should be made. Part 2 also provides that unfit accused and supervised persons should be communicated with in a way that is understood, provides for the appointment of support persons and communication partners to assist people through the court and tribunal processes and allows family members and carers to make submissions to the courts and tribunal as to the person's treatment, care and support needs. It is quite astounding that we have to put that on the record and legislate that, but the act is old and needs updating and modernising. Another important reason that the Attorney General has introduced this bill is so that what we know to be right is included in there in detail.

Part 3 focuses on raising the question of fitness. I will go into this issue in more detail in my contribution. It raises the question of fitness to stand trial and how to deal with someone who is determined to be unfit. The criteria for being unfit at clause 26 includes being unable to understand the nature of the charge, instruct a lawyer, follow the course of the trial or properly defend the charge. A person need meet only one criteria to be found unfit. There is a presumption of fitness. Someone is presumed to be fit until the contrary is found. Similarly, once found unfit, they are assumed unfit until the contrary is found. This is a particularly important point, I believe. The question of fitness can be raised at any time before or during a trial and can be raised more than once, which again speaks to the point that mental health can be fluid and although at one point the person may be fit to stand, they can become unfit. Absolutely conversely, although they may be unfit at some point, they can become fit. The court can inquire into fitness by ordering reports from psychiatrists, psychologists and other appropriate experts, which I think is another critical point to make.

If the question of fitness is raised, the Mental Health Advocacy Service must be notified. Part 8 of the bill requires MHAS to make contact with unfit accused persons and offer them advocacy support. Court proceedings can be adjourned for up to six months, and in exceptional circumstances 12 months, to allow a person to become fit. That is another really critical point. Once a person is confirmed as unfit and the court determines that they will not become fit, the court has a few options. If the offence is a summary one, the court may discharge the person or hold a special proceeding. If the offence is an indictable one, the court must hold a special proceeding.

There are some other key points. It is a large bill with a lot of detail and numerous parts. I think we are up to part 13. The member for Landsdale will know off the top of her head. There are 15 parts.

I now move on to some points of implementation. Certainly, I am sure that others who will speak following me will raise some of the other points and, I expect, some points that they deem to be of particular interest, as I have done in the area of fitness. Implementation of the reforms provided by the bill will require significant cross-agency planning and collaboration. Implementation will be coordinated by the Department of Justice and involve at least 10 other agencies and statutory bodies. Implementation preparation has been occurring in parallel to the bill being drafted and will continue as it is considered by Parliament. An executive-level implementation steering committee has been established to drive and oversee the implementation preparation and activity.

Change will be required to existing roles, responsibilities, policies and processes. There will also be new functions, bodies and court hearing types introduced by the bill that must be planned for and put in place. These implementation considerations relate to not only supervised persons, but also other key stakeholders and participants in the process, including victims of supervised persons, courts, tribunals and the legal profession, advocates including MHAS and the Office of the Public Advocate and staff working in custody settings such as Graylands Hospital, Frankland Centre, the Disability Justice Centre, prisons, community corrections and youth justice services.

The member for Landsdale and the member for Kalamunda mentioned that victims of supervised persons will be considered. The bill is designed to protect the community as much as it is to advocate for those going through the judicial system who have a mental impairment.

It is a balanced bill and, as we have seen, it has taken a massive amount of time to be brought before us. It is important that enough time is taken to ensure that this is done well and done right. The period between the bill passing and implementation, of course, is very, very important.

Mr D.A. Templeman: Member, could I just make a note?

Mrs L.M. O'MALLEY: Certainly.

Mr D.A. Templeman: There have been no opposition members in this place for nearly an hour. I am just making the point. Keep going, please.

Mrs L.M. O'MALLEY: That is well made. Thank you for that. I think it is perhaps an indictment of how the opposition feels about this bill. Considering the weight of the bill, it is quite a —

Ms M.M. Quirk: Not enough pictures, member! That is the problem.

Mrs L.M. O'MALLEY: That might be the case, member for Landsdale. It is disappointing that they could not be bothered turning up. Show up, I would say.

The implementation of the bill will have some cost to government and will be considered as part of the budget process. That is another element in the time that it will take to bring this bill to its fullness. Adequate time will be required between the passage of the bill and it being operationalised. This is required to allow for, among other things, establishment of the new tribunal and preparation commencement as a new body; establishment of new court hearings for special proceedings and transitional matters; expansion of the Mental Health Advocacy Service's functions; drafting of subsidiary legislation to support the new framework; new and updated administrative arrangements, policies, procedures, information-sharing and notification processes; information and communications technology changes; and the recruitment and training of staff. It will be approximately 12 months between the passage of the bill and its proclamation. I believe that reflects the fact that as a state government the McGowan Labor government does not keep things in the too-hard basket. We pull them out, we deal with them and we put them into action.

I want to speak a little on advocacy as well. A lot of people have been involved, both individuals and organisations, to advocate for these changes, but I would like to highlight the work of the Western Australian Association for Mental Health. I will briefly read part of its media statement posted on its website after the bill was introduced last year —

> WAAMH welcomes the introduction to WA Parliament of new Criminal Law (Mental Impairment) Bill 2022
>
> Today has been a long-awaited milestone for WAAMH, our members, advocacy partners, and the people with lived experience and their families who have been impacted by this legislation for the last 26 years.
>
> This morning Attorney-General The Honourable John Quigley MLA, on behalf of the WA Government introduced the Criminal Law (Mental Impairment) Bill 2022 into Parliament, which provides a framework for people with mental impairment in the criminal justice system. WAAMH has been advocating for —

A long time —

> This current legislation has long been known to deny people due process, natural justice, and human rights and to compromise public safety by creating barriers to people accessing vital supports …
>
> WAAMH is pleased to see the Bill implements key recommendations from the 2016 Statutory Review of the CLMIA Act 1996, particularly limiting custody orders to no longer the term the person would likely have received …

I will skip to the conclusion —

> Reforming CLMIA was the very first election commitment made by the now Premier back in 2016 at the inaugural WA Mental Health Conference hosted by WAAMH. WAAMH commends the WA Government for realising this commitment by bringing this legislation to the Parliament …

It is, of course, very pleased with and supportive of this bill.

I would also like to acknowledge the advocacy and the on-the-ground work of Mental Health Matters 2, which has been working tirelessly to assist people through the judicial system for over 11 years of its operation as a volunteer grassroots systemic advocacy group. Four of the seven positions on Mental Health Matters 2's board are designated for people with lived experience as individuals, family members or supporters with experience of mental health and/or alcohol and other drug challenges, and possible experience with police, courts or prison.

[Member's time extended.]

Mrs L.M. O'MALLEY: Mental Health Matters 2's aim is to improve the outcomes for individuals, families, carers and supporters with experience of mental health, alcohol and other drug challenges, many of whom have found themselves caught up in the criminal justice system. Between 2010 and 2021, MHM2 consistently advocated with decision-makers to ensure that the voices and views of people with lived experience as individuals or family members helped to influence and inform the design and implementation of laws, policies and decisions that affected their lives. This inclusion is increasingly more common with approaches such as co-design and co-production being more regularly used in human services areas. That really reflects the fact that the McGowan Labor government is committed to working on the ground as well as in the policy space and to ensuring that there is a communication flow between those who are living the experience and those who are making the policy decisions that can either assist or inhibit those with lived experience.

Quickly, I want to reflect a little bit on fitness. At the risk of repetition, I will to refer to Piers Gooding, member for Landsdale.

Ms M.M. Quirk: That's all right. I commended the article to you.

Mrs L.M. O'MALLEY: Absolutely; I noted that when the member first stood to her feet. I thought it was a good article, so I thank the member for that. The member for Landsdale and the member for Kalamunda, I believe, referenced the article "Unfitness to stand trial and the indefinite detention of persons with cognitive disabilities in Australia: Human rights challenges and proposals for change" by Piers Gooding, Bernadette McSherry, Anna Arstein-Kerslake and Louis Andrews, in which we learn —

> *Adverse consequences facing accused persons found unfit to stand trial in Australia have been well-publicised in recent years. Those found unfit may face indefinite detention in prison or other secure settings—potentially for longer …*

As we know, it could be for longer than the sentence they would have faced if they had been convicted of the crime, if they had been fit to stand trial.

Reform initiatives have brought attention to the issue. Certainly, we as a state government have listened to those strong reflections so that there can be important legislative change, as we see in the Criminal Law (Mental Impairment) Bill 2022 before us.

The article went on to talk about a story, which is important to understand the impact of the laws that govern on individuals —

> In 2015, a young Western Australian man, 'Jason', was reported to have been detained for over 11 years following a finding that he was unfit to stand trial for a charge of manslaughter. The young man, who … was 14 years old when he was charged, had allegedly crashed a stolen car that resulted in the death of his 12-year-old cousin. Jason entered juvenile detention in 2003 and later moved to adult prison …

Where he remained at the time of the writing of the article. An ABC online article at the time reported that if Jason had been convicted and sentenced for his original charge, he could have expected to face a jail term of between four and eight years. It continues —

> Other cases also highlight the adverse consequences of Australia's laws relating to unfitness to stand trial. In 2014, the Australian Human Rights Commission determined that the rights of two Indigenous men were violated multiple times while they were detained indefinitely in the Alice Springs Correctional Centre after being found unfit to stand trial.

We know of other examples in which this situation has occurred. I would like to quickly reflect on the term "unfitness to plea", which —

> … is used in some jurisdictions and reflects terminology stemming from 19th century English common law. This article —

The article by Gooding that I am referring to —

> uses the term 'unfitness to stand trial' to reflect the fact that a person must be considered fit at each stage of criminal proceedings, not just at the plea stage.

Reflecting back on my earlier comments, the question of fitness and how it can change—whether somebody who is unfit becomes fit or is fit and becomes unfit—has definitely been dealt with in part 3 of the bill. It continues —

> The unfitness to stand trial doctrine was largely incorporated into modern law as a humanistic measure to protect accused persons with disabilities, offer a mechanism to test the prosecution, and divert individuals to relevant treatment. In practice, however, findings of unfitness to stand trial can lead to 'extremely deleterious consequences' …

We have heard that, and I am sure we will continue to hear that as other members provide their comments.

This is a comment from the article in reference to unfitness —

> … the Supreme Court of Western Australia, in an extra-judicial comment, observed that:
>
> > Lawyers do not invoke the legislation, even in cases in which it would be appropriate because of the concern that their client, might end up in detention, in custody, in prison, for a lot longer period than they would if they simply plead guilty to the charge brought before the court …
>
> Law reform initiatives at the Commonwealth, state and territory levels have brought attention to the issue …

Here in this house, with the Attorney General bringing the bill to us, we are dealing with that and setting it right.

In conclusion, I would like to acknowledge the history of advocacy by the community and professionals who work with people under the current act. I particularly thank the Western Australian Association for Mental Health; its work has helped to coordinate much of the advocacy over the last several years. As I said, Mental Health Matters 2 has played a significant role as a crucial avenue for individuals and families impacted by the current act. I would also very much like to thank the Attorney General for this monumental piece of reform, which I commend to the house.

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [4.47 pm]: I rise to make a brief contribution on the Criminal Law (Mental Impairment) Bill 2022. Like other members in the chamber, I am anxious to hear what the opposition's position is on this important legislation. I am sure it has a position because we have just suffered through a matter of public interest in which the opposition talked about crime and punishment, and law and order. I wondered whether the matter of public interest was a naked political stunt and the opposition does not, in fact, really have a commitment to criminal law reform and to working in the criminal justice system. When it comes to doing the hard work of legislating, the opposition is missing in action.

Mr D.A.E. Scaife: I think it is worth noting that no members of the opposition are in the chamber.

Mr S.A. MILLMAN: They are still not here, as the manager of government business said.

Ms M.M. Quirk: Let's just pass the bill.

Mr S.A. MILLMAN: This is another reason I wanted to keep my contribution short. As well as the Attorney General, who has carriage of the bill, the Minister for Health is here. As the Parliamentary Secretary to the Minister for Health, I was going to spend some of my time talking about some of the investments that this government has made in mental health. I can only imagine that the calls for a delay in the passage of this legislation by Hon Tjorn Sibma—the shadow minister for justice, and the proxy shadow Attorney General, given that there is no shadow Attorney General now—are a reflection of the opposition's lack of capacity in dealing with this. Although, it might very well be that the reason the opposition members are not here is that they are dealing with the fact that the federal National Party has come out today and said that it will happily campaign for its state counterparts in the 2025 state election if the Nationals WA does away with its alliance. Perhaps they are too concerned about maintaining the integrity of their alliance. They have all scurried off to have a secret meeting somewhere to see whether they can keep the loose alliance together.

Ms M.M. Quirk: They are in a phone booth somewhere.

Ms S.E. Winton: I was just going to say, where is the phone booth?

Mr S.A. MILLMAN: In a phone booth.

Mr D.A.E. Scaife: Do you think they will campaign in densely populated areas?

Mr S.A. MILLMAN: I hope they do! In fact, I hope they are campaigning in Mount Lawley, member. We will happily welcome the attention from the Nationals WA, but I suspect that it will not be there. We recently have seen a lack of attention from the Liberal Party as well. Speaking of Mount Lawley—I digress from the subject matter of the bill ever so briefly—I congratulate the Attorney General on an appointment as I am very pleased to see my constituent Fiona Seaward, SC, who is a fantastic mum from Mount Lawley Primary School, has been elevated to position of judge of the Supreme Court. That is another one of my constituents on the Supreme Court. The McGowan government has a good track record of appointing Mount Lawley residents to the Supreme Court, and I am very pleased to see that somebody of the calibre of Fiona Seaward has been elevated to that position. I place on public record my congratulations to her for her new appointment. I think that she will make a great addition to the court. She is an excellent lawyer.

I now will talk very briefly on the bill and make some key points. I will talk about the history of the legislation that is before the chamber. I make my contribution in the context of members opposite saying that we should slow down or pause our legislative reform agenda. I highlight that issue because I did a bit of research in my preparation for my contribution today and I came across the *Criminal Law Mentally Impaired Accused Act 1996: Advocacy brief: Priorities for urgent reform*. This report is from organisations such as the Western Australian Association for Mental Health, as has been mentioned by the member for Bicton; Richmond Wellbeing; People with Disabilities WA; the Aboriginal Legal Service; Arafmi, which is now Carers WA; Lifeline; the Western Australian Council of Social Service; Anglicare WA et cetera.

In the report's list of "Critical priorities for urgent reform", it states —

> We are clear that wholesale reform of the Act is necessary.
>
> We advocate for the following reforms to occur immediately, and **request that this government put a Bill to Parliament before the end of the 2015 calendar year** …

This was a plea to the former Liberal–National state government for it to put through reform. The advocacy brief goes on to say that the former Liberal–National government had made an election commitment to amend the act. But all members know what happens with election commitments from the Liberal and National Parties; they get broken. This was another broken election commitment because they did nothing. Sorry—they did one thing. But that paper was the call back in 2015 from various advocates highlighting exactly the sorts of concerns that the bill addresses.

In response to that advocacy brief, the last Attorney General of the Liberal–National government, Hon Michael Mischin, commissioned a report from his department, the Department of the Attorney General, titled *Review of the Criminal Law (Mentally Impaired Accused) Act 1996: Final report*. I would have thought that with the advocacy groups contending for the change, and the recommendations from his own department into the review, the then Attorney General would have done the appropriate thing.

Here we go; we have a member of the opposition coming into the chamber. Welcome, member of the opposition! I am glad. We are happy to see you here. It has been a long time since we have had members of the opposition in the chamber for this debate.

I would have thought that with the review of the Criminal Law (Mentally Impaired Accused) Act in April 2016, Hon Michael Mischin might have taken some steps. No action was taken. Hon Michael Mischin did not have the capacity to bring about the legislative amendment that was needed to this act, and now, his successor—the standard-bearer for the justice portfolio; the shadow Minister for Justice and would-be shadow Attorney General—is similarly dragging his feet and wants to delay the passage of the legislation. Therefore, when it comes to the passage of this legislation, people in Western Australia cannot rely on the Liberal and National Parties to make the difficult decisions, to do the heavy lifting and to do the hard work to introduce legislation that is needed into Parliament. That was the review, and it would be fair to say in passing that most of the recommendations made in 2016 have been picked up by this Attorney General and incorporated into this legislation because they are the right things to do in amending the Criminal Law (Mentally Impaired Accused) Act.

The member for Kalamunda said that this is a ground up amendment to the act. The next thing that I came across was the Law Society's *Briefing paper: Mentally impaired accused* from October 2020. The Law Society went through a number of points that it thought were relevant, and these issues are dealt with by the legislation. In respect of indefinite sentences, the Law Society quoted from the decision in Chester v The Queen that states —

> referring to s662(a) of the *Criminal Code* … the High Court in a joint judgement said:
>
> > *the stark and extraordinary nature of punishment by way of indeterminate detention, the term of which is determinable by executive, not by judicial decision, requires that the sentencing judge be clearly satisfied by cogent evidence that the convicted person is a constant danger to the community.*
> >
> > …
>
> The West Australian legislation, unlike other states, has none of the features Deane J refers to. Indefinite term orders, under s662(a) of the *Criminal Code* and now s98 of the *Sentence Administration Act* … are not subject to statutory safeguards nor periodic orders for continuing detention; these laws do not allow for detention in an institution other than a gaol;

Having identified the problem, the Law Society then went on to ask: how can we remedy this? The Law Society's proposed reforms were a proper conceptualisation of the determination of "unfitness"; the briefing paper reads —

> to reflect the National Decision-Making Principles proposed by the Australian Law Reform Commission … and to facilitate Australia's compliance with art 12 of the United Nations Convention on the Rights of Persons with Disability …

There should be a determination of "unfitness". There should also be a limited detention. It continues —

> The *Criminal Law (Mentally Impaired Defendants) Act* … should be amended to place limits on the period of custody orders for persons detained after being found not mentally fit to stand trial.
>
> …
>
> The *Criminal Law* … should be amended to provide that a custody order must not be made unless the statutory penalty for the alleged offence includes imprisonment or detention.

I am happy to say that it is obvious our international law obligations under the United Nations Convention on the Rights of Persons with Disability has obviously been taken into account in the drafting of this legislation. Members can clearly see that the position articulated by the advocates in 2015, the then Attorney General's department in April 2016 and the Law Society in 2020 have all been incorporated into the drafting of the bill that is now before Parliament. Therefore, I cannot understand—unless it is a lack of capacity—why the shadow Minister for Justice is not in a position to be able to deal with this matter.

I started by saying that I thought that the opposition's matter of public interest this afternoon about crime was all froth and bubble, seeing that members opposite were not even here to debate an amendment bill on criminal law. That is the first problem that the opposition has. It is hopeless when it comes law and order and it is hopeless when it comes to community safety.

It is also hopeless when it comes to investment in mental health. I want to very briefly highlight some of the significant investments made by the McGowan government and the Minister for Mental Health, the member for Morley, to support people with issues related to mental health. There has been $1.3 billion allocated for Western Australia's mental health, alcohol and other drugs services in 2022–23, representing a 13 per cent increase in funding on the 2021–22 state budget; an additional $181 million to fund new and expanded mental health services, including $47 million to support immediate infant, child and adolescent task force recommendations; $18.5 million to expand the Child and Adolescent Health Service frontline workforce across seven regions; and $13 million for additional peer support workers—and we heard from the member for Bicton why peer support workers are so vital in the mental health area. There has been $10.5 million allocated to deliver a two-year virtual support service for at-risk children and $4 million to establish an interagency program office to undertake service model design and to develop an implementation plan. Millions of dollars have been allocated for active recovery teams, and $5 million has been allocated towards a mental health emergency telehealth service to be operated by the WA Country Health Service. This is money that will be ignored by the National members who say that they do not get any services into the country. There is $5.1 million to operate an emergency —

A government member: They cut it. Their government cut that telehealth service.

Mr S.A. MILLMAN: It is shameful—just outrageous—that members opposite have the audacity to turn around and criticise us for that.

I cannot wait for the Leader of the Opposition's contribution. I have not heard one speaker from the opposition speak on this bill. They should get up and say something when I have finished, but until then, please be quiet.

A total of $6.1 million was allocated to continue a range of foetal alcohol spectrum disorder prevention initiatives.

Mr R.S. Love: I will not be doing as you suggest.

Mr S.A. MILLMAN: The member for Moore is not making a contribution. What a pity.

Mr R.S. Love: I will be making a contribution but at the appropriate time.

Mr S.A. MILLMAN: It takes a while to get across the brief.

Ms S.E. Winton: Once he's heard all our speeches, so he can understand.

Mr S.A. MILLMAN: Customarily, the minister gives his speech, then the lead speaker for the opposition stands up and gives their speech and then all the government backbenchers stand up and give their speeches. Do members know what has had to happen? Whilst opposition members are busily trying to understand what is contained in the legislation because they do not have a lawyer in the shadow cabinet—so no-one can provide them with advice—they have to wait for all the lawyers on this side of Parliament to explain to them how the bill is going to work. Then they will stand up and say, "Hang on a second, this is how law and order works." They have no idea!

The ACTING SPEAKER (Ms C.M. Collins): Member for Mount Lawley, I cannot hear you because the member for Moore is speaking. Member for Moore, you will have your turn next.

Mr S.A. MILLMAN: I hope so. I cannot wait.

Ms A. Sanderson: He's actually been in densely populated areas with Senator Bridget McKenzie.

Mr S.A. MILLMAN: As I said before, I thought they were scrambling and trying to figure out how they were going to preserve the alliance when their federal counterpart said they were going to help them campaign, provided they left the coalition. They face a number of concerns. Amongst the six of them, they face a crisis about how they are going to manage the conflict amongst them.

As I said, $6.1 million has been allocated for foetal alcohol spectrum disorder prevention initiatives, $3.5 million for suicide prevention services and $3.5 million to support the development of an alcohol-related violence prevention program at Royal Perth Hospital's emergency department.

I conclude my contribution by saying that a good government does a number of things. It tackles the difficult issues. It introduces legislation that meets its obligations under international law. It fixes longstanding problems that have been the subject of advocacy, reports and lobbying by stakeholders in the community. It does all of that as well as providing the resources necessary to support people who are struggling with mental health issues. We cannot do one or the other; we need to do both. The concerted effort from the McGowan cabinet is testament to good government. The Minister for Health is working to ensure that the budget has a sufficient allocation to fund all these services that I have articulated. The Attorney General is making sure that the legal framework is there so that if people with mental health impairments face the criminal justice system, they can do so in full protection of their rights and duties under the criminal law system.

Members have already spoken at length about the legislation. Members following me will also speak at length about the legislation. I wanted to keep my contribution brief. I commend this Attorney General for once again seizing the initiative and passing legislation that "Mischin in action" was not able to pass when he was the Attorney General during the last term of government. I commend the Minister for Health for once again advocating on behalf of people with mental health issues in Western Australia. With that, I commend the bill to the house.

MRS L.A. MUNDAY (Dawesville) [5.02 pm]: Today I stand to make a contribution to the Criminal Law (Mental Impairment) Bill 2022, which will replace the Criminal Law (Mentally Impaired Accused) Act 1996 in its entirety and address the 2017 election commitment to reform WA's mentally impaired accused laws, along with numerous reports and recommendations. This is a very large bill, with 15 parts. I would like to focus on parts 3 and 8 during my short contribution.

Part 3 of the bill focuses on raising the question of fitness to stand trial and how to deal with someone who is determined to be unfit. The criteria for being found unfit, at clause 26, includes being unable to understand the nature of the charge, instruct a lawyer, follow the course of a trial or properly defend the charge. Part 3 also states that under the new Criminal Law (Mental Impairment) Bill a person need only meet one of the criteria to be found unfit. In the judicial system, there is a presumption of fitness. One is assumed to be fit until the contrary is found. Similarly, once found unfit, one is assumed to remain unfit until the contrary is found. Also, the question of fitness can be raised at any time before or during a trial and can be raised more than once. The court, when inquiring into fitness, can order reports from psychiatrists, psychologists and other appropriate experts. If the question of fitness is raised, the Mental Health Advocacy Service must be notified. Part 8 of the bill requires the MHAS to make contact with the unfit accused persons and offer them advocacy and support.

People in this chamber know that I have a strong connection with the autistic community, and I am a huge driver of bringing to light the gaps in the systems and the amazing strengths autistic people can bring to every avenue of the workplace. My two young adult sons are autistic. They were diagnosed at a young age—both of them at six years

old. They were extremely lucky to be socially educated, and came to understand their strengths and weaknesses and how to look at autism as a super strength and not a disability.

In my life as a paramedic, I have encountered a lot of diagnosed and undiagnosed people who have fallen on the wrong side of the law or become a person of interest to the police or the ambulance paramedics. In my experience, a lot of the time it was in the form of car accidents. During that time, on a lot of occasions I intervened in police and other paramedic conversations with drivers and passengers of cars who were clearly autistic in my mind because I have a bit of a strength in picking autistic traits in people. I found that the police or ambo—whoever I was working with—felt that the person was acting strangely or answering questions in an odd manner, and sometimes they came off as condescending or longwinded or tried to avoid the answer. They lacked eye contact or became fixated on something that they could not shake, like a dent in their car or a need to contact someone, and became elevated or angry or, alternatively, they shut down, refused to answer and showed no empathy or consideration for others in the situation.

To be honest, I think every single one of us is on the spectrum. We love our favourite seat at a cafe and our fluffy pyjamas, but the difference between a neurotypical person and autistic people is that if someone has taken their favourite seat, they move on to another. For an autistic person, it could be the difference between feeling anxious, unable to continue with their day or having a complete meltdown.

There is a common saying in the autistic world that if you have met one autistic person, you have met one autistic person. Everyone shows up differently, with different quirks, tics and sensory issues, but by and large there are three major overarching traits for all autistic people. First, they have an inability to read and respond to social cues. This can be anything from struggling to follow instructions, not being able to absorb more than two or three sentences or verbal instructions, oversharing and being exceptionally trusting. Autistic people may be unaware of the impact of their actions and therefore fail to express empathy and remorse and often struggle to understand sarcasm. The second trait is hypersensitivity. This often entails some people losing control after experiencing sensory overload, which would not typically affect a person without autism. Autistic people may have too low or too high pain thresholds and can be hypersensitive or hyposensitive, which is high or low, to touch, sound, smell and taste. They have a strong propensity and craving for consistency and predictability as well as structure and routine in their environment. Any disruptions or unpredictability in this regard can be very distressing for an autistic person and they may react unusually when put under pressure. The third trait is obsessiveness. Autistic people often have a specific interest that the autistic person obsesses over and knows everything about. These obsessions may take over their life, above family and work, and can persist for their entire life. My two sons have an obsession with Dungeons and Dragons—a fantasy tabletop role-playing game—that evolved from their love of Pokémon cards and trading card games. That is in front of everything—any family birthday or Christmas. We just need to make room for it.

For some autistic people, their obsession has been something they can make a career out of. Members may be surprised, or not surprised, to learn who is considered to be on the autistic spectrum, including Albert Einstein, Anthony Hopkins, Jerry Seinfeld and Elon Musk. Elon Musk may not be a surprise. On the other hand, we have also seen the media try to link autism to different criminal activities like the Port Arthur massacre. I found a research paper titled "Violence is rare in autism: when it does occur, is it sometimes extreme?" to back me up. It comments that rather than being more likely to engage in the offending or violent behaviour, individuals with autism spectrum disorder may have an increased risk of being a victim rather than a perpetrator of violence.

CoderDojo is an awesome group of neurodiverse mentors who work every Saturday in Mandurah with autistic and other neurodiverse young people doing coding, creating programs and building working robots. I try to catch up with them when I can and in my work as a mentor for CoderDojo, I met Tom Oliver, a young man who is studying to become a lawyer. He currently works as an intern across many law firms in Perth. When Tom came to see me and found out that I was a member of Parliament, he wanted to discuss the fact that autistic people are over-represented in the judicial system. He explained his work to me and told me about his drive to one day establish his own law firm that would defend people with disabilities and autism alike and fight for a justice system that caters for all, including autistic people, which led to me standing here today. I have spoken to the Attorney General about the Criminal Law (Mental Impairment) Bill 2022, and I thank him for his advocacy in this arena.

According to Tom's statistics, two per cent of the population is on the autistic spectrum, with four to five per cent of people in prison being diagnosed with some level of autism. Tom and I believe that the three autistic characteristics that I have already mentioned render autistic people more susceptible to committing crimes.

The first characteristic is an inability to read and respond to social cues. More often than not, autistic people who are caught up in our justice system are not criminally driven per se; rather, criminal behaviour by autistic people is often a result of social naivety and simple misunderstanding. I will give members the example of my son Frazer, who happened to be stopped for a random breath test at the end of one hot summer day and nearly ended up in the back of a police car. When Frazer was stopped for a random breath test, he had significant sunburn from the day

before and had no shirt on. He was wearing jeans and no top. Most police and ambulance officers think that if someone is wearing no top, it is a good indicator that they may be a meth addict. Frazer was driving his car, he had his top off, he was sunburnt and he had his arm through the seatbelt so that it was not touching his shoulders. He was pulled over for a random breath test. The police officer asked him whether he had been drinking. He said, "No, sir." He blew into the breathalyser and the police officer asked him why he was wearing his seatbelt like that. Frazer gave him a longwinded explanation that started with suncream in 1968 and ended with what he had had for breakfast. The police officer asked him, "Why are you trying to be funny? I'm just asking you about your seatbelt." He said, "Sir, I'm not trying to be funny. I'm just explaining that, at the end of the story, I was sunburnt." I think that he tipped his hat, or bowed, or made some remark that the police officer thought was sarcastic or condescending, so the officer asked Frazer to get out of the car.

Frazer got out of the car. He is not a small kid; he stands at about 120 kilograms and is six foot four. He does not like wearing shoes, so he was wearing jeans, no shoes and no top. The police officer automatically thought that he was weird, he was not answering questions properly, and he was under the influence of drugs. Frazer said to him, "No, sir, I'm not. I'm trying to be respectful." The police officer asked what was wrong with him, why he was being weird, and whether he had been taking drugs. Frazer said, "No, I'm autistic. I'm quite eccentric." I taught both Frazer and Alex to be open in speaking to authority, so he was not afraid of the police officer, but I can imagine that someone in the same position would start to get an elevated sense of stress. He was scared, because he thought that this was not going the way it was meant to be going; he was smiling and his eyebrows and shoulders were getting higher. In the end, the police officer asked Frazer where he was going and he said, "I'm going home." The officer asked how far away that was, he said that it was straight down the road, and the officer said, "On your way." The police officer had decided that Frazer was too hard to deal with, but on another day or at another time—maybe if it was two o'clock in the morning and not four o'clock in the afternoon—it could easily have ended up differently for Frazer. That is an example of autism; I guess the police officer stereotypically assumed that Frazer could have been under the influence of drugs. To be honest, I can understand why a police officer who does not have a background with autism would think that. That is Frazer's story.

The second characteristic is hypersensitivity. For some people, this often entails losing control after experiencing sensory overload, which would not typically affect a person without autism. Autistic people may have too low or too high pain thresholds, which I talked about before. They can also have a propensity to act out in situations of disruption or unpredictability that can be very distressing for an autistic person. It can lead to feelings of frustration and rage and render them susceptible to committing crimes such as trespass to the person or to property.

I will share a story about Alex. When he was about 14 years old, he got on a train. He had forgotten his Health Care Card to prove that he had a disability, which means he is entitled to a discounted train ride, and also his student card. There was a transit guard on the train who asked him for his ticket. He said that he had his ticket but he had only paid this amount because he had disability pension. The transit guard asked him to prove it. He said, "I'm also a student, which is at the same cost as a disability pension, so I'm okay." He did not have his student ID, but he was in a school uniform. He was about six foot two at the age of 12 and weighed about 100 kilograms. The transit guard asked him to prove that he was a student. He said, "I'm wearing my Leeming Senior High School shirt. I wouldn't be wearing this if I didn't go to school." The transit guard said that people do that, and asked him to prove it. It cycled round. In the end, the transit guard took Alex off the train, marched him onto a train back to Perth and made a phone call to me. We sorted it all out from there. I explained that he is autistic and what was happening, but the guard said, "You need to put your kid in line. He was being so condescending and argumentative to me that I was one step away from calling the police." Again, it is something that just gets out of context. The conversation goes around. The other thing about Alex is that he has a flat affect, so he looks like he is not interested. Despite the anxiety that he is experiencing inside, he gives off a very flat affect, so that would not have helped his cause.

The third characteristic is an obsessive interest. Autistic people often have a specific interest that they obsess over and know everything about. However, if an autistic person's obsession pertains to something of a criminal nature such as guns, drugs, theft or stalking, or when their obsession renders them more susceptible to committing crimes, the autistic person can inadvertently find themselves caught up in the justice system.

Tom Oliver gave a good example of this in his TEDx talk titled "Autism is not a crime". He talked about a man called Darius who was absolutely obsessed with the public transport system. As a child, he was taught to drive the trains by employees of the station. As he got older, they surreptitiously had him covering shifts while they were working. They would sit back and let Darius drive the train. He had a savant memory. He had the whole New York train system down pat; he knew where every train was, its number and where it was going from and to. He had an incredible memory. Darius was obsessed by trains. Unfortunately, when Darius got a bit older and the station employees stopped letting him drive the trains, as an adult, without being asked, he decided to get into a train and operate it. He got his passengers from A to B in perfect time, he stopped at every station, he was given commendations by people saying what a great ride it was, and all the passengers were satisfied with the service. However, this time

Darius had not been employed to operate the train. He was charged with impersonating a federal employee and was imprisoned. Upon his release, still obsessed with trains, he did it again. Again, he operated trains and buses, impersonated transit employees and stole uniforms, and again he was imprisoned and released. This cycle continued 32 more times, and Darius has spent most of his adult life incarcerated and segregated from society.

After listening to Tom's TED talk, I did a quick google search this morning. Back in 2015, Fox News reported on Darius McCollum. He is now a 50-year-old man, so this has been happening his whole life. He has been arrested more than two dozen times for crimes that include piloting a subway train, stealing a bus and donning uniforms to pose as a conductor. He is being held without bail after his latest arrest, and his attorney says that there must be better options for this man, who has autism. The article reports that on Friday, Darius McCollum pleaded not guilty to charges that he stole a bus from the nation's busiest depot—the Port Authority Bus Terminal in Manhattan. He was sent to Rikers Island with no chance of bail. His attorney, Sally Butler, who has become McCollum's friend and advocate, said that we can do something about this as a society rather than locking him up and throwing away the key. But before he could be evaluated, McCollum was sentenced by a Manhattan judge who said that she had looked up the disorder online and decided that he did not have it. He has since been diagnosed by doctors on both sides—the defence and the prosecution—with Asperger's syndrome, which is on the autism spectrum.

Darius's attorney, Sally Butler, later commented that with the support of the district attorney's office, they have worked on a solution. McCollum pleaded guilty to stealing the bus, and, on Thursday, instead of being sentenced to 15 years as a habitual offender, he will get two and a half to five years and will voluntarily undergo cognitive behavioural therapy. In my mind, that is a better way to work with Darius—to understand and potentially redirect his obsession towards lawful activities.

I think that if my sons were sitting in court in a witness box giving evidence, they would be lacking eye contact. Frazer would have a monotonous voice and unusual facial expressions. He would be saluting the judge and bowing to people who came in. On the other hand, Alex's face would lack emotion. He would come off as disinterested. He would probably yawn during the proceedings out of anxiety and fear, not out of disinterest. They would both have different body language from a neurotypical person. A jury of their peers, despite being told not to construe such body language as guilt, would inadvertently unconsciously do so, because they are human; they would decide that they must be guilty just by the way they were acting.

The Criminal Law (Mental Impairment) Bill 2022 outlines in clause 47 the considerations to which the court must have regard when making an order under part 5. These are the protection of the community; the nature of the offence and circumstances of its commission; and the person's character, antecedents, age and health. Another consideration is the nature of the person's mental impairment. This is where I think people with neurological disorders such as autism, Asperger's syndrome or foetal alcohol spectrum disorder will be considered. Other considerations are the relationship between the mental impairment and the offending conduct; the degree of risk that the person appears to present to themselves or the safety of the community because of their mental impairment; and the extent to which adequate resources are available for the treatment, care and support of the person in the community.

After discussion with Tom, he and I—Tom in particular—would welcome any legislative change we might make that would encompass both diagnosed and undiagnosed autistic people who find themselves on the wrong side of the law. He also feels that the Sentencing Act 1995 should be reformed to require judges in their judicial discretion to consider releasing autistic offenders from incarceration and instead sentence them to suitable tailored therapy that will work with their autistic characteristics, such as the ones Darius is showing, and their obsessive interests, and enable them to respond to social cues. That will help address and manage the underlying causes of their crimes, because, as Tom says, being autistic is not a crime.

When I approached the Attorney General about our concerns, he and his team, particularly Marion Buchanan, were very supportive. We were concerned about whether autism spectrum disorder needed to be specifically mentioned in the CLMI bill because autism is regarded more as a neurological disorder as opposed to a mental impairment per se. The Attorney General sought advice and was informed that autism spectrum disorder is recognised as a mental impairment, as is also foetal alcohol spectrum disorder. The Attorney General also informed me that further education will be undertaken for the legal profession and judiciary as part of the implementation of the bill. As I have mentioned previously, in the situation of Darius, the judge decided that he did not meet the autism criteria, and sentenced him to a further prison sentence. However, not long after that, two doctors on both sides—the defence and the prosecution—agreed on a diagnosis of Asperger's syndrome, which sits on the spectrum. We need subject matter experts to advise judges, lawyers and other people on how to recognise and manage people on the autism spectrum.

It gives me hope that the new CLMI act will provide a more far-reaching process to enable people who are caught up in the judicial system to be screened for an autism diagnosis and to give them the vital support that they need because of their inherent vulnerability, gullibility and trauma. I thank the Attorney General and his team, and the community groups, for all their work on this bill, and I commend the bill to the house.

MR R.S. LOVE (Moore — Leader of the Opposition) [5.22 pm]: I would like to make a contribution to the second reading debate on the Criminal Law (Mental Impairment) Bill 2022. The opposition will not be opposing the bill. Many elements of this bill were drawn up in about 2016. The opposition does not have a great deal of concern about the intent and operation of the legislation in providing natural justice. However, given the size of the bill and the complexity of the surrounding legal infrastructure, it is impractical to expect a single member of Parliament without legal training to offer a sufficient critique of this bill. For that reason, the opposition believes that this bill should be referred to the Standing Committee on Legislation in the other place for it to examine the clauses of the bill in great detail, with the assistance of the professional advice that it can seek, to ensure that it will have no unintended consequences and will do everything that it sets out to do. No-one is trying to be obstructionist. It would probably take three months for that committee to do its work. I point out that as far as I am aware, that body has not considered any legislation in this term of Parliament. The upper house of this place has the ability and expertise to forensically examine the details of this very important bill. Probably only a small cohort of the people who come into the criminal justice system—half a per cent or thereabouts—will be affected by this bill. However, we will do a disservice to those people if we cannot ensure that the bill will achieve what it sets out to achieve.

I cannot pretend to have an understanding of all the information that is contained in this bill, the background to the bill and the infrastructure of the justice system that will sit behind the bill. I will not be able to do justice to the discussion by having some sort of sham consideration in detail based simply on my reading of the letter of the law as written in this bill. I have gone through many bills with the Attorney General, and sometimes he has even complimented me on my understanding of some of the matters involved. However, I am not ashamed to admit that it is beyond my ability to provide a meaningful critique of this legislation. I am not a lawyer. I have not been involved in the treatment of people who might have some of the conditions that will be covered by this bill. I will not pretend that I will be able to do justice to this bill. It is vastly important that the bill be thoroughly examined. The proper place to do that is the legislation committee of the upper house. It would be supported by professional research staff. It could also call in legal expertise pertaining to corrections, custody and mental health issues that no doubt will be part of the decision-making of the courts going forward.

It is essential that the bill be given that examination in the other place. The Attorney General can go out and make the statement that the Leader of the Opposition admits that he cannot properly deal with this bill. I believe that would be beyond the ability of any layperson. I admit that. It is extremely important. We all remember the unfortunate situation of Marlon Noble, who languished in custody for years. Bennett Brook Disability Justice Centre is used to house people who are in that situation. Last Thursday, Hon Tjorn Sibma asked a question in the Legislative Council about that centre's current occupancy and was told that there are three people in that facility. It has not had a lot of use. However, it fulfils an important function for people who have been found guilty of a crime but have not been sent to prison and need to be housed safely. The centre's website states that people are sent to that centre with approval from the Minister for Disability Services for a placement to be finalised. The centre is designed to create a secure home-like environment where residents have the opportunity to take responsibility for their own day-to-day living needs. It is staffed 24 hours a day, seven days a week. That centre is at the heart of some of the decisions that will be made under this legislation.

The Attorney General indicated in his second reading speech that it would take about 12 months to implement the bill. A large body of regulations will need to be drawn up. There is no time imperative to not have this bill properly examined by a committee of this Parliament. That committee could take about three months to go through the bill in detail, and we could still get the bill through the upper house in plenty of time for the act and the regulations that will surround it to be put in place in 12 months.

We would then have the assurance that Parliament had the opportunity to properly inspect the legislation to analyse and understand its effects fully; it would be explained in a report and we could incorporate some of the discussion that might follow into *Hansard* from the discussion in the other place. For that reason, I ask that the Attorney General considers my position and my request and allows this bill to go to that group. It is very important. We want to see that the law put in place is sound. As I said, there was an earlier iteration of this bill. As someone pointed out—it might have been the member for Mount Lawley—Hon Michael Mischin had brought that forward. It is not something that should be political football. I think everybody wants to see this bill work. The way to ensure that it works is to take it to that committee for examination.

The member for Moore does not have the ability to properly critique this legislation with the Attorney General today. It is just not practical. Any member of this place who thought that appropriate would be doing a disservice to the processes of this place. We have a committee system that can examine complex bills. I remember when we ran a second chamber in the Legislative Assembly to consider the Public Health Act when Hon Kim Hames was the Minister for Health and Hon Roger Cook was the shadow minister. The former member for Mirrabooka sat in that committee. For weeks, they went through that very large piece of legislation to ensure that it was appropriate. Parliament has this process at its disposal. Consideration in detail without support, without a professional research

officer of Parliament helping and, as I said, other expertise that the committee may seek to draw from, is a sham of a process. It is not going to provide a meaningful analysis of this legislation. My plea to the government, not just the Attorney General, but also to the Leader of the House and two other ministers in here, is that they consider seriously that this should be given due consideration, the bill should go through the committee system, there should be a report, there should be consideration of the report and then the legislation can proceed. That can happen in a timely manner that will ensure that by the time the regulations are ready to be put in place, the bill having been properly critiqued will also be passed and given assent.

The bill has some very important considerations and will take away elements that have led to outcomes that have not been in the best interests of persons with mental impairment who find themselves in the criminal system. It will put in place a whole different raft of processes and examinations of evidence et cetera. I am sure that will provide a fairer outcome for the community and also provide the community with the assurance that it will be protected. Protection of the community is important and needs to be considered in any of the tribunal's decisions. For that reason, it would seem to me to be almost disrespectful to the drafters and the many people who have been affected by the current legislation and legislation that existed before that for this matter not to be properly examined through the committee system.

With that, I will conclude my discussion and ask that the government takes very seriously my plea that a committee look at the legislation so that we can be assured that it has been properly examined. For me to pretend to go through this bill and understand all of it and be able to draw out the questions that need to be asked is just not a reasonable proposition given the circumstances and the fact that I do not have legal training or a background in any of the processes outlined in this bill. With that, I conclude my discussion and end again with a plea that this be considered properly by a well-resourced committee with people who have the time to get the advice and information that is necessary to get a thorough understanding of the bill and its implications so that we get it right.

MR D.A. TEMPLEMAN (Mandurah — Leader of the House) [5.35 pm]: I want to make a contribution to the second reading debate on the Criminal Law (Mental Impairment) Bill 2022 because I want to make some factual statements about the handling of the bill. I want to thank the Leader of the Opposition for his honesty. I accept his comments regarding the capacity to scrutinise complex legislation. I accept that; however, I do not accept his alliance spokesperson's totally misleading email or statement that accused the government of ramming a bill through this place. I have a point of contention with that. The fact of the matter is that we have good relations with the new manager of opposition business. The government made it very clear that this bill is important and that all the time that was required would be made available, including in my letter to the Leader of the Opposition and to the Leader of the Liberal Party in this place. In order for this bill to be thoroughly debated, as much time as required would be made possible, including sitting late in this place. I accept and understand the opposition's limitations with its numbers in this place, but when that arrangement is made, in good faith, and the alliance spokesperson, the shadow justice minister in the other place, Hon Tjorn Sibma, then accuses the government of treating Parliament "as a rubber stamp as it seeks to rush the most significant changes to the state's mentally impaired accused laws in three decades through the Legislative Assembly in three days", it is a crock of rubbish! That is a crock of rubbish from that member up there in that place.

I am concerned, because it seems to me that the rift is already very clear in the unsteady alliance of the Nationals WA and Liberal Party agreement. In question time today, when the Premier quite rightfully put a question to the Leader of the Opposition with regard to a matter raised in question time, we heard the member for Vasse say, "We're not part of that team." That is what she said. Are they or are they not? This is a classic example of how the National Party and the Liberal Party operated when they were in government. During the Barnett government and National Party alliance, we knew that regularly National Party ministers would actually vacate the cabinet room if they did not want to discuss, vote on or make a decision about particular cabinet matters. What Hon Tjorn Sibma has done is totally unacceptable.

Mr J.R. Quigley: It is dishonest.

Mr D.A. TEMPLEMAN: It is dishonest, and it is a lie. It is. The member cannot say, "We don't have the resources or the capacity or capability to debate a bill in this place" and then accuse the government of trying to ram it through when every amount of time is made to accommodate whatever the opposition wants. I am not being critical of the Leader of the Opposition because I understand the difficult situation that the member in the other place, a member of the so-called alliance, has put him in. He has thrown an absolute proverbial sandwich to the member. We are in only the second week of Parliament this year and already the widening gap between this so-called alliance with the Nationals WA and the Liberal Party is very, very clear.

I want to state some facts about this bill so that people in this place are very aware of how the Attorney General has provided every opportunity to ensure that the opposition is briefed and why the statement put out by Hon Tjorn Sibma is absolutely dishonest, political and disingenuous. Let us go through this. The bill was introduced in December last year. It sat on the table for two months and provided members with the capacity to seek information and consider some of the complexity of this bill. It has not been here for three weeks, which is the normal time before a bill is

debated; it has been sitting on the table for two months. The opposition was offered the entire week. We said it could have as much time as it needed. I wrote that in the letter. I said that if we have to sit late Tuesday and Wednesday nights to deal with this bill, we will. We know that the opposition has only six members in this place. Accept it. We said that we would do everything to accommodate the opposition's needs. My conversations with the manager of opposition business late last week and indeed earlier today were along the lines of, "How much time do you need?" If we needed to sit tonight, I would have said to the Speaker that we will be sitting tonight so we will have a dinner break, and the same for tomorrow. The opposition was offered the entire week to consider the bill. The Deputy Leader of the Opposition was informed by me. He informed me that there was no plan or intention to speak on the bill for very long.

When the member for Bicton was on her feet, I made the point that there were no opposition members in the chamber for nearly an hour. That is not the opposition leader's responsibility, but that is appalling. There was no opposition member in this place for nearly an hour. I cannot believe that. I closed Parliament when I was the opposition Whip because the then Barnett government could not provide anyone on their side of the house. I closed it on the last day of Parliament in 2016. I remember it very well. I wear it as a badge of honour. Members opposite are slack and lazy, and it demonstrates a wide gap between the Liberal Party and the National Party. I have to say that my criticism is particular to the Liberal Party. There has been no contribution from the Liberal Party and it has not given any indication that it wants to make a contribution. It has been asked several times.

Hon Tjorn Sibma, do not come and tell fibs. Do not put out crocks of rubbish and accuse the government of trying to ram something through when the member and his opposition —

Withdrawal of Remark

The ACTING SPEAKER (Ms C.M. Collins): Leader of the House, you are experienced enough to know you cannot accuse another member of lying.

Mr D.A. TEMPLEMAN: I withdraw.

Debate Resumed

Mr D.A. TEMPLEMAN: Stop being so disingenuous. Stop being so politically inappropriate. Stop misleading the people of Western Australia. Stop doing it. It is because it is a crock of rubbish.

We know it is a complex bill. When the bill gets to the other place, consideration of it will be in the hands of the members of that other place, but we are dealing with the bill in this place. The Leader of the Opposition has already indicated that he is not capable—I am not meaning that in a disingenuous way—of going through the clauses. I accept that and I thank him for being honest. He was being honest but he should not let his alternative member throw rubbish like that out. I do not think he even knew about it. It is just so poor how low they will go, particularly that member in the other place.

I have to tell members that my understanding is that when the briefings were offered, no Liberal member from this place even attended a briefing. A Liberal member in the other place has accused the government of ramming through a bill when the Liberal members of this place did not even turn up to the briefing on it. That is not our fault. That is their fault. How ridiculous and appalling it is. Members opposite need to understand that they cannot chuck rubbish like that. I negotiate with the manager of opposition business in good faith, and I get on well with him and he is a good man. I negotiate with him in good faith. But then the member from the other place, who I think the Leader of the Opposition needs to pull into line, goes and writes that absolute rubbish.

Then the Liberal Party members in this place do not even turn up in the house and do not even contribute to the debate. They are not even interested. At least the Leader of the Opposition is honest. Where are those other two opposition members? Not only that, none of them could turn up for at least an hour during debate. I will sit down but I wanted to put that on the record because it is important that Western Australians understand that this government will present important legislation and the capacity and capability for it to be debated will be given, and the opposition will have every opportunity to do that, as it has with this bill. For various reasons, including those that the opposition leader has given, it is not able to. I accept that. But I will not accept rubbish from that person in the other place who is the so-called justice spokesperson when he chucks and flings that sort of thing here. It is unacceptable. We will not accept it. The bill should be further debated.

MS M.J. HAMMAT (Mirrabooka — Parliamentary Secretary) [5.47 pm]: I rise to make a brief submission on the Criminal Law (Mental Impairment) Bill 2022. I thank the Leader of the House for his contribution because it was incredibly important in highlighting what a sad state of affairs it is. We are in the second week of sittings for the year. We are here debating a really significant bill that has a long history. The matter has been before Parliament at various times. It is not something that has materialised suddenly or without explanation. As the Leader of the House said, it has lain on the table for months, yet we find that the contribution from the opposition members is

that rather than debate the substance of it here today, they seek to refer it to a committee. I think the Leader of the House was very clear about some of the misleading information from the justice spokesperson in the other house and why we take exception to that.

I want to make a contribution on this bill because I think it is incredibly important. I will keep my comments fairly brief given the time, but I want to commend the Attorney General for once again bringing a really important piece of legislation to this house. A number of bills introduced by the Attorney General have passed this Parliament in both this term and the previous term of government. We know the Attorney General has a great zeal for legislation and ensuring that our legislative framework remains fit for purpose for the modern age. He makes sure that our legislative framework is appropriate, fair and balanced and takes account of the needs of everyday Western Australians. This bill is a fine example of that same set of values that have underlined all his work as the Attorney General.

These are really significant reforms. A number of speakers before me have spoken quite eloquently about why it is the case that we need to make changes in terms of how we deal with mental impairment in the criminal law system.

By way of brief summary, and I think others have said it before me, the elements of this bill will allow the judiciary discretion to impose a range of options for mentally impaired accused people. These increased options will include things like community-based orders if they are found to be unfit to stand for trial. Importantly, it will limit terms so that custody orders will be no longer than the term the person would have got had they been found guilty of the offence. In effect, it will provide some comfort for people that whatever custody might be imposed on the mentally impaired accused person, they will not be in custody for longer than what otherwise would have been the case. There will be new provisions for procedural fairness making sure that there are rights to appear, appeal and review. The bill will ensure that determinations about the release of the mentally impaired accused from custody and the conditions attached to that release are made by the Mentally Impaired Accused Review Board with a right of review to the Supreme Court on an annual basis.

These are very important principles that will ensure that people with forms of mental impairment who engage with the criminal justice system will have a more appropriate balance and that their needs will be taken into account. I thought the member for Dawesville made a very good submission about some complexities for people who might be engaged with the criminal law system or police and how those situations could potentially escalate. It is a very important bill in dealing with that aspect.

In preparing my comments this evening, I did think quite a bit about how our level of understanding and knowledge of mental illness and impairment has changed and progressed a great deal over the years. It is very important that we come back to acts like this to make sure that we have a legislative framework that matches our contemporary understandings of mental illness. One of the things that we all perhaps understand is that we still really do not well understand mental illness. It is not well understood. We can look back at the history and recognise that people often suffered from mental illness and were subject to some quite cruel and unusual practices through history, often in the name of finding a cure. I think it really underlines how in the search for a cure, people's understanding of mental illness has been quite deficient. Clearly, the way they have also been engaged in the criminal law system has also been weakened as a result of that. It is important that we update our legislative framework and continue to ensure that we reflect our current and contemporary understanding. That is what this bill will do.

If we just turn our mind back, we can see many different practices that were used for the treatment of mental illness. Some of them were quite shocking. One of the earliest forms of treatment was trephination—a great word that I had not previously heard, but will certainly want to use again! It is one of the oldest forms of surgery. There are estimates that it was used approximately up to 7 000 years ago. In earlier years, it was believed that mental illness was the result of supernatural phenomena, and that a way to cure it was by putting a hole into the skull using an auger or bore or sometimes even a saw. The view at the time was that there was a deficiency in the brain and that by relieving pressure on the brain, it would alleviate the mental illness that that person was suffering.

Throughout history, there have been attempts to "fix the humours"—that was the kind of phraseology that was used. People were seen to be made up of substances or fluids, also referred to as humours, and they had to be kept in balance. Those were blood, phlegm, bile and what was called black bile. People who were out of balance needed to go about fixing their humours. That was a way that people approached the idea that they could cure mental illness. That led to the idea that bringing the body back into equilibrium would require bleeding patients and sometimes the use of leeches to suck people's blood out. There were also examples of purging and vomiting by ingesting all sorts of terrible things. Of course, none of those worked to alleviate mental illness. I am sure some of them were quite cruel.

There are lots of examples over the years of how mental illness was seen. Mental illness was understood as a sign of demonic possession. Through history, there are many examples of rituals such as exorcisms and prayer used in an effort to relieve the individuals and their families from the suffering. Of course, many women were burned or

drowned as a result of being considered witches—many of whom no doubt suffered from some form of mental illness. The list goes on. Some of them are quite shocking.

Experimentation through the 1800s used what was called fever therapy. An individual was infected with another form of infection as a way to try to cure the mental illness. Malaria was the most successful as it worked in patients who had syphilis, because syphilis is a bacterial infection. By invoking another fever through malaria, that rising body temperature actually cured syphilis in some patients. It did not work for anyone suffering from mental illness as a result of any other cause, of course. For those people, most likely, it quite often resulted in death. Approximately 15 per cent of patients died as a result of that practice, which was quite common at the time.

More recently, there have been other sorts of treatments as well, such as the insulin coma therapy and what have you. The point of reflecting on this is that it underlines how our understanding and knowledge of the causes, treatments and manifestations of mental illness have changed quite dramatically over time. No-one would now believe that a person suffering from mental illness is possessed by the devil or suffering some other kind of possession. We have simply moved on from that. We go about addressing the issue in a very different way. I think it is absolutely critical that we continue to make sure that our justice system is fit for purpose for the current understanding. This is what the Attorney General is doing—namely, ensuring that our justice system is fit for purpose and recognises our contemporary understanding of the complexities, causes, manifestations and appropriate treatments for people experiencing mental illness.

With that, I bring my contribution to the end. I once again thank the Attorney General for his work. This is an incredibly important bill. We know that the other contemporary understanding we have of mental illness is how widespread it is in the community. A great number of people experience mental illness and mental impairment during the course of their life. I commend the Attorney General once again, and congratulate the Leader of the House on his very clear comments about how it is all about responsibilities when we are elected to this Parliament. We must undertake our duty to take the legislative process of this place seriously. Fundamentally, that is the purpose of being here. We need to ensure that all of us take that obligation seriously, particularly those in the Liberal Party who have not been part of this debate and made contributions in the other place suggesting that, in fact, we have rammed this legislation through the Parliament. I do not know where the Liberal Party members have been, but their primary obligation is to be in this house debating legislation that comes before it, representing their communities and engaging in the detail. That is where I think their communities expect them to be, and they do a great injustice not just to themselves, but to the community of Western Australia by failing to be here today. With that, I commend the bill to the house.

MR J.R. QUIGLEY (Butler — Attorney General) [5.59 pm] — in reply: I rise to thank all the contributors on the second reading debate of the Criminal Law (Mental Impairment) Bill 2022. I do not want to single out individual members this evening because it would take a little long to go through each of their contributions, but they were sound contributions. I would particularly like to thank the member for Dawesville for frankly and candidly exposing and bringing to the chamber's attention the difficulties for those in our community who are labouring under autism and how this bill might assist them. I thank the member for Landsdale for her long and good contribution, and also the member for Mirrabooka. I think the member for Mirrabooka sets an example for the Liberal Party because the member is one of the most diligent members in the chamber for being here and listening to all the debates and making a contribution.

I am very pleased that there is support all around the chamber for this bill. As we know, there was a report back in 2016 that my predecessor did not act on. That is a little misleading. He did act on it, because he added it to the pile of reports that he had on the Guardianship and Administration Act, the Coroners Act and the Criminal Law (Mental Impairment) Bill. He was diligent in keeping a nice, neat stack of reports so that when we came to office, I could go straight to work on report after report and bring them into effect.

I want to clear up something for the chamber. I know that Hon Tjorn Sibma in the other place will read this. I have an observation and perhaps some advice for him. I know that on a bill that is this important, the judiciary and senior members of the profession follow *Hansard* closely. When we go to functions like the Western Australian Bar Association dinner or the judge's dinner, the opposition spokesman turns up having shot himself in the foot for his dishonest behaviour in front of all the profession. He absolutely shreds his credibility and that of the Liberal Party on the way through. In a dastardly email, he set out that the Labor Party was treating this Parliament as a rubber stamp and rushing through legislation. The member for Mandurah—the Leader of the House—has already explained why that is absolutely false, but I can add to it. As I said in the second reading speech, the first rounds of consultation on this commenced in May 2019, and 24 organisations were consulted. That was the first round of government organisations, including the Chief Judge; the Chief Justice; the Chief Magistrate; the President of the Children's Court; Magistrate Zempilas, who was running the mental health Start Court; the Department of Communities; the Office of the Chief Psychiatrist; and the Office of the Public Advocate. I could go on. There are 24 of them.

The second round of consultation took place in February 2020, involving 19 government and external stakeholders. At that time, the former shadow Attorney General was involved, I believe. He was definitely involved in that round of consultation.

A third round of consultation was held in October 2022 after speaking to the wider groups, including the opposition, and having gone back to government. After all that consultation, the final bill was prepared to present to this chamber. Shortly before its presentation, we had a number of emails from Hon Tjorn Sibma, who advised in the first one that he had become the shadow justice spokesperson, with a wounded foot where he shot himself. He sent a number of emails advising that he had taken over as the opposition's spokesperson and asking whether he could have a special briefing. Every effort was made to do that.

One email from Hon Tjorn Sibma reads —

> Millie,
>
> Thank you. Are you able to advise me about the range of stakeholder consultations you had, and when these occurred?
>
> Sincerely,
>
> Tjorn

The email to Hon Tjorn Sibma states —

> Dear Member
>
> Thank you for attending today's briefing.
>
> As discussed here's the link to the … 2016 report …
>
> We are working on an answer to, "How many of the current cohort of CLMIA Act supervised persons have or have not had non-CLMIA sentences in place …

We say that we are looking into the question he asked. The honourable member replied —

> Unfortunately I have a medical appointment at that time. Can I speak with the Parl Sec afterwards—I do have his number.

The reply to him from my parliamentary liaison officer states —

> Unfortunately our Parliamentary Secretary is unavailable from 12.45–1.45 tomorrow.
>
> If the advisers are amenable, are you available from 10–11am instead?
>
> If not, I understand the Parl Sec is happy to forego this meeting—just let me know.
>
> Kind regards,
>
> Millie.

The response from the honourable member was —

> I appreciate your exceedingly prompt reply.

The next correspondence to Hon Tjorn Sibma was —

> Dear Member
>
> Thank you …
>
> Could you do 12.45pm–1.45pm tomorrow … ?

We did everything to accommodate him because he had just come into that position. He then requested that we set out in table form all the people who had been dealt with under the act and under which sections. I have these here. It is six pages of details of how the mentally impaired accused had been dealt with. Following the opposition briefing, we got a number of questions from the honourable member, totalling four in number. The member asked —

> **Do any other jurisdictions provide a statutory right to advocacy for all persons with mental impairment like that currently provided in the Mental Health Advocacy Service under the *Mental Health Act* … and *Declared Places* … and proposed to be expanded by this Bill?**

We gave detailed answers. He then wanted set out in table form details of the bill and whether it addresses the recommendations in the report. For the information of the member for Moore, it is in tabular form. It is eight pages of each of the 35 recommendations anchored back to the clause in the bill that was before the chamber. Those senior judicial officers and senior barristers listening to this debate are now fully aware that the opposition's justice spokesperson is a dud and a fraud. He sent out an email saying that this government was just using this place as a rubber stamp.

We bent over backwards to supply him with a private briefing—for as long as he wanted, on any subject he wanted pertaining to the bill—with a special Teams meeting so that he could have his advisers close by to help him with the questions. Following that, he received in tabulated form a list of all the people who had been dealt with on appeal under the Criminal Law (Mentally Impaired Accused) Act, and then a further eight pages of tabulated information for each recommendation, which clause addresses it and a comments section when it is required. For example, there is a comment about whether amendment should be made to section 42(1)(a) of the Criminal Law (Mentally Impaired Accused) Act. Is it addressed in the bill? No, but the bill will provide for the standalone Mental Impairment Review Tribunal. That is in part 10 of the bill. There is a narrative comment to each of the proposed sections that was sought by the honourable member in the other place, the shadow justice minister.

Those people now reviewing the shadow justice minister's effort know that it is misleading in the extreme. It is dishonest to say that this government was using this Parliament as a rubber stamp. As the minister who has brought the bill before the chamber and after three rounds of consultations, after the special private briefing for the member, after replying to all his emails that posed questions to us and after providing tabulated charts so that he can follow which clause number tied to a particular recommendation in the report, I am offended. It is a very sad state of affairs for the opposition to have sunk this low to attack the government, not on the substance of the bill and not on what we are doing but to fraudulently assert that we are rushing this bill through the Parliament, giving it cursory debate, applying the rubber stamp "pass" and sending it on its way. Nothing could be further from the truth.

I am not really being critical of the member for Moore. He has been the member of this place who has interrogated other bills that I have brought before the chamber, and done so competently, despite not being a lawyer. I thought that it was, in all those cases, a very fair attempt at interrogating the bills. But, obviously, the left hand is not talking to the right hand in this alliance because Mr Sibma had it all, including, as I say, eight pages, going clause by clause in relation to the recommendations. When members opposite talk about this Parliament needing to examine the bill more closely, I do not cavil with that. But the time that this chamber interrogates the bill is when we have consideration in detail and that has not happened. It has not happened not because the government supplied any guillotine to push this bill through; it just has not happened. I appreciate that the Leader of the Opposition is a member of the Nationals WA and that the Liberal Party members might not have given him all the information and all the emails that were given to them at the briefings. The Liberal Party probably keeps the Leader of the Opposition in the dark. The time for this chamber to interrogate this bill is during consideration in detail, but the opposition will waive that, taking it through to the Legislative Council. I cannot give the member an undertaking about what will happen in the other place with the Standing Committee on Legislation and all that. That is up to the other chamber, and I do not want to be presumptuous.

But cutting back to the chase now, this bill is about reforming our criminal law for those circumstances in which mentally impaired people intersect with the criminal law. I will go back to the case that precipitated this as an urgent matter for me and that was the case of Marlon Noble. He was charged with indecent assault. He was declared mentally impaired and unfit to plead. He was given a detention order. The system forgot about him. A prison officer in Greenough Regional Prison approached a visiting Legal Aid lawyer to say, "Can you see this prisoner over here? He's been here for 10 years and he hasn't got a sentence. We do not know what's going on." That lawyer then wrote to the Director of Public Prosecutions saying, "We've had an assessment. He has stabilised enough now to plead and understand the proceedings. Could you put him to trial, please, because he wants to plead not guilty. He said he did not touch this woman." The DPP sent the police back to see the witnesses, who were young Indigenous girls, and they said, "No, we said at the time it didn't happen. This was another family making the allegation that he abused us. It didn't happen." Marlon Noble was released after spending 10 years incarcerated for something that the supposed victim said never happened, and there was never a trial. That is why we will have special hearings so that before a detention order can be made, there has to be at least some case that the court can be satisfied with, on the balance of probabilities, that the right person has been brought before the court or that there is enough evidence against the person to convict him if he was compos mentis. He or she will not be convicted because of the provisions in this legislation, but an order will be able to be made.

The other critically important part about this legislation is that it will take the executive out of the loop. It will be for the new Mental Impairment Review Tribunal, headed by a Supreme Court justice, to review these cases and make the call about whether the person should be detained, whether the person can live at home under a community service order or whether, ultimately, the person can be discharged from custody. As we all know, there are also provisions in this legislation to have a system like that in our high-risk offenders legislation. If a court says that a person is mentally impaired, so they will not be convicted, the court will be able to give an detention order nonetheless. If the offence was deserving of two years' detention, the court can make a detention order of two years. At the end of that two years, the person's mental capacity might have deteriorated. He might have become even more of a potential danger to the community. Then there will be capacity in this scheme to go back to court to seek a longer period of detention, as we do with the high-risk offenders or sex offenders.

Perhaps I am some sort of nerd when it comes to the law. There is something like 400 clauses in the bill, and after a bit of exercise, a couple of Sundays ago, I sat at home and thought, "I will start again. Instead of looking at this division and that division, I will slowly read the bill from cover to cover, every proposed section, every item in the index and every proposed section that follows." As I said, I might have been a bit of a nerd because I thought, "What a beautifully written piece of legislation!" I came to one spot and thought, "Now, they have not provided for that", but then I turned two pages and there it was included most elegantly. I would like to thank the drafter Roger at Parliamentary Counsel's Office for such a fine effort. This piece of legislation is something that the Parliamentary Counsel's Office can be truly proud of. I do not suppose a lot of people in the community will say that it is a beautiful piece of legislation the way it has been written, so I congratulate everyone. With that, I shall resume my seat.

I commend the Criminal Law (Mental Impairment) Bill 2022 to this chamber and thank all members, including the member for Moore, for their contributions.

The DEPUTY SPEAKER (Mr S.J. Price): Before I put the question, I have some commentary on the debate we have had this afternoon. We all know that it is out of order to accuse someone of deliberately undertaking dishonest behaviour or misleading or whatever. The comments that we have heard accusing another member of Parliament of engaging in dishonest behaviour are very similar to accusing them of deliberately undertaking or lying or something like that, which we normally do not do. I suppose accusations of engaging in dishonest behaviour are the same as directly accusing a member of doing something deliberately. In future, when unusual circumstances arise, be mindful of that.

Question put and passed.

Bill read a second time.

[Leave granted to proceed forthwith to third reading.]

Third Reading

MR J.R. QUIGLEY (Butler — Attorney General) [6.24 pm]: I move —

That the bill be now read a third time.

MR R.S. LOVE (Moore — Leader of the Opposition) [6.24 pm]: I will make a brief contribution to the third reading in the most unusual of circumstances in that there has been no consideration in detail, for the reasons I pointed out. This is far too complex a matter and beyond the norm of other legislation that we have discussed in this place with the Attorney General. The fact of the matter is that I remain of the view that the Criminal Law (Mental Impairment) Bill 2022 should go to the Standing Committee on Legislation and be forensically examined in that place. I take the point that it is not for this house to determine what happens in the other place, but I also note that several ministers are here and I am sure that they would be able to express an opinion if discussion were to take place within cabinet or at any level around any matters to do with the possibility of the other place sending this bill to the legislation committee. I ask that that be a considered and, with that, I conclude my contribution.

Question put and passed.

Bill read a third time and transmitted to the Council.