DANGEROUS SEXUAL OFFENDERS LEGISLATION AMENDMENT BILL 2015

First Reading

Bill read a first time, on motion by **Mrs L.M. Harvey (Minister for Police)**.

Explanatory memorandum presented by the minister.

Second Reading

MRS L.M. HARVEY (Scarborough — Minister for Police) [4.16 pm]: I move —

That the bill be now read a second time.

The Dangerous Sexual Offenders Act 2006—the DSO act—empowers the Supreme Court of Western Australia to order the post–sentence preventive detention or supervision of sexual offenders who pose a serious danger to the community. The court is required to assess the person's risk of reoffending. It can impose either a continuing detention order or a supervision order containing strict supervision conditions. This bill amends the DSO act and related legislation to improve the ability of authorities to manage, and so to adequately protect the community from, known dangerous sexual offenders. It arises out of two reviews of the DSO act in recent years. The first concluded in 2011 and the second in mid-2014. The 2014 review was initiated by the state government in response to community disquiet arising from the release, on a supervision order, of an offender known as "TJD" who had previously been the subject of a continuing detention order. The reviews did not expose any fundamental difficulties with the legislation that required any radical and urgent change; however, they did inform the improvements proposed by this bill, which benefits from almost nine years' experience operating the DSO act. The reviews confirmed that the DSO act is working as intended by providing for the preventive detention, or strict supervision in the community, of persons who are a serious danger to the community. In addition to providing for the detention in custody or the supervision of such persons to ensure adequate protection of the community, an object of the DSO act is to provide for the continuing control, care or treatment of such offenders. For a court to find that a person is a serious danger to the community, the court must be satisfied that there is an unacceptable risk that the person would commit a serious sexual offence if the person were not subject to a continuing detention order or a supervision order. The application is brought before the end of the offender's sentence. If found by the court to be a serious danger to the community, the offender is released subject to conditions with stringent supervision requirements if the court finds that the risk can be adequately managed in that manner; otherwise the offender remains in custody.

So far, no offender released under the DSO act has committed a further serious sexual offence. Nevertheless, agencies responsible for the supervision of these dangerous sexual offenders have recommended a number of reforms to strengthen the legislation. The bill represents the most substantial set of amendments to this legislation since it was introduced in 2006, and builds upon legislative reforms introduced in 2011. As mentioned, if the court considers an offender likely to pose an unacceptable risk, the offender may be detained in continuing preventive custody. Currently, that detention must be reviewed every 12 months. The bill retains the initial review period at 12 months, but otherwise extends the period between reviews of detention to two years. This will assist in the management of such offenders. The two-year interval will provide offenders with a greater incentive to participate in appropriate sex offender and other treatment programs, the opportunity to consolidate treatment gains, and more time to demonstrate a change in their behaviour and that they present a reduced risk. Detained offenders will still be able to apply for an earlier review with leave of the court if they are able to demonstrate exceptional circumstances to the satisfaction of the court.

The bill extends the range of relevant serious sexual offences for which an offender may be subject to an application under the DSO act by including conspiracy or incitement to commit a serious sexual offence, and prescribed offences against the laws of the commonwealth or another state or territory. Furthermore, for the purposes of the DSO act, and unless the contrary intention appears, a person will commit a serious sexual offence if the person does an act or makes an omission outside Australia that, if done in this state, would constitute a serious sexual offence.

The bill also recognises the interests of the victims of crime by including the adequate protection of victims along with the protection of the community in the objects of the DSO act. A victim of a serious sexual offence by the offender will, if he or she wishes, be able to make a written submission to the court to give his or her views about the need to ensure adequate protection of the victim. A victim of serious sexual offending by a person potentially subject to orders under the DSO act will be able to be kept informed, should they choose to be, of any prospective proceedings under the DSO act in relation to the offender. In that regard, the bill proposes to amend section 113B of the Prisons Act 1981 to extend the range of victims of crime to whom the chief executive officer of the Department of Corrective Services may disclose prescribed information regarding a prisoner. This will facilitate victims of serious sexual offences being notified of proceedings under the DSO

act. Victims must make arrangements to be provided with this notification, and may change their mind about wanting to be provided with notification. Victims of crime who do not wish to receive notification of such matters should not be disturbed by them. To further protect victims, the bill will empower the court to impose conditions on supervision orders to restrain the offender from making certain public comment. The court will have discretion under proposed section 18(2A) of the DSO act to impose a condition that the offender not make public any statement, information or opinion relating directly or indirectly to a victim of a serious sexual offence committed by the offender. The matters that the court must have regard to in deciding whether to impose this kind of condition are set out in proposed section 18(2B), being the gravity and nature of the person's offences; the likely impact on the victims of the offender providing or making available any statement, information or opinion; and the public interest generally.

Otherwise, the bill contains provisions confirming that the court may make an order under the DSO act, even if the offender has been found not mentally fit to plead or when the offender, if charged with an offence, would be likely to be found not mentally fit to plead, or when the offender is under an order of indefinite detention; making it explicit that offenders can be the subject of orders under the DSO act even if only part of their sentence relates to a serious sexual offence; clarifying that when considering the risk posed by the offender, the court is to disregard possible future terms of imprisonment, bail conditions or remand in custody of the offender; giving the court capacity to adjourn certain hearings for orders and reviews under the DSO act when good cause is shown, such as when the interests of justice require it; allowing for proceedings for custody or supervision orders to continue, even if, while the application for orders is pending, the offender ceases to be under a custodial sentence, or, in cases when a subsequent supervision order is being sought, ceases to be subject to a supervision order; and making it express in the Evidence Act 1906 that provisions in that act that prohibit publication or broadcasting that would allow identification of a complainant of sexual assault apply to proceedings under the DSO act.

The bill also addresses the roles of the Attorney General and the Director of Public Prosecutions under the DSO act. By operation of the Director of Public Prosecutions Act 1991, the DPP is an independent statutory authority and not subject to direction from the Attorney General or the government of the day in the performance of his or her functions. The director independently decides whether to bring any given proceedings to seek orders under the DSO act, based on the law and his or her professional judgement. Although the Attorney General may, after consultation with the DPP, issue to the DPP directions as to the general policy to be followed in the performance of any function, the Attorney General, quite properly, cannot direct the DPP in respect of a particular case or specific application under the DSO act. Section 6(1) of the DSO act provides —

> The Attorney General may make an application that the DPP may make under this Act and may give a consent that the DPP may give under this Act.

The proper exercise of the power of the Attorney General to bring applications under this section is to be understood having regard to the relationship between the Attorney General and the DPP under the Director of Public Prosecutions Act 1991. The remarks on that legislation upon its introduction alone put it beyond doubt that the Attorney General's power to bring applications under the DSO act is properly characterised as a reserve power: a power to make an application under that legislation if the DPP has not made a decision either way on the matter. If the DPP takes or chooses not to take proceedings under the DSO act, that choice is one made on behalf of the state of Western Australia, and not one that can be circumvented or overridden or ignored by an Attorney General of the day who may take a different view of the case, and certainly not for political reasons. Given that the position at law is that the DPP is the primary applicant under the DSO act and makes these applications and takes other proceedings under the legislation on behalf of the state of Western Australia, the bill will clarify this by providing that applications and proceedings taken by the DPP can be made in the name of the state of Western Australia, rather than in the name of the Director of Public Prosecutions, as is presently the case.

Amendments in the bill also seek to clarify and enhance the operation of supervision orders. It is proposed that the duration of supervision orders will be extended for all sentences of imprisonment that may occur during the life of the supervision order; there will be a new power for the court to amend the duration of a supervision order in response to a breach of the order; and there will be new powers to allow the court to make a subsequent supervision order on the expiry of a supervision order. The bill also amends the Sentence Administration Act 2003 to exclude persons subject to orders under the DSO act from applying for re-entry release orders.

This bill supports integrated cross-agency management of dangerous sexual offenders. The lead agencies—in particular, the Department of Corrective Services, the Western Australia Police sex offender management squad, the Office of the Director of Public Prosecutions and the Prisoners Review Board—work closely together on this offender management, which is a cornerstone of the effectiveness of this legislation. The bill will contribute to enhanced integrated management arrangements for dangerous sexual offenders by inserting new provisions facilitating the exchange of information between agencies. This will be facilitated further by a new requirement

that the release of a dangerous sexual offender under a supervision order must not take effect for at least 21 days to give the authorities responsible for the monitoring and management of the offender sufficient time to put any necessary policing arrangements into place.

The bill also introduces a range of amendments relating to court processes to provide for the efficient operation of proceedings under the DSO act, following matters that have been raised in the review processes. These include a new duty on offenders to disclose relevant material for court hearings, and empowering the court to order a wider range of expert reports regarding the offender. The bill will also ensure that the possibility of being subject to orders under the DSO act is not to be considered a mitigating factor in sentencing, and is not to be part of the decision as to whether an indefinite imprisonment order should be made in relation to the offender under the Sentencing Act 1995.

I commend the bill to the house.

Debate adjourned, on motion by **Mr R.H. Cook (Deputy Leader of the Opposition)**.