PROHIBITED BEHAVIOUR ORDERS BILL 2010

Second Reading

Resumed from 21 October.

HON JON FORD (Mining and Pastoral) [3.19 pm]: I am coming to the conclusion of my remarks. The point I was trying to make before the recess was that many people's first contact with the law can be a make or break occasion; that is to say, if the law officer were able to show some discretion and take on a mentoring role and give somebody a kick up the backside in private, it would allow those people, as they go on through life, to develop as contributing members of society.

What I see in this instance is a bill that smacks of vindictiveness. It is leading society into an area of seeking to punish everything. It is a lazy bill, because instead of trying to resolve issues and put in resources to bring people along in society, it chooses to ostracise them. I would like the parliamentary secretary to answer a couple of questions in his response to the second reading debate. My understanding is that the bill will allow the publication of the names of people who are caught by the powers in the bill. I have a couple of issues with that. The British equivalent of this bill, in fact, encouraged the publication of people's names and led to examples such as these, which I am holding up for members to see. I am not sure if any other member has shown these in the house. I have a picture of a young fellow who has his name on a beer mat in a pub. I have examples of a few different people. This example is of a young man standing next to a bus on which his photograph is displayed.

Hon Col Holt: Can the member identify where that is?

Hon JON FORD: It is somewhere in Britain. These examples have raised a couple of issues for me. I do not see the value in that or what that does. In the example of the young man standing next to the bus, it could be a picture taken on a mobile telephone and is part of a bragging right, such is the way that young people think, particularly young men, about risk taking. Another issue that it raises for me is that for people who are caught up in or may be trying to escape domestic violence—or any sort of violence—the publication of their photograph would identify them and the district where they are, which would be an essential issue when trying to hide from those people. I have some concerns about that, and I would like know how the government would seek to fix that, or if that is indeed what the government is planning to encourage. As I said, for the life of me I cannot see any value in doing that.

As I said, this is a lazy bill; it will produce a lazy society. It is a vindictive bill that seeks to isolate people, particularly young people. It will target young men and women in my electorate, particularly in places like the Pilbara, the Kimberley and the outer Goldfields, because those people have very limited opportunities. Society already isolates them. Previously in a speech in this Parliament I stated that as a society, and through government, we institutionalise racism because we create laws that particularly target Indigenous people, but we do not supply them with enough resources. Much the same goes for people in low socioeconomic groups who have fewer opportunities. When this sort of bill becomes law, it will have what I hope is an unintended consequence of further isolating them from the community. In the end, the community will pay. Society pays either at the start by investing in these people and helping them out, or at the end by building lots of prisons and courts, and employing lots of probation officers. Society pays one way or the other. Any reasonable, thinking person would think that the investment up front was better than afterwards.

If in debate in this chamber the government had said that this was just its initial response and it had X, Y and Z planned and it would spend X amount of money to invest in support officers and facilities to help people break the cycle of petty crime and to break away from the circumstances in which they are in that makes them seek those sorts of thrills and to address the issues that make them feel isolated from society and wishing to wreak some sort of revenge on a society because they do not feel part of that society, I might be a little supportive of the bill, but we have heard none of that. This is purely a vindictive, punitive and lazy bill and I urge the house to reject it.

HON COL HOLT (South West) [3.27 pm]: I want to make some brief comments to give my view. I point out that these comments might not be shared by some of my colleagues in the National Party. I want to pick up on an interesting point that Hon Jon Ford made a couple of weeks ago now, when he talked about good, old-fashioned policing that has set some people on the right track. I have had some experience of this as well; one of my brothers got a good kick in the pants when he was younger to set him on the right trail, and he has turned out all right. I am not talking about my so-called brother in the other place, who probably has had a good kick in the pants every now and again! I am talking about my own brother. I am concerned that we hear those stories a fair bit, but we do not hear of those occasions when that has failed. Often good, old-fashioned policing has worked, but there are other times, which we probably do not hear about, when someone has slipped through the net

because they were dealt with by a leaner hand when a stronger hand was needed. We do not hear about those occasions.

This bill has two saving graces. One is the review after three years. I would hope that the findings taken from that review after three years are taken very seriously and that amendments are made to the act, or the act is removed—that is, if the bill is successful in getting through this house. The other saving grace is that a behaviour order is not mandatory. It is just another tool for sentencing by the judge. I would certainly hope that the judge or magistrate will look at how he or she uses such an order and that it is used properly and in the best interests of the community and the person against whom the order is made. There are, therefore, a couple of saving graces.

We have heard in this house quite a lot of debate on this bill, and I would say that 80 per cent of it has centred around the inclusion of 16 and 17-year-olds in the bill. I have grave concerns about that as well.

I want to read a quote from the second reading speech in which the parliamentary secretary talked about some analysis of people who had had contact with the juvenile justice system. He said —

> This analysis tracked the passage of a group of young offenders through the juvenile justice system and found that, of the sample examined, approximately 75 per cent of young offenders who initially came into contact with the system had four or fewer subsequent contacts with the juvenile justice system, but about five per cent of the offenders had 12 or more contacts with the juvenile justice system after their initial contact.

We cannot tell how many have had more than two contacts with the system. I will talk about that because, from my viewpoint, two similar offences in a three-year period seems to be a very low threshold. If, as stated by the parliamentary secretary, 75 per cent had four or fewer subsequent contacts with the system, obviously quite a few could have had three or four contacts. If, after two offences and that kind of history, they were put under a prohibited behaviour order, they could be already breaking that prohibited behaviour order and could be potentially sent down a slippery slope to maybe more than 12 contacts. It would be a great thing if the parliamentary secretary could give us some insight into that. Another concern is clause 8(2)(b), about which the parliamentary secretary said —

> … unless constrained from certain otherwise lawful behaviour, the person is likely to commit another relevant offence.

That is so because some juveniles are quite likely to have more than two contacts with the juvenile justice system.

Another caution I would give, especially with juveniles, is about the publication of their identity. I know that the decision to publish will be at the discretion of the judge, but part of the second reading speech states —

> A necessary aspect of the bill is that details of a PBO can be published. The purpose of publication is to enable members of the public to report breaches of a PBO to police.

There will, therefore, be publication of the PBO with potentially, I guess, identification of the offender. The community could therefore become aware of and promote the identification of someone who could be potentially breaking an order. I have some real concerns about how that will apply to juveniles—16-year-olds and 17-year-olds.

Reflecting back on the speech made by Hon Kate Doust, she talked about unworldly kids who may make a silly error of judgement. I would say that probably some worldly young people may make some —

Hon Kate Doust: I think we all make mistakes at some point in our lives, don't we?

Hon COL HOLT: Correct.

Worldly young people, not just unworldly young people, can make serious errors of judgement. It worries me in publishing the identity of a person and of the PBO that the punishment could go way beyond the intent of the order. I certainly believe there is a real risk in this bill for young people. Our juvenile justice system is separated from the adult justice system for a reason, and I believe we should protect the integrity of that justice system and take reference to juveniles—16-year-olds and 17-year-olds—out of the bill.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [3.34 pm]: I want to make some brief comments on this Prohibited Behaviour Orders Bill in support of the comments that have been made already by my colleagues in opposing the legislation.

This bill empowers the courts to issue an order against someone who is 16 years of age or over and who has been convicted of a criminal offence—albeit described as an antisocial offence—over a three-year period. The details of that offender—including a photograph, name and address—will ordinarily be published and be able to be republished by anyone. A breach of a prohibited behaviour order will be a criminal offence. Many reasons for

opposing this bill have already been put on the record. I will therefore not go into each of them in the detail that has already been canvassed, but I do want to touch on them.

The first and most obvious is, of course, the recent decision by the Conservative government in the United Kingdom to reverse usage of its version of prohibited behaviour orders. The UK government found that the community had been issued with, if members like, a false promise in the sense that the community was told that these orders would result in a direct decrease in antisocial behaviour, and that that was not what had happened. The context at the time of introduction of the legislation in the UK was also important. I had a quick look in my file and I do not have the reference with me, but in preparing for my comments I did find some research that canvassed the fact that when these orders were introduced, they were to be targeted primarily at some large housing estates in the UK, particularly in inner city areas, where to a great extent any sense of community was impossible because of the high level of antisocial behaviour and because of the involvement of gangs of young people in particular, who effectively prevented anyone else coming into the estate and prevented those living in the estate from being able to live in a kind of peaceful fashion. That is not necessarily the nature of the way things are organised in Western Australia and it is not the nature of where antisocial behaviour in WA is occurring. We need to bear in mind that the UK introduced the legislation in a different context but, more importantly, we need to bear in mind that the new government reached the view that it was not working.

It is an extraordinary thing—if members think about these things in a general sense—that a Conservative government would undo legislation of this nature. But that is what the UK government did on the basis that there was no evidence that it was working. In fact, to the extent that there was any evidence at all, it indicated that the legislation was not working. In some circumstances receiving a prohibited behaviour order was effectively becoming a badge of honour for some of those who were engaged in it.

Importantly—Hon Col Holt referred to this—most of the attention in debate on this bill has been on the fact that it covers children 16 years of age and over. For the first time in this country, therefore, on the basis of the research that I have been able to do, we will be reversing the laws on publishing names of juvenile offenders. The current situation in most jurisdictions that I was able to research is that the default position is a prohibition on publishing names and identifying material. In some jurisdictions there is a prohibition but with an exceptional circumstances clause that allows publication in certain circumstances. However, the default position, or the starting line, across Australia is to not publish. This legislation reverses that position. The starting position with this legislation, therefore, is to publish unless there is reason not to. The legislation does provide a discretion not to publish but the default position is to publish. That is what I think is of concern, particularly when the following reason for my opposition to this bill is added, which is that the information can then be republished forever. By that, I mean the provisions in the bill that allow others to republish the material that has been published. I would be interested to know whether there is any provision in the legislation—I could not find it, but I just had a cursory look—that provides that there is some time limit on how long that material can be published for. It seems extraordinary to me that it would be allowed to be published beyond the life of the prohibited behaviour order. I do not understand why we would want that, unless the intention is for potential ongoing damage to these young people.

If we think about where this legislation starts—the conversation just referred to by Hon Col Holt was about 16-year-olds and 17-year-olds—we find that the triggers are two convictions in the space of three years. That means that something that a 16-year-old did when he was 13 can be included. Members should think about when they were 13 and about their capacity at that time to make rational judgements about all the circumstances that they found themselves in. This legislation will capture a 13-year-old who is convicted of an antisocial-type offence. One would hope that 13-year-olds do not carry out some of the more senior offences, but they do from time to time. If a 13-year-old commits two offences, is convicted and pays the penalties set out in the law for those two offences, this legislation gives anybody, vigilante or otherwise, the right to publish forever and a day the information that says that this person did something when he was 13. I find that extraordinary. I do not think that is good law. If we are talking about this having some impact on 16-year-olds, let us genuinely start it at 16. But this law says that we are going to take into account what the person did when he was 13, 14 and 15, and that can kick in when he is 16. That is why I am going to use the words “child” and “children” when I talk about this legislation. The honourable Parliamentary Secretary to the Attorney General may well raise his eyebrows at me, but I hope he will stand and tell me that this legislation will not capture 13-year-olds. I would welcome it if he stood and said that, but in fact the legislation captures 13-year-olds.

Hon Michael Mischin interjected.

Hon SUE ELLERY: Does it or does it not—I am happy to be corrected—capture the three years prior to a person turning 16?

Hon Michael Mischin: It does.

Hon SUE ELLERY: I make my point.

Hon Michael Mischin: But what about reading the rest of the legislation?

Hon SUE ELLERY: I have.

Hon Michael Mischin: You haven't understood it, then.

Hon SUE ELLERY: The parliamentary secretary will get the opportunity to correct me if I am wrong.

Hon Michael Mischin: As usual, yes.

Hon SUE ELLERY: What was that?

Hon Michael Mischin: As usual.

The PRESIDENT: Order!

Hon SUE ELLERY: What does the parliamentary secretary mean by that?

Hon Michael Mischin: I will correct the misinformation that seems to be the foundation of the arguments of the opposition.

Hon SUE ELLERY: What does "as usual" mean?

Hon Michael Mischin: I usually have to correct the misinformation upon which the opposition bases its arguments against all our legislation.

Hon SUE ELLERY: The parliamentary secretary must lead such a tedious life.

The PRESIDENT: Order! Everybody will have their opportunity. The parliamentary secretary handling the bill will have the opportunity to sum up at the end of the debate. The member on her feet has the call.

Hon SUE ELLERY: Interestingly, when I researched this legislation, I found that late last year, I think, the New South Wales Legislative Council conducted a review. It came at the issue from a slightly different perspective from this legislation. It did not look at publishing identifying information about children appearing before the courts in the context of prohibited behaviour orders; it came at it from a different context but it certainly canvassed some of the issues around publishing information about children. That report canvassed many of the issues raised by people during the debate, which I have read in *Hansard*, about the reasons why this country and, indeed, many others have a separate juvenile justice system and why we have a set of provisions that say that the point at which an 18-year-old is able to exercise legal responsibility and is to be held accountable for his actions differs from that of a younger person. There is a reason for it. It goes to brain development and immaturity and, if nothing else, the effect that crazy hormones have on adolescents. All of those things mean that, in a civil society, we have long held dear the notion that we treat children differently from the way we treat adults. I find it particularly offensive that for the first time in this country we are reversing the default position of publishing material and are allowing others to continue to republish that material forever, it would seem.

The other point that has been made in the debate that I want to pick up on is that the nature of a prohibited behaviour order is not just about a person committing an offence; it is about a person doing something that is likely to lead to what that person has been prohibited from doing. In that sense, it criminalises activity that for all other purposes is not criminal. For the rest of us, it may be perfectly lawful. In the article published on Wangle on 18 August, Hylton Quail canvassed this a bit more eloquently than I am able to, and he certainly did it elsewhere. He said —

> In essence, all that the PBO laws will do is make the preparatory acts related to anti social behaviour offences in themselves. PBO's criminalise behaviour at an earlier point than under existing laws.
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> If someone carried a spray can or texta when they were prohibited from doing so, or if they entered Northbridge in violation of an order, that would be an offence (punishable by 2 years prison and a $6000 fine or 5 years and $10,000 for a superior court PBO).
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> The Government has been unable to explain how breaching a PBO will be more of a deterrent than the substantive offence already is. Why would offenders who have such a wilful disregard of graffiti laws —

I insert here "already" —

> suddenly decide to obey PBO's?

I also want to touch on exactly what is the government's intention. When there are questions of interpretation or confusion, the courts and, indeed, many others will look to the second reading speech to get direction on what the legislators intended when the law was canvassed. It is not clear. No; I retract that. The second reading speech is clear but the commentary from the government, even between when the second reading speech was made in

the other place and when it was made in this place, is sending mixed messages. The second reading speech referred to the suite of offences as high-volume, low-impact offences. It appears to me that once the notion of the high-volume, low-impact offences was not getting any traction or was in fact generating offence, the Premier and the Attorney General changed that to different language. We are now expected to believe that this legislation is targeted at the "worst of the worst", which was the expression used by the Attorney General. I understand that a table of prescribed offences was provided to the house by the parliamentary secretary during the previous sitting period. I am grateful that I received a copy of that table. That suite of offences cannot be described as fitting the second reading speech's catch-all phrase of "low impact, high volume". Some pretty high impact offences are in that list. The government's intention is not clear. If the courts were to follow the language of the second reading speech, they would apply PBOs only to that suite of antisocial offences such as graffitiing. They would not apply them to any offences related to prohibited or controlled weapons such as those listed on the document that the parliamentary secretary provided. They would not apply them to a range of matters under the Criminal Code, including serious assaults or stealing a motor vehicle. They are not low-impact, high-volume offences; they are very serious offences. I would be interested to see whether the parliamentary secretary can clarify the government's intention. In other words, how do we marry the words in the second reading speech that refer to the suite of offences that are low-impact, high-volume antisocial graffiti-type offences with the public expressions by the Premier and the Attorney General that this piece of legislation is directed at the worst of the worst? I will be interested in the parliamentary secretary's response.

It is also the case, as has been canvassed in the debate, that other laws are already in place that might be used to have the same effect, such as move-on orders. Indeed, there are parental responsibility orders that go to engaging a family when antisocial behaviour such as graffitiing, truanting or a range of other things are going on. There are already ways for the police and others to address the antisocial behaviour of children. The case has not been made that the police need an additional tool and that this is the additional tool that will have the effect of stopping that level of antisocial behaviour by children.

Hon Michael Mischin: What if those avenues don't work?

Hon SUE ELLERY: That is a very good question because the evidence before the house is that this does not work.

Hon Michael Mischin: There is no evidence of that; that's your opinion.

Hon SUE ELLERY: There is evidence of that. The UK has provided us with that evidence. That is a really good question. What do we do when the evidence that we have tells us that it does not work? Why are we introducing the same thing when we already have evidence that it does not work?

Hon Michael Mischin: What do you do if all these brilliant ideas like parental responsibility orders and intensive youth supervision orders don't work?

Hon SUE ELLERY: Mr President, I am sure that the parliamentary secretary will get an opportunity to speak.

The PRESIDENT: Yes. Let us proceed without interjections and with comments directed through the Chair.

Hon SUE ELLERY: The other point I wanted to make is that our rates of juvenile detention are already high. What effect will this legislation have on those rates? It seems to me that it will just add to them. I do not have a problem with detaining juveniles who have been convicted of offences for the sake of it. I am not a bleeding heart liberal who says that we should never detain children. The juvenile justice system exists for a reason, and detention is necessary. However, when we are designing a set of laws that the evidence from overseas shows will result in additional numbers of children being convicted but does not show that there is an equivalent reduction or a reduction anywhere near it of antisocial behaviour, what is the point of doing it? We will add more stress to a juvenile justice system that is already feeling the strain. Hylton Quail talked about that as well. In the Wangle article that I referred to before, he stated —

> … juvenile offenders fall into two main groups—the first and largest group are those who appear in Children's Court to face offences on no more than a handful of occasions.
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> …
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> This group is successfully rehabilitated through their own efforts and with the assistance and encouragement of the Court and welfare workers. …
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> The second group of offenders are those who often from a very young age appear almost weekly in the Children's Court. There are probably no more than between 100 and 150 of these young offenders at any one time in the State.
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> They present serious issues for the juvenile justice system and significant resources are invested in attempting their rehabilitation. The causes of their offending are almost always rooted in dire family

> circumstances. Often by the time they are young teenagers they are heavily involved in substance abuse and are no longer in education. This group is also those responsible for most of the anti-social behavior offences that the PBO legislation is directed at.
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> …
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> For the second, smaller group of offenders there is absolutely no deterrent value in naming and shaming. In my view, it will in fact be a badge of honour for them.

That was also the point that was made about the UK legislation.

What does not accompany this legislation is any complementary intervention in the lives of the young people. We are not seeing any intervention beyond the PBO. There are no additional funds or programs to address drug and alcohol issues, no additional funds and programs to address family violence, and no diversionary programs of any kind. I have already touched on the issue of responsible parenting orders. Has consideration been given to ensuring that there is some link between the issuing of a PBO and using that as a trigger for a responsible parenting order so there is at least an attempt to engage the family in trying to address the reasons that led to the offence that triggered the PBO? Those who are most likely to be engaged in low-level, high-volume antisocial behaviour are those, as Hylton Quail pointed out, who are already the most disengaged and therefore the most vulnerable; that is, children from dysfunctional families, homeless children, mentally ill children and, most likely, Indigenous children.

I was interested in the comment made by Hon Col Holt about the review period. That is important. I would be interested in hearing from the parliamentary secretary about what ideas have already been canvassed on the nature of that review, because there are reviews and there are reviews. There are desktop reviews in which we get government agencies to provide us with a set of statistics, and there is the kind of review that invites comment and submissions from those who are seeing the effects, positive or otherwise, on the stakeholders and dealing with the consequences of the legislation on the ground. I hope that the government will be in a position to say that it will give us a commitment to the most broad and wide-ranging review to ensure that all those issues are canvassed. In that review I will be really interested to see how many children are picked up by this legislation whose first offence occurred when they were younger than 16.

With those comments, I will conclude my remarks. This legislation sets new standards in ways that I do not think Western Australia wants to be setting new standards. We do not want to reverse the longstanding position on publishing material. I fail to see how allowing that material to be republished forever and a day beyond the life of a PBO will serve any decent public purpose at all. I will be opposing the legislation.

HON ALISON XAMON (East Metropolitan) [4.00 pm]: As already noted by my colleague Hon Giz Watson the Greens do not support the Prohibited Behaviour Orders Bill 2010. There are many reasons for our concern about this bill, but I will not be going into all of them. I think it is of significant concern that similar legislation has been deemed to be an utter failure in other jurisdictions.

I will focus particularly on my concerns about the impact of this bill on young people and on people who have potential mental health issues. The PBO bill provides that unless a court orders otherwise the department's chief executive officer must publish on the website details of the PBO, including the person's name, photograph and suburb of residence. I am particularly concerned about these provisions because—as already identified in this place—of the ease with which this information can be forwarded not only to multiple recipients, but also, potentially, indefinitely. We know that in making a PBO the judge or magistrate can order that all specified details relating to the restrained person must not be published if it is believed that the circumstances justify suppression. I am aware that in the case of a youth, the judge or magistrate has to have regard for the wellbeing of the youth when deciding whether to publish the details of the PBO. I am not convinced that that is enough protection. According to the parliamentary secretary, the purpose of publication is to enable members of the public to report breaches of a PBO to police. The Greens have strong concerns about the name and shame aspects of this legislation; in particular, the provisions for the naming of juveniles. The protection of privacy for juvenile offenders is a fundamental right and one that I believe we need to defend absolutely. As noted by Hon Giz Watson and others in this place, the importance of protecting the privacy of children is already reflected in the tenor of not only our state laws regarding young offenders, but in federal and state family law, and in article 40 of the United Nations Convention on the Rights of the Child. I am not flippant about these international conventions; I think that they are critically important. They set minimum standards that we recognise as humans and as such I think they need to be treated with far greater seriousness than they are.

I acknowledge the Attorney General's comments that PBOs are not designed to be punitive and that the government intends their impact to be solely one of deterrence. However, I am yet to see any research to convince me that publicly naming offenders will be an effective way to deter young people from committing crimes. In fact, on the contrary, I am concerned about the negative impact of labelling young people as criminal

or delinquent. In that regard, PBOs appeared to be a very blunt—in fact some would say draconian—instrument to use when attempting to modify behaviour.

In many ways we are very fortunate to have, as a society, broad access to the internet. On the downside, and as many people who have had a moment of poor judgement have found—whether it be from the publishing of a rather unflattering photograph of a drunken person on Facebook or something similar—once something appears on the internet it can never be completely erased; it is in the public domain forever. I do not want people to take comfort from the idea that something removed from a website can never be found. A few years ago, I wanted to hunt down some information from an old website and was disappointed to discover that I could not find the information. The guy I was working with at the time told me it was okay and that he could get the information in a moment. I thought he was kidding because even the domain was down. Within 30 seconds he managed to get up the entire original information. I think it important to note that, because once information appears on the internet it is there forever. People should be very mindful of that. We also know that prospective employers and perhaps even prospective friends or partners know how to use Google. I have used Google as a tool to find more information not about prospective partners, but prospective employees. It is a fairly common practice. The sorts of things that appear can be very interesting. In my case, it has been quite useful to know the full extent of the wonderful activist work done previously by potential employees. It is, however, important to note that that information is out there and is readily available and we do not have any control over how it appears on Google. In effect, this means that this PBO legislation with its name and shame provisions for juveniles has the potential to effectively grant lifelong punishment to young people for having engaged in antisocial behaviour.

The structure of our society, our laws and policy frameworks, reflect the broad understanding, by most, that children and young people must be treated differently from adults. According to the Commissioner for Children and Young People, children and young people constitute a distinct and vulnerable group and differ from adults in their psychological and physical development, and their emotional and educational needs. Of course, the commissioner is right; this is well documented. We would do well to heed the expertise of people such as the commissioner.

Recent research demonstrates what we have all known for a long time, which is that young people are inclined to take risks and to experiment. We also know that much youth offending is transitory and minor in nature.

The bill is aimed solely at low-level offences. It is a bad bill. It has the potential to make low-level transitory crime into something that will have a significant and lifelong impact. I believe we have a duty to protect our young people and to support them through their youth and this period of risk-taking and experimentation. We need to put in place strategies to minimise the potential lifelong negative impact of what happens during our youth.

I want to talk a little about youth and public spaces. I am concerned that laws such as this entrench a negative stereotype of young people. Such laws send the message that young people are antisocial and scary and perhaps even dangerous. I understand that may not be the government's intention, but I believe it is a very real consequence of this type of legislation.

Unfortunately, too often the language used does not reflect that the vast majority of young people have had little or no contact with police, that they contribute positively to the community and that they are leading productive lives. Indeed, my experience working with young people has been an overwhelmingly positive one. I have had the honour to meet and work with some incredibly smart, articulate and passionate young people. I have always taken the view that our future is in very good hands. I have great concerns about the type of language this government uses about young people. I have found some of the commentary around the need for this legislation to be quite disturbing. I am not necessarily talking about things said in this place, but rather those I have heard on talkback radio; for example, the particular suggestion that our young people have no right to congregate in public spaces is very concerning. I think that we sometimes forget that our public spaces are just that. They are public and should be equally open to all of us to use. Our young people should not be driven away or made to feel unwelcome because they choose to congregate in public spaces and other generations do not understand them.

The even more relevant point, according to YACWA—the Youth Affairs Council of Western Australia—is that more than 5 500 young people are homeless in WA on any given night. We have to face the fact that for too many young people in our community—often the ones who have the potential to be captured by this legislation—home is not a safe and loving place, and things are simply not as they should be. Of course, a small proportion of young people do the wrong thing and come before the justice system. For some of them this happens multiple times. I do not want to understate the impact that these young people who repeatedly offend have on the community. I am certainly not at all suggesting that they should simply get away with this behaviour, because people deserve to be protected from antisocial behaviour. What we do need to do is to address the root causes of this behaviour in order to adequately address it. Overwhelmingly, these young people have faced significant challenges already in their short lives. Many of them will have come from a dysfunctional

home, not of their doing. They suffer from disadvantage and poverty, and also potentially mental illness. The reasons for repeat offending are complex. I am not of course suggesting that it is therefore an easy thing for us to address. It does require multipronged strategies and long-term, sustainable funding.

A few members have already referred to the piece in *Wangle* by Hylton Quail from the Law Society of Western Australia. I also wish to refer to it, particularly when he asks us why, when existing laws have failed to stop antisocial behaviour such as graffiti, does the government expect that prohibited behaviour orders are going to be effective. Why do we expect them to be a deterrent when existing laws are not? Why do we think that a small group of people who are going to be targeted by this legislation, persistent offenders who are usually already the most marginalised in our society, are going to suddenly respond positively to naming and shaming? It will have the opposite effect. All it will do is entrench stigmatisation and alienation. It seems quite straightforward that measures that alienate young people and that are not based on principles of social inclusion are unlikely to be effective in reducing antisocial behaviour. They are more likely to have the opposite effect.

The Attorney General also suggested in the other place that there is already a raft of successful intervention and diversionary strategies in place. I read that as the Attorney General basically throwing up his hands and saying that the government has tried everything and that there is nothing more that can be done for the prolific offenders who are being targeted by this bill. I find this really hard to believe, particularly given calls by the Youth Legal Service, the Youth Affairs Council of Western Australia, the Commissioner for Children and Young People, and the Aboriginal Legal Service, to name just a few, for better funding and service delivery for these strategies. These kids are not lost causes. Passing a bill, whose endpoint is likely to be imprisonment, is not going to help them. I am devastated that we are giving up on our children in this way.

I would like to share with members some comments made by a Carnarvon police officer that were reported earlier this year in an article in *The West Australian* written by Jessica Strutt. I found it very moving. The officer talked about the approximately 100 prolific young offenders that the police had identified in the local area. His comments were that most of them are good kids, but he felt that they just needed some guidance and some parenting. He also commented that the older role models were not there. These kids are victims. They need assistance. They need to be given a hand up. They do not need to be named and shamed. To paraphrase the Commissioner for Children and Young People, our youth justice system is not effective; detention is still the main strategy on which the system is based and more effective alternatives are simply not being made available; community-based approaches are not developed appropriately and are hampered by funding that can be uncertain and given for only limited periods of time. According to my notes, to quote the commissioner —

> Given that the problem is multifaceted, the solution must rely on providing a range of interventions in a holistic and integrated way (in both funding and service delivery), so the often complex causes of young people's offending behaviour are addressed and young people are supported in developing skills that will help them engage with the community in positive ways … We need to be investing more in evidence-based programs and services that are delivering proven, positive outcomes for young people and for the wider community …

Why are we not going down that path? Why are we automatically moving into a punitive response with the capacity to potentially alienate our children for life before we have even put in place the necessary funding and support for interventionist strategies that have the potential to actually work?

I would also like to share with members a quote from Cheryl Cassidy-Vernon from the Youth Legal Service, which was posted on the Commissioner for Children and Young People's website. She wrote —

> Locking young people up —

I would add, making a PBO against them —

> does not resolve the welfare and care and protection issues that many of our clients deal with, nor does it help to re-integrate young people that otherwise with maturity would grow to be law abiding citizens.

Western Australia already has a really poor record when it comes to putting young people in detention, and particularly with young Aboriginal males, where our record is consistently described as being the worst in the country. The Aboriginal Legal Service has raised concerns that these laws will target Aboriginal youth disproportionately. I think we will need to consider very carefully any legislation that has the potential to further contribute to the gross and worsening overrepresentation of Indigenous people in our criminal justice system.

I am also concerned about the potential impact of this legislation on relations between police and young people. We have successful programs, such as the midnight basketball program run in Midland and Geraldton, that are helping police to develop really positive relationships with at-risk young people. The evidence has demonstrated that this has resulted in decreases in crime rates in the local area. The potential for this legislation to impact negatively on the relations between police and young people also concerns me. I understand that research from

the United Kingdom has shown that Anti-Social Behaviour Orders have had a major negative impact on these fragile relationships. That was found in a study by Crawford titled "Criminalising Sociability through Anti-social Behaviour Legislation".

Another issue closely interlinked with that of antisocial behaviour of young people is that of engagement in the education system. The Auditor General last year identified that 28 per cent of students in our public schools are at educational risk because they are not attending school regularly. The report highlighted the lack of effective strategies to address the causes of non-attendance. I understand that the Minister for Education has been working on improving policy in this area; however, the State School Teachers' Union of WA and the Western Australian Council of Social Service have both recently raised with me their concerns regarding school attendance and what they say is the lack of progress in addressing these concerns. They believe we need more participation officers and more funding for other programs to help at-risk kids and to improve school attendance and retention rates. Clearly, truancy and antisocial behaviour are interlinked issues. Why is more not being done?

There is also a strong economic argument against legislation that is likely to result in more young people being sent to detention. We know that investment in prevention and diversionary programs is far more effective and less costly in the long term than spending on enforcement. We have finite resources and we should be using them in the best, most effective way. If people do not care about human beings and they do not care about children but all they care about is money, why not at least look at the overall economic arguments, particularly in the long term?

As I have already mentioned, I am also gravely concerned about the impact that this bill is likely to have on members of our community with mental health issues. I understand that research on ASBOs in the United Kingdom has demonstrated that the legislation impacted on a high number of people with mental health issues—acquired brain injury, substance abuse or learning disabilities. I question very much the fairness of introducing legislation that we have every reason to suspect will target particular, vulnerable members of our population. There is already emerging evidence that this will be the case. We should not be naming and shaming people with mental illness. We should not be preventing them from accessing public places, or putting other constraints on them that are not going to go any way to improving their condition. We should be treating them, and, in particular, ensuring that they are provided with adequate follow-up care and have access to appropriate and safe accommodation, including in rural areas.

I know that people have read the frequent and ongoing heartfelt pleas from parents of mentally ill young people in letters to the editor in newspapers, and have heard them on talkback radio. Many people in our society are falling through the cracks in the mental health system. That is particularly the case when they clash with the justice system. It would be far better to improve the availability of services for these people than to basically impose life-long stigmatisation on these people through the use of PBOs. I would like an assurance from the government that when a PBO is made against a young person, a person with a mental illness or a person with an acquired brain injury, that person will fully understand the serious repercussions of breaking that PBO.

We all want safer communities. That goes without saying. I do not deny that dealing with antisocial behaviour is a significant and complex challenge. People should not have to put up with graffiti, intimidation, property damage, hooning, shoplifting and the other unacceptable behaviours that this bill is targeting. I am not saying that when youths commit this sort of crime, we should excuse them solely because of their age, or because of other mitigating factors such as substance abuse, mental illness or homelessness. But what this bill highlights is that we do not have enough strategies in place to deal effectively with the small group of young people who come into contact with the justice system repeatedly.

I am calling on the government to put in place measures to deal with antisocial behaviour that are based on evidence, that are effective and that are designed to have a long-term, positive impact on our young people, rather than put in place legislation that has at its core the potential to label, stigmatise and punish our young people and cause their mistakes to follow them for the remainder of their lives. I am not comfortable with criminalising behaviour that would otherwise be lawful. I am not comfortable with naming and shaming people, particularly young people, who have committed low-level crimes. This bill is not good legislation that is based on sound empirical evidence. It is purely a knee-jerk response to populist views.

It would be very useful if we could be given some evidence in support of this bill. Although this bill was debated thoroughly in the other place, the Attorney General was the only person who spoke about the research that is available at this time. Stanley v Brent—the United Kingdom case that is cited in Liberal Party policy in support of this concept—does not support a default arrangement whereby publication will occur unless a court orders otherwise, as is proposed in this bill. In that case, the claimants were members of a gang who had been responsible for serious antisocial behaviour over a long period, and media reporting had already occurred. That case makes no reference to research about the likelihood that publicity will fulfil the purpose of enforcement or

deterrence. This point was conceded by the appellants, who instead ran an argument based on necessity and proportionality, bearing in mind the rights of both the constrained person and the public.

So the question is not whether it is government policy to seek to reduce crime by inducing shame or humiliation in offenders, but rather what the impact of this legislation will be. The concern about PBOs is that the stigma produced from the naming and shaming approach could reduce the offenders' prospects of rehabilitation, particularly if the offenders are juveniles, either through the consequences of negative labelling, or by the offenders treating the PBO as a badge of honour. Some members in this place have also raised their concerns about this matter.

I turn now to specific risks to juveniles. It has long has been accepted in this state and internationally that the privacy of children needs to be protected. As I have already mentioned, the proposed clause in the bill that deals with this matter is contrary to the tenor of state, federal and international law regarding young offenders. We need to look at the reasons for that. In 2008, the United Nations' Committee on the Rights of the Child, in its concluding observations on the United Kingdom of Great Britain and Northern Ireland, expressed concern that the state party had not taken sufficient measures to protect children constrained by anti-social behaviour orders from negative media representation and public naming and shaming. That report recommended that intensified efforts be made to respect children's privacy in the media, particularly by avoiding messages publicly exposing them to naming and shaming provisions. We are starting to get emerging evidence against this.

Also in 2008, the New South Wales Legislative Council's Standing Committee on Law and Justice published its report titled "The prohibition on the publication of names of children involved in criminal proceedings". Among other things, the committee decided, based on the evidence it heard, that naming juvenile offenders would stigmatise them, would have a negative impact on their rehabilitation, and was unlikely to act as a significant deterrent to offenders or would-be juvenile offenders. It recommended that the New South Wales law be amended to provide that 16 to 18-year-olds involved in criminal proceedings who wanted their name to be published could give that permission only in the presence of their choice of lawyer. The New South Wales government supported that recommendation, because it recognised that 16 to 18-year-olds are not able to give informed consent in the way that we would hope.

In 2009, Duncan Chappell and Robyn Lincoln published a report that referred to the above committee report and also cited other bodies of research. That report suggested strongly that the naming and shaming of young people involved in criminal proceedings has a negative impact, although they also noted a lack of direct evidence of the impact of the mass media naming of young people involved in criminal proceedings and sought further research. In their conclusion, they referred to a gathering movement by some—interestingly, they also referred to Western Australia's Attorney General—to publicly name juvenile offenders, and expressed concern about the erosion of international conventions in favour of politically expedient and popular positions.

In the other place, and in his answer of 14 September 2010 to a question on notice from my colleague Hon Giz Watson, the Attorney General suggested that there is no major evidence for the idea that stigmatisation produces ongoing negative effects on recidivism and re-offending. However, we already have evidence that suggests otherwise. The long history of not naming juveniles naturally means that we are limited to the current empirical evidence that is available. Therefore, that is a bit of a disingenuous response. Western Australia's longstanding convention of protecting the privacy of juveniles should not be overturned without at least carefully investigating the likely impacts based on the existing research and the most up-to-date knowledge of child psychology and brain development. If nothing else, the house needs to have the opportunity to hear the views of the Commissioner for Children and Young People. I would have thought that was the very reason that position was set up in the first place.

Again, in relation to the specific risks to people with mental health issues, a key finding of the 2008 Auditor General's report titled "The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994" noted that significant numbers of young people with high levels of offending have mental health or substance abuse problems; however, there is limited identification of this in the juvenile justice system, and no agency takes responsibility for case managing these young people to ensure that their mental health, substance abuse and other problems are managed.

The June 2009 final report of the Law Reform Commission of Western Australia into court intervention programs similarly identified high numbers of Western Australian offenders with underlying problems, including mental health problems, thereby increasing the risk of future offending. It also identified that court intervention programs may assist. Why do we not go down that path?

The Criminal Lawyers' Association has advised that sentencing principles require that offenders with mental health issues or mental impairment should not be made examples of for the purpose of deterring them or others from offending. These sentencing principles, however, have been swept away by making PBOs a civil process rather than part of sentencing; however, the effect on the constrained person is the same.

The bill provides that the exact address of the constrained person is not to be published. However, in small communities—for example, in small country towns, in schools, and among minority groups, where most of the population is known to each other—the offender's whereabouts will be readily ascertainable. Vigilantism and the risk of violence are therefore a possibility. Clearly, the impact of this legislation and the full repercussions of it have not been explored to the full extent that they need to be.

Discharge of Order and Referral to Standing Committee on Legislation — Motion

Hon ALISON XAMON: Therefore, I move without notice —

> That the Prohibited Behaviour Orders Bill 2010 be discharged and referred to the Standing Committee on Legislation for consideration and that it report not later than Tuesday, 15 February 2011.

Debate interrupted, pursuant to temporary orders.

[Continued on page 8264.]