MICHAEL MCGARRY — RELEASE FROM PRISON

622. Mr F.A. ALBAN to the Attorney General:

I refer to the decision made in the Supreme Court yesterday to release Mr Michael McGarry from prison on a supervision order. Given the naturally high level of public interest and concern regarding this issue, can the Attorney General provide members with some greater clarity about Mr McGarry's release?

Mr C.C. PORTER replied:

I thank the member for his question. Yes, there has been some degree of interest in Mr McGarry and the order that he is now subject to. Mr McGarry, I guess, could be euphemistically described as a very difficult person, and this presents a very difficult problem for a government of any stripe. Perhaps I will just give a very brief summary. This is a matter that no doubt many members will be asked about by their constituents or a range of people. It is useful to have at least three points made about the history of this matter and how Mr McGarry came to be in this position and how he became the subject of these orders.

Mr McGarry is long known to the criminal justice system in Western Australia. He has an incredibly long criminal record. I would make three points about that. The first is that back in 1998 he was convicted of indecently dealing with a child under the age of 13 years. At that time he already had a very long record. The Director of Public Prosecutions made an application under section 98 of the Sentencing Act, which application was effectively to detain him indefinitely so that he would get a sentence of indefinite detention, which is something that we can do under our Sentencing Act. That application was successful before the Court of Appeal. It went to the High Court, which ruled that that application should not have been successful, and it was sent back down for re-sentencing. I guess it is something of a salutary lesson that even the High Court is fallible. It, in effect, found that the evidence that was provided to the sentencing court did not permit it to conclude that, more probably than not, two years after sentencing there was a risk that the offender would engage in conduct of which the consequences would be grave and serious for society. Therefore, that order did not stand.

He was released from custody. He then reoffended in 2002 and 2003. He was apprehended with respect to both of those matters. The first was for indecently dealing with a 14-year-old girl and depriving her of her liberty. The second was for an aggravated indecent assault on an eight-year-old girl. This occurred notwithstanding that the High Court determined that it could not have been found on the balance of probabilities that he was a risk in those terms. He was then sentenced for those matters, and again an application was made for indefinite detention as a part of the sentence. Ultimately, that application was withdrawn, no doubt after the DPP looked at the High Court jurisprudence on this issue. He was then sentenced on the second charges with respect to the offences for which he served about five years. He served the full amount of his term.

An application was made by the DPP under the Dangerous Sexual Offenders Act—which is a very good piece of legislation that the opposition brought in in 2006—and that application was for the court to exercise its discretion that he be under either a continuing detention order or a supervision order. Her Honour Justice Jenkins determined that Mr McGarry could be released into the community under a supervision order. That order has 52 conditions attached to it. I have read it. For the moment its terms are suppressed, although I understand that some, if not most, of the detail of that order will be known publicly once there has been an opportunity for the court to release it minus all the identifying conditions. As I said, I cannot talk too much about the detail of the order, but I can say a couple of things about the way in which my department and I have gone about administering that order.

I met with my department, the commissioner and relevant officers this morning and we have gone through each of those 52 orders in some level of detail to work out how it is that we can adequately supervise the offender on those orders. There will be weekly reports to me about that level of supervision. Mr McGarry will be scrutinised, I think, more closely than anyone else in the history of this jurisdiction under one of these orders.

My assessment, if I might say so to the house, having looked at each of those 52 orders, is that they are so stringent that I think commonsense would say that any normal person would have difficulties in meeting them. Indeed, I do not regard Mr McGarry as a normal person.

I can assure the house and members of our community that we have received those orders from the court. We will allocate every resource necessary to ensure that they are met. Mr McGarry will be under intense scrutiny. I have my doubts that he will be able to meet the terms of those orders over the medium, long or even short term. If that individual breaches any one of those orders, we will be returning him to the process to which he has been subject and I would imagine that his prospects of any such future order would be diminished radically, if not completely.