SENTENCING LEGISLATION AMENDMENT BILL 2016

Second Reading

Resumed from 10 November.

MR J.R. QUIGLEY (Butler) [4.24 pm]: I thank you for your patience—we have all been waiting six years. In 2010 the then Attorney General, Hon Christian Porter, foreshadowed that he would introduce a sentencing legislation amendment bill. He foreshadowed a number of things the bill would contain, including, for example, weekend detention and other matters that do not appear in this bill, the Sentencing Legislation Amendment Bill 2016. The development of this bill has been a very long and slow process. We think it is regrettable that this bill has come on on the afternoon of the third last day of this Parliament, being the third-last day of more than eight years of a Liberal administration, when it was seen as necessary by the then Attorney General—one who had some insight into this matter but could not bring it forward—as long ago as 2010.

The opposition's position on this bill is that it welcomes some of its provisions. I am thinking now of—I will express it quickly—for example, the provisions that relate to convictions for domestic violence and the provisions that will be in place following the passage of this amending bill. However, we will oppose other provisions. We realise that the time left to this Parliament is not long, and having waited six years we would like to see the legislation pass. We will not, therefore, take up undue time in this chamber; however, the bill is complex and deserves, and will get, close scrutiny clause by clause. It is not the opposition's fault in any way that this bill has been left until the eleventh hour to come on. Normally the government blames the opposition for holding up business in the chamber, which we utterly reject. We all know that last week we packed it in a bit early because the government had passed some bills and thought that that was enough and we all went home. There have been other days when Parliament has ended early, and to in any measure try to take a political point from the opposition during or subsequent to the scrutiny of this bill by saying that this is the opposition trying to waste time is repugnant.

Sentencing, of course, is one of the most important functions of our courts. Our courts, in a very stable and civilised manner—that is not always so for the litigants, but it is for the judiciary—adjudicate, rule on and issue orders in relation to civil society. But they also have the core function of taking away, by their order—by their warrant and nobody else's—a citizen's liberty. In a free democracy there is no more serious matter than to take away a person's liberty. We do it without hesitation, of course, when we are dealing with criminal behaviour because it is the ultimate sanction in our society. It serves many purposes, including as a personal deterrent, which I will speak of in a moment, and as a general deterrent to the community at large not to commit like offences. It also delivers a sense of justice or retribution on behalf of victims who have been savaged by these crimes. I emphasise that in our society this sanction is reserved for an independently acting judiciary that is not subject to political pressures but is cognisant of community views in particular areas of sentencing.

I take, for example, paedophilia. We are aware of that group of men—I rather hesitantly call them men—known as the "hateful eight", and the father of that poor victim, who pimped her around a circle of people, received a very condign punishment of 22 years' imprisonment. When one considers that, under the Sentencing Act, the minimum term of imprisonment for murder before being eligible for consideration for parole is 15 years—it is not proposed that that will change—one can see that a judiciary not constrained by mandatory sentencing and left to its own discretion in sentencing came up with a sentence that was very, very heavy, and rightly so: more than 50 per cent longer than the minimum term for murder. Fifteen years' imprisonment is the statutory minimum that can be applied for the part of a sentence for murder that must be served before consideration for parole, and there is no guarantee that a person will be released on parole. Only last week we saw a mother, daughter and others receive sentences of more than 24 years' imprisonment, I believe, for the murder of a gentleman, a father, who was the partner of one of the convicted persons, so even for a sentence for murder, they do not go to that statutory minimum before consideration of parole. I just wanted to mention that, having mentioned what the minimum non-parole period was.

The judiciary weighs all these matters independently, and has done so for centuries. The Sentencing Legislation Amendment Bill 2016 introduces several new concepts to the law in Western Australia and other adjustments, if I can put it that way. Before I go to the new matters and adjustments being introduced to the sentencing regime in Western Australia, I want to stress the importance of the sentencing process being independent of the body politic or the executive. This is very, very important, and I will come back to it later. Indeed, the first big clash between the monarch and his—yes, it was a male monarch—aristocracy, the barons, of course wrought the great charter of June 1215 known as Magna Carta. The genesis of that conflict was the barons' objection to the ships tax and other taxes being levied against them. It is, of course, hanging in the corridor of the Legislative Council. It was a prohibition, if you like, of the illegal imprisonment of any subject of the King.

In other countries we have seen this ultimate sanction of imprisonment—indeed, in some awful countries, the ultimate sanction of execution—being used, at times, for political purposes. That is why it is so important, to maintain confidence in the judiciary, to retain the separation of powers between the executive, the legislature and the judiciary. Our Constitution in Western Australia is, at least in its wording, reasonably simple—for the peace, order and good governance of the people. The Australian Constitution was the subject of great debate amongst the founding fathers of our Constitution—the initial Premiers, including Sir John Forrest and the like—and they had the wisdom to include in it a chapter on the separation of the judiciary from the executive and the Parliament. That stands, in black and white, in the federal Constitution.

I would now like to turn to the three big areas in the Sentencing Legislation Amendment Bill 2016. It will soon be apparent why I have emphasised, in my opening remarks, Magna Carta, going back 800 years, and a whole string of cases of more recent times dealing with the separation of the courts and their functions from those of the executive. In the evolution of sentencing law in Western Australia we have gone through a number of epochs, if you like, the most recent of which came under the Attorney Generalship of Mr Porter. That was all around the encapsulation of "truth in sentencing"—the reduction of the time a person could be on parole. Indeed, during that time, parole became harder and harder to get for any person. It is a matter of record that once former Supreme Court Justice Johnson took over the Parole Board, she said that parole was not a right—quite rightly so; it is a release on licence—and thereafter, more often than not, parole was denied and people were made to serve their full sentences. Of course, the community and the Attorney General of the day derived some satisfaction from the fact that the full sentence inflicted by the courts would be served, but that gave rise to another problem: when a prisoner had finished their finite term, the state had no purchase on their future conduct. If they were sentenced to 10 years, once they had served their 10 years, they were taken to the front door and released, because the only people who could keep them in prison were the judges, by their judgement. Once the prisoners had extinguished the period for which they had been incarcerated, they walked out, having paid their debt, as free people. This was alarming to the authorities in some respects because there was no future hold on those people to modify their future conduct. They were let out of prison, often without any support services at all and sometimes without having gone through any programs within prison; the programs were no longer available, as we all know, because of the dramatic increase in prison numbers.

The new concept being introduced in this amending legislation is post-sentence supervision of certain offenders. This legislation provides that after a person has served their sentence, or just before they finish their sentence, the chief executive officer of the Department of the Attorney General, or his or her delegate or nominee, will report to the Prisoners Review Board, formerly known as the Parole Board, addressing certain matters referred to in clause 25 of the bill, which we will discuss in detail, including inter alia issues for any victim of a serious offence. The clause deals with serious offending and those serious offences are in schedule 3 of the legislation. The CEO, or his or her delegate, will report on the criteria set out in this legislation and the Prisoners Review Board will make a supervision order that is like, in most respects, a parole order—that is, that the free person can be required not to leave the jurisdiction, not to change residence, not to change employment and may be required to wear a GPS tracking device. All of which are contrary to the liberties of the person.

The Labor opposition is not saying that there is not a need for this provision in some circumstances, but this provision is, to put it at its very lowest, constitutionally problematic. I believe, after speaking to senior counsel and judges in other jurisdictions, that it is unconstitutional and will offend the Kable principle. The Kable principle states that any enactment that can or may derogate from the respect in which a court that exercises federal jurisdiction is held—that is, in any way diminished or embarrassed—will be unconstitutional. Of course, it was on that principle that the anti-association laws, colloquially known as the bikie laws, were struck down in several states. Although those laws were passed in this state, they have never been tested. The government held the Labor Party up to a wall to vote for the laws on pain of being accused of being soft on crime. Labor members said that these laws were unnecessary, and the government has found them to be exactly thus—that is, unneeded—because it has not used them once since 2012, when the government presaged this chamber into passing the laws.

It is important to note that this proposed infringement on the liberty of a citizen whose sentence has expired means that one branch of the executive will report to an instrument of the executive beseeching that that branch of the executive impose these parole-like provision on the citizen with no right of appeal, no right of review and no transparency. This is exactly why the barons took on King John at Runnymede 800 years ago. Labor will oppose this provision, but, because the government has left this legislation until so late in the day, we will not now attempt to rewrite proposed part 5A of the bill. The answer to this problem is quite simple: involve the judiciary. This provision is not that much different from the provisions of the dangerous sex offenders legislation that has been tested before the High Court and found to be constitutionally sound—that is, a person convicted of a dangerous sex offence prior to release can be made the subject of a detention order or, as in this legislation,

a continuing supervision order. That condition is imposed by the Supreme Court and therefore the judiciary. It is not imposed by someone in the executive stating they do not want this person or that person to be released. It is not someone going to their mate in the next office with a report and getting them to do it. I will go through all the transparency issues that that involves. I foreshadow that the principle is not abhorrent, but the methodology is totally abhorrent.

It is important to note that the Prime Minister of Australia, not some bleeding heart who members opposite want to call soft on crime or whatever, and the Attorney General of Australia, Mr Brandis, QC, announced that the new terrorism laws to be brought before federal Parliament will include post-sentence supervision orders. At his press conference, Mr Turnbull was at pains to reassure the public that this would involve the judiciary. Likewise, Mr Brandis said that these laws are necessary because some of the diehard jihadists in prison never change their thinking and we have to keep control of them after they have served their term. Sometimes they are very lengthy terms, but, notwithstanding, we have to have some purchase on jihadists' continuing behaviour after they leave the prison gates. The Liberal Prime Minister and the Liberal Attorney General of Australia were at pains to point out and reassure all citizens of Australia that they would not in any measure breach, as this government is trying to breach, the time-honoured principle that impediments on a citizen's freedom once they have served their time would only be by judgement of a court.

Post-sentence supervision was introduced in Western Australia by a Labor government. It was introduced by Mr McGinty, as Attorney General, and Dr Gallop, as Premier. We are not ideologically opposed to the concept, but we are diametrically opposed to the executive taking it upon itself to make this determination. I foreshadow that we will vote against one clause of the bill, but we do not have to do this to make the point. That clause, when we get to it, is clause 74D, which reads —

> (1) Before the end of a prisoner's term, the Board —

If the clause stated that a justice of the Supreme Court must consider whether a post-sentence supervision order should be made for the prisoner, there would be no constitutional problem.

As framed, let us look at what the legislation says. It states —

> Before the end of a prisoner's term, the Board must consider whether a post-sentence supervision order should be made ...

Upon what advice is the board acting? Is the board acting upon a judge's advice? No. The clause before it states that the CEO—the definition of "CEO" is the CEO of DOTAG or his or her nominees—must give the board a written report about every prisoner that addresses post-sentence supervision orders. Then we go to what I have just read, which is that the board will then consider the CEO's report on making an order, which is unheard of in Australia. We will be asking the minister representing the Attorney General to take us to the precedents in Australia in which the courts have said that this sort of order is within constitutional construct.

We will also want to find out how many prisoners who have been guilty of a violent offence have committed another violent offence within two years of their release. The government must have figures on that. I worry that it does not because when we considered the mandatory sentencing legislation, we knew that no such records relating to sentencing at large are kept. That takes me to another area. The bill before us amends the Sentence Administration Act and the Sentencing Act. Clause 73 of the Sentencing Legislation Amendment Bill 2016 provides that a court must not sentence an offender to a term of three months or less. It strikes out the current provision of six months. I can remember being in this Parliament when Mr McGinty was worried about the prison population and the utility of such short sentences of 12 weeks. Then we have to take from that 12 weeks remissions for good behaviour and then add into that 12 weeks, not by lengthening it but there has to be a very expensive induction or assessment program, which takes up the first week or two, so the cost is not insignificant. In fact, it will cost the community something in the order of $60 000 to lock someone up for three months. What is the rationale behind this? The only rationale given—it is not in the second reading speech—is in the explanatory notes. This might be the hint to everything. Perhaps the government got cracking and started a database. The explanatory memorandum states —

> The minimum sentence for imprisonment will revert to three months from six months, following amendments made in 2003. This was brought about —

This is the important part —

> as a result of 'sentence creep', whereby sentences that attract a term of imprisonment of less than six months were attracting longer sentences.

We will be looking for the data on that. In the other house, the Attorney General took one of his usual pathetic cheap shots at the former Attorney General, who was a true reforming Attorney General, by saying that we have

to keep the rate of imprisonment down, not expand it like the present government. The rate of imprisonment under the present government has increased absolutely dramatically. I will turn to those numbers soon.

I will take this in stages. First, we want to see the statistics that are driving this and why it is said and on what evidence it is said that there is sentence creep. The magistrate wanted to give an offender four months. Knowing he could not give him four months, he gave him six months because that is the minimum sentence under the Sentencing Act. Where is the evidence for this? One of the disturbing things—I know that this will concern you, Mr Acting Speaker (Mr P. Abetz)—is that this will undoubtedly increase the rate of imprisonment in Western Australia. There is no doubt about that. We do not have to be Alfred Einstein to see which cohort of prisoners is going to bear the weight of this amendment. We want to examine the statistics behind this because we believe, on everything that has happened so far, that the people who were going to be most cruelly affected by this are Indigenous people. They comprise about three per cent of our population and make up over 40 per cent of the prison population. That is a known fact. We will have a look at the statistics on that when we go through it.

There are two things that we would like to see and hear from the minister, either in her reply to the second reading or during consideration in detail. Just to remind her, the first issue is the constitutionality of the whole part of the act that deals with post-sentencing orders. During consideration in detail, we will be looking to find out whether this was done on the advice of the Solicitor General and whether the government will be sharing with us the Solicitor General's advice on this particular matter. The senior lawyers that I have spoken to all say that this is problematic in the extreme. In a doorstop interview, the Premier said that he will take personal responsibility—it was a good line for TV—for reducing the Aboriginal incarceration rate.

Mr P. Papalia: Watch what I do.

Mr J.R. QUIGLEY: Yes, watch what I do. He is making sure that they go in at an earlier time—after three months. There is no doubt at all that this will most harshly affect the Indigenous population in Western Australia. I am reading from a speech from His Honour, the Chief Justice, which states —

> In Western Australia, the adult Aboriginal imprisonment rate is 3,633 per 100,000. That compares to the national rate of 2,174 …

So we are already 50 per cent—we are a disgrace in this state—higher than any other state in Australia. It continues —

> The next highest rate is in the Northern Territory at 2,808/100,000.

So Western Australia's incarceration rate of Indigenous people far outstrips even the Northern Territory. We will want to find out from the minister how many extra Indigenous people she expects will be incarcerated as a result of the proposed amendments to section 86 of the sentencing legislation. Before I leave this area, I am looking for one other figure. We all know about the high rate of imprisonment in Western Australia. I was invited to make a speech on this in Melbourne the week before last. Hon George Brandis, QC, was addressing the same conference, at which he indicated that a national inquiry was to be initiated into Indigenous imprisonment rates. The best thing that any government could do is attend to the 300-odd recommendations of the Aboriginal deaths in custody royal commission before spending any further funds on inquiries.

I have found the figures I was looking for. This is what has happened during the last 10 years. Bearing in mind that the Liberal–National government came to power in 2008, this snapshot goes back to 2006. In March 2006, there were 1 351 Indigenous prisoners in Western Australia. Ten years later, without a significant increase in the Indigenous population of Western Australia, the number of Indigenous prisoners is now 2 313. I congratulate the Premier on racking up 1 000 additional Indigenous prisoners—actually, 962—or a whacking 71 per cent increase in Indigenous incarceration. When I read that figure to the assembled crowd in the Betty Cuthbert room at the Melbourne Cricket Ground, a silence fell upon them. I said that if we are looking at the tragedy, and Mr Brandis wants to have an inquiry, perhaps unnecessary, into Indigenous incarceration rates, ground zero is Western Australia.

Now I go to non-Aboriginal prisoners. Ten years ago, there were 2 181, and now the figure is 3 694—an increase of 1 513 or 69 per cent. We can now mix the two ethnic groups up and break it down between male and female prisoners. The number of male prisoners was 3 282 in 2006; it is now 5 431—an increase of 2 149 or 65 per cent. What takes my breath away is what has happened to the figures for the women prisoner population in the same period. In March 2006, there were 250 women in prison, mostly Indigenous, and by March 2016, there were 577, an increase of 131 per cent. Our total prison population has increased by 70 per cent over 10 years. Population increase may be argued to account for this, but the statistician informs us that over the past 10 years, the

population of Western Australia has increased by 28 per cent. Our prison population has increased at nearly triple the rate of the increase in the general population. Does this community feel any safer for it? I suggest not.

Mr M.J. Cowper: The increase in the population of women prisoners is not a phenomenon confined to Western Australia. It is also happening in other states.

Mr J.R. QUIGLEY: I hope the member participates in the debate, and points this out in his contribution, because the increase he refers to is not to the extent of 131 per cent. However, with this legislation, we are lowering the bar so that we can stuff more people into prison. We are taking the present situation, in which someone cannot be imprisoned unless they have committed an offence that warrants six months' imprisonment, and halving that and lowering the floor so that we can stuff more people in. I suggest that this will not achieve the outcomes that the government was crowing about in making the community safer. We have seen the figures—month-on-month double-digit increases in some crime rates, and certainly year-on-year double-digit increases. There has been a crime wave, so we have seen two things running in parallel—this accelerating rate of imprisonment and this great crime wave crashing over our state.

I now turn to another area of this amending legislation that I am sure the member for Warnbro will have something to say about in due course—that is, the introduction into Western Australia of the concept of a suspended fine. At first blush, this seems like a fairly reasonable thing. We will fine someone for an offence, and we will suspend the fine for two years, but if they commit any offence during those two years, they will be brought back to be punished for that crime as well as the one they had previously been sentenced on. This would work well if we had an intelligent, mentally stable—I am going to say something that is a bit stupid—criminal population. If they were intelligent, they would not be criminals. Nonetheless, in a rational criminal population, if we fine someone, they would take note of that and desist from further offending. The problem is that this provision will especially hit the poor, the disadvantaged, the homeless and the Indigenous population, because anyone else would pay the fine.

As an aside, I always remember appearing in court representing a pearler who had been caught with too many panels. Panels are nets that hang down with each pocket containing a pearl shell. He had 100 or 150 more panels than his licence permitted, and there was a mandatory penalty for each excess panel. When I multiplied the mandatory penalty by 150, I will never forget that it came out to a $218 000 fine. This man was going off to Vietnam to buy more seed for culturing pearls; he was due to leave that day and knew he was about to be inflicted with this huge fine. When I went to break the news to him, I thought that he would break down and cry, and that I would need to give him a Disprin and a cup of tea or something, but he said, "I've got to get the plane later on this morning; will cash do?" I told him I was not taking 218 bricks to court, so I told him to wait until the fine was inflicted. Sure enough, he went and got a bank cheque and paid the $218 000 on the spot—and my fee, thank you very much. The wealthy do not feel it, no matter how heavily they are fined.

If a $150 fine is inflicted for a traffic offence or for disorderly conduct—I do not want to go through all the offences—on an Indigenous person or someone struggling in our economy, a single mum, the court will say, "We will be merciful; we will suspend the fine," but there is no other support service available to these people for behavioural change. I have a constituent who suffers from a mental illness. She parked her car outside her house every day and when a bit of paper was left on the windscreen, she just threw it on the road. The fines built up to over $30 000. Of course, a warrant for incarceration for failing to pay parking fines is not available, so she is left with a fine of $30 000. She is mentally ill. She will never get her licence back and therefore will never be able to get employment. If she goes bankrupt, bankruptcy will not extinguish the fine, so the $30 000 fine will remain with her for the rest of her life because she is mentally ill and cannot do anything about it. Her driver's licence will be forever suspended and because of that she will not be able to get employment. She had employment, but she had to give that up when she lost her licence. I am raising this because a fine itself does not change the behavioural response of those who are mentally infirm. What is likely to happen is that the evil day of incarceration will be put off. The fine will be suspended and we will wait until they come back and then put them in prison. Without financial resources to pay fines and without support services in the community to help dysfunctional people navigate in our society, imprisonment will end up being the inevitable consequence.

I realise that I have 13 minutes left on the clock. I could ask for another hour, if Madam Acting Speaker would give me that extension, but she is indicating that she will not give me another hour, so I am going to leave it to my friend the member for Warnbro to make some further comments about fines and to traverse that particular area.

Other measures in the bill are laudable. That is why I have said it is a mixed bag. We are not opposing the bill outright. We want to go on record as opposing what we believe to be unconstitutional. Those things could have been easily fixed. The bill could have been properly drafted and it—like the Prime Minister of Australia who has assured the public that he is going to—could have made it the province of the judiciary to impose these orders.

Members should think about that. I know Madam Acting Speaker (Ms J.M. Freeman) has an intense interest in the matter of violence restraining orders, but we do not go to some clerk in the bureaucracy and ask for a stamped violence restraining order—that is, those occasions in which a person has not committed a violent offence but is threatening to commit a violence offence or is behaving in some abhorrent way. Violence restraining orders can be obtained only from a judicial office. The bill proposes that post-sentence supervision orders will be dished out by another branch of the executive on the recommendation of bureaucrats.

Provisions in the bill will both expand the range of people who can be regarded as victims of crime and who can therefore make victim impact statements to the court at the time of sentencing. This will not be limited only to the direct victim of the crime, but will also extend to their relatives and guardians. Interestingly—we will come to this in consideration in detail—for Indigenous people or Thursday Islanders that facility will be extended to guardians and carers, but not carers in relation to others. We do not understand why that is. I have a relative who is disabled, who lives in a wheelchair as a quadriplegic, has cerebral palsy and has a full-time carer. If something happened, why are carers of non–Thursday Islanders or Indigenous people not also included within the ambit of the amending legislation?

The bill also provides, rather sensibly, that victim impact statements must be referred to the Prisoners Review Board so when a prisoner's case comes up for sentence before the review board, it has before it not only all the court records and charging documents, but also the victim impact statements that were presented to the court. The victim impact statements will become part of the law once this bill passes through Parliament, as it surely will. We think that is a very good move forward.

We do not see anything in the legislation that would give rise to, or could bring before the Parliament, anything to satisfy the Premier's undertakings to reduce the amount of Indigenous incarceration. I have read out the figures and I will not go through them again, but it is obvious that the government has no clue what to do about the high rates of Indigenous incarceration because it is only rising. Ever since the Premier uttered his famous words, the rate has kept rising. There is nothing in this bill, for which we have waited six years, to give us any hope that the government is on top of the problem and can turn it around.

I have talked about the importance of sentencing in our society, but when legislation that deals with crime is constructed it should not be done emotionally. Although it might give some short-term satisfaction to legislators to state, "Life means life," as Mr Porter said when he upped the penalty from manslaughter to a maximum of life imprisonment—I remember *The Sunday Times* stating that now, we have got it and life means life—no-one has ever got life or anything near it. Even under the new regime, no-one has ever got the full 20 years' sentence. The Liberal government got its headline, but there was no result for the community, as evidenced by the alarming increase in the crime figures. There is nothing in this legislation that in any way addresses those matters. Take even suspended fines, for example. As I said before, nothing is in the legislation to address behavioural change. The convicted person might have to undertake some community work of a voluntary nature with an organisation. We will come to this in due course.

We are now dealing with conditional release orders, which will be amended by clause 56 with proposed new section 49(1C). It reads —

> For the purposes of a requirement imposed by a court under subsection (1B), the CEO (DOTAG) may approve —
>
> (a) any educational, vocational or personal development programme; or
>
> (b) any unpaid work; or
>
> (c) any other activity the CEO (DOTAG) considers appropriate.

It does not include any requirement to attend and be supervised in a program aimed at behavioural change. Offenders can go out on a conditional release order under this amended legislation so long as they are doing any unpaid work approved by a bureaucratic Department of the Attorney General. It will not be the CEO, obviously, because too many people would be saying that they wanted to work unpaid for this or that organisation. I do not know what will occur, but nothing in the Sentencing Legislation Amendment Bill is aimed at behavioural change. We think this is being done on the cheap. The member for Warnbro will no doubt deal with that because when we raised the number of unpaid fines in Western Australia, we were told that it was not an issue. When the member for Warnbro raised the number of people being incarcerated for unpaid fines, we were told that it was not an issue. We are glad the government has fessed up that it is an issue by moving in this direction of suspended fines. Offenders will get a short-term sugar hit and not everyone will go to jail as quickly as they do now, but the law will catch up with them because the government will still have its policies for unpaid fines.

In conclusion, the opposition says that this legislation is long overdue and we do not oppose the essence of it. The essence of it is post-sentence supervision orders and that is what the government referred to straightaway in the second reading speech. But we raise the unconstitutionality of the construct of this bill, so we will vote against a bureaucrat being able to impose the orders. However, we will not take the time of the chamber to go through chapter and verse seeking to amend each clause of proposed part 5A to include the judiciary because there is not enough time left in this Parliament. I suspect that the result of each division would be inevitable, so we will raise the red flag concerning proposed section 74D and be on the record as staying on the right side of the Constitution. The government, by reason of its numbers, will have its way, as it did on the Bell litigation, over which it fell flat on its face and is now being sued. It brought an unconstitutional bill into this chamber, lost its case 5–zip in the High Court and is now being sued by the liquidator in proceedings in Sydney and refuses to tell the community what all this costs.

MR P. PAPALIA (Warnbro) [5.24 pm]: Sheer genius!

[Quorum formed.]

Mr P. PAPALIA: I will briefly refer to the amendment in the Sentencing Legislation Amendment Bill 2016 that covers post-sentence supervision orders, referred to by the shadow Attorney General. Clearly, the proposal is very likely to fail when ultimately challenged. It is right for the opposition to draw the attention of the house and the people of Western Australia to the government's incompetence in introducing this amendment in this part of the bill. It is right for the opposition to point out that rather than opposing the concept of retaining individuals in prison post their sentence, the opposition opposes the poor drafting of the bill. We oppose the concept of bureaucrats being authorised to enact that sentence. We believe that, as is the case with the dangerous sexual offenders legislation, this legislation should require the courts to make decisions of this nature. We will not oppose it on the grounds that we are concerned about individuals who will be impacted on by the legislation, although it is normal practice for a government to act in a lawful fashion. With all the resources government has at its disposal, it is not normal to introduce poorly designed legislation into this place. Nevertheless, that is the government's decision, so, as indicated by the shadow Attorney General, we will oppose that component of the legislation. I think he indicated that we will move an amendment or at least will oppose that structure of the legislation and we will make our points and move on.

The part of the legislation I want to focus more attention on, as indicated by the shadow Attorney General, is that which acknowledges the government's failure to deal with the issue of fine defaulters being incarcerated. Way back in November 2014, the opposition drew to the attention of not just the Western Australian public, but also the entire nation, the absurdity of the Barnett government's practice of locking up fine defaulters. We did not do it with just a press statement, with a speech in Parliament or on a radio show with a few seconds grab; we released a discussion paper containing statistics garnered through the parliamentary process over a number of years. We drew the entire nation's attention to the abject failure of the Barnett government concerning the policy associated with fine defaulters. We pointed out the stupidity of a policy under which we would lock up somebody to notionally recover from them $250 a day when, at the time, it cost the state $345 a day to incarcerate a person and they would not actually pay the fine. They would not learn any lesson and the vast majority of people who were incarcerated in that fashion under that ridiculous formula would go in on Friday at some time, but not necessarily in the morning because a day was counted as an entire day, regardless of their arrival time in the prison establishment. They would sit on their backsides watching television over the weekend on Saturday and Sunday with three squares and no obligation to learn any lessons, make any recompense to society or change their behaviour. They would then come out at any time on the Monday, not necessarily at the end of a full day, and that would be counted as a full day for the purpose of erasing their fine. As a consequence, they would have a clean slate whereupon they could enter society and recommence offending and accumulating more fines. It was the Western Australian opposition, WA Labor, that drew the stupidity of that policy to the attention of the public of Western Australia and the people of Australia more widely. It was not the government. There was no action on behalf of the government to force people to learn a lesson and to compel people to pay for their breaching of the law. There was no effort on behalf of this government to try to change the behaviour of people who were offending. In fact, it facilitated the opportunity for individuals to rapidly erase all their fines and recommence offending. That was a considered decision by the Barnett government as indicated by the massive rate of growth in the incarceration of fine defaulters within the first two years of the Barnett government taking office.

The former Attorney General, Hon Christian Porter, is waltzing around the nation, telling people that he can fix the social welfare issues of the nation. After that individual changed the regulations—without even introducing new legislation—that govern incarceration of fine defaulters and the supervision of those people who are in breach of work orders, within one year, the number of fine defaulters incarcerated in Western Australia tripled

and increased subsequently until, by 2010, we were averaging about 1 100 people being incarcerated annually, solely for fine default—no other offence. There was a massive increase in the incarceration of Aboriginal women. In 2014, when we drew the attention of this place and the public's eye to this stupidity, one in three women who entered Bandyup Women's Prison were going there solely for fine default—no other reason—and 60 per cent of them were Aboriginal. It was ridiculous and it was embarrassing.

Rather than respond in a way that might lead to better policy development, the Barnett government chose to up the ante. It chose to ramp things up and the rhetoric was ramped up. The initial suggestion, on many occasions in the media, and the response of not only the Attorney General but also the Minister for Corrective Services and others—maybe not including the Premier; I cannot recall whether he actually said it—was that there was no problem with fine defaulters because if we went to the prison system on any one day, a tiny percentage of the prison population would be there for fine default, which was absolutely true. However, over the course of the year, 1 100 people is not a small number. Even if went for an average 4.2 days, which is the duration they were going for at that time, they incurred incredible costs on the state. Apart from the fact that they do not pay fines, they do not change their behaviour or learn any lessons and they incur a cost on the state. They incur a cost on the prisons that accept them—that is, public prisons, because private prisons do not get them. There is an administrative burden, and it is not $345 or $350 or whatever it is this year. It is not that amount of money. As indicated by the Auditor General in his report on bail management, released last September, the cost of the first week of incarceration is $770 per person a day for an adult. That is an extraordinary amount of money. Bear in mind that the average fine defaulter's stay in prison was 4.2 days, so that is $770 every single day for every single one of them. That is an extraordinary cost to the state for a system that patently fails to change behaviour and, in fact, is designed to encourage that sort of poor behaviour. It is extraordinary that the government would then turn around and say that it is not an issue. It is almost laughable that the government said, "Don't worry about it; disregard it" repeatedly, but its subsequent response, in the form of the Sentencing Legislation Amendment Bill 2016, is a two-year get out of jail free card for the government, not for the individuals associated with offending, because it knows it has a problem. Over its term, the government has increased the prison population by in the order of 53 per cent. As indicated by the shadow Attorney General, that is far outstripping population growth. It has nothing to do with population growth, but a lot to do with very poor policy and, clearly, the government has lost control of crime and punishment in Western Australia.

No-one in Western Australia feels safer than they did eight years and two months ago—not a single person, perhaps other than the member for Scarborough. Under this government, for nine consecutive months, there was year-on-year double-digit growth in crime statistics in Perth. That is abject failure writ large. The government has lost control of crime. We know it has lost control of punishment because 30 per cent of the prison population is there on remand. They have not been sentenced yet! Forty per cent of the population of Casuarina Prison, the state's pre-eminent maximum-security facility, is on remand. The system is broken; the Barnett government broke it. It is not changing crime other than for the worse. It is not making communities safer and it is imposing massive costs on the state at a time when we cannot afford it. People who go into these facilities as minor offenders are being turned into serious criminals. The crime university is real in Western Australia. It is not just juvenile detention facilities; it is every one of our prisons, with perhaps the exception of Boronia Pre-release Centre for Women. All the other prisons are crime universities. Relatively minor offenders are going in, sitting next to real criminals, meeting their next drug dealer, joining bikie gangs, becoming associates, learning about how to be real criminals and hardening up under the process of being incarcerated and they are coming out far more likely to reoffend—and they are. That is why the prison population is going through the roof.

Every time the Barnett government's responsible ministers collect their pay cheques and shrug their shoulders about what is driving the problems in Western Australia, they make preposterous claims about how successful they have been at intercepting methamphetamine. I was getting it wrong in my interjection this afternoon; I apologise. I should have been asking, "Did the price of methamphetamine on the streets go up?" I know it did not, because the minister confirmed it in Mandurah when I was listening to her at the policing forum. Despite every single interception of methamphetamine under the government, the millions of dollars that have been poured into policing in recent times in this field of endeavour, the claims made in just about every type of media in Western Australia and despite the diversions run by the Commissioner of Police, when he is feeling under the pump for bad police statistics, in the form of stories about raids on meth houses, the price of meth on the streets has not gone up and that means that there is more than enough out there. Regardless of all the interceptions and all the activity, the government has not made a dent; it is not working. At the same time, we are spending almost $1 billion—we will exceed $1 billion this year—on corrective services, the vast majority of which clearly does not work.

Forgetting about policing, $1 billion has been spent on corrective services for a failed system that the Minister for Police helped to incapacitate. The government has driven up the prison population to such an extent that the prisons are not capable of doing anything except housing people. There is now very little capacity in our prison system to try to change behaviour or provide diversion to individuals who are set on a path from that pathway. Under this government's watch and as a consequence of this government's failed policies and the massive amount of incarceration and overcrowding of the prison system, these individuals are far more likely to leave the prison system and reoffend at a higher rate than they would had they not even entered the prison system. We heard today an interesting rant from the Minister for Corrective Services while he failed to respond to a question about juvenile detention, as he always does. He avoided questions about what I think must be the fifth or sixth serious incident at Banksia Hill this year that required the special operations group to yet again deploy distraction grenades and pepper spray. Instead of answering questions on that, the minister made an outrageous claim about reducing recidivism rates at Banksia Hill. That was just ridiculous. If the statistics are not published the opposition cannot analyse them, they cannot be assessed by independent authorities and are therefore questionable. They are not valid. The Commissioner of Corrective Services needs to publish data, and he should be told to by the minister. They are both failing the state of Western Australia by a veil of secrecy having been laid across corrective services since 2013 that prevents external scrutiny and means that any claims with respect to a reduction in recidivism or success in service provision are invalid.

[Member's time extended.]

Mr P. PAPALIA: I take this opportunity to make one observation on juvenile detention, which is that it is under-resourced at the moment. I concede that the numbers have reduced slightly since the government took office, but of course what the minister overlooks is that the number of juveniles in detention almost doubled in the middle of the government's term. When we lost office in late 2008, yes, there was in the order of a couple of dozen difference between the numbers incarcerated today, but in the middle years, under the auspices of three or four, I think, different corrective services ministers and two police ministers and two Attorneys General, the number of juveniles almost doubled. That is what drew the attention of independent organisations like Amnesty International that wrote papers that ended up being released some time later. By that time there had been a scramble by the government to change the number held at Banksia Hill. That is what drew the attention. That is what shot us to record levels of incarceration and being at what was suggested was the peak of jurisdictions insofar as overrepresentation of Aboriginal juveniles in the detention system.

Nevertheless, the system is still failing. Regardless of any claims made by the minister, the fact is that one in three of juveniles who to go into Banksia Hill—no matter who they are, what they have done or how they have offended—will subsequently reoffend after they reach 18 years old and adulthood in such a way as to enter the adult prison system. Those people are still massively disproportionately Aboriginal. We know that in Western Australia, after turning 18 years old, an Aboriginal young person who offends in such a way as to go to adult prison reoffends at a rate of 70 per cent. Our juvenile detention facility is currently an apprenticeship for adult prison and a lifetime of incarceration for an Aboriginal. Nothing has changed there, and there is no evidence to the contrary. I directly defy the minister, department and the commissioner to release the data that will refute those claims. If those people believe they are correct, they should release all the data. They should not release reports that have been contrived and composed by consultants paid by the minister to produce a tailored report. That is inadequate and not research; that is just spin.

The Sentencing Legislation Amendment Bill 2016 will not result in anything for this government because we are in the dying days of the Barnett government. Very shortly, with luck, this government will not be responsible for anything. However, this legislation will probably result in a hiatus in the rate of incarceration of fine defaulters because there is the option there for a 24-month holiday. I take no confidence, from what I have read of the explanatory memorandum and second reading speech, from the suggestion that programs, interventions or tasks assigned by some bureaucrat in the Department of the Attorney General will result in any change in behaviour for these individuals. I suspect it was just a desperate measure to be seen to be doing something, because the government has done nothing for eight years, two months and two weeks or whatever it is.

I will take an interest in the consideration in detail stage of this bill. I look forward to the minister providing this house with the evidence used to justify the amendment related to fine defaulters. I think the minister needs to not just come in and re-read the second reading speech or make some claim about the good behaviour period of 24 months that will somehow change people's behaviour. Thanks to a Western Australian Council of Social Service report from about 2013, we know that 53 per cent of individuals in Western Australia on a community work order suffer from a dependency of some description that is either alcohol or drug related. That means they are dysfunctional. That means they are very unlikely to respond to the threat, however delayed, of a prison sentence. As we have seen, it does not work as a deterrent to someone who commits these offences and

accumulates fines. We need to take action and properly fund and oversee interventions that are more likely to provide these individuals with a life-changing and behaviour-changing outcome. From what I have seen in the second reading speech or explanatory memorandum or heard described, there is no explanation to suggest that the government has any idea about what it will do, let alone how successful it would be. I look forward to hearing all the evidence, the reference material and the justification for this change to the legislation, and all the arguments for why it will be better than the current situation in which Corrective Services has for every single year of the Barnett government blown its budget by on average 8.6 per cent, with this as a significant contribution—albeit much smaller than the rest of the fiasco the government created. I want to hear the evidence the Attorney General was provided with to justify this legislation, because we will be otherwise forced to conclude, as we so often are, that the government is just being steered along by bureaucrats who provide the government with some very flimsy arguments and very little evidence or research. They just compile an argument or a bit of legislation to meet the government's requirements that are purely political and not in the interests of the people of Western Australia.

MS M.M. QUIRK (Girrawheen) [5.49 pm]: The Sentencing Legislation Amendment Bill 2016 purports to be in response to the Department of the Attorney General's "Statutory Review of the *Sentencing Act 1995* (WA)". I make the point, as I frequently do on such occasions, that that report was tabled in October 2013. It is now November 2016. Once again I commend the Attorney General for the glacial pace at which he has responded to the recommendations in that report.

Having said that, I note the following paragraph in the executive summary of the report —

> It is worthy of particular mention that since its commencement in 1995, there has been a distinct lack of significant issues or negative feedback arising from the operation of the Act. As such, the Department has taken an unhurried approach to conducting a thorough analysis of selected critical stakeholders' views in preparing this report.

I have to say: as if it needed encouragement!

I want to make a couple of brief comments. The first relates to the Prisoners Review Board and the notion that is introduced in this bill of extending the period for people to complete their sentences, thereby extending their time in incarceration. One of the issues that comes up frequently when people are incarcerated and they become eligible for parole is whether or not they have completed certain programs. It seems to me that this is a bit of a cover for getting to the stage at which someone completing their sentence should be admitted to parole but they end up completing their whole sentence without having completed any real rehabilitative programs whatsoever. This gives the government an out to keep them in custody until such time as they can organise programs. It is simply unacceptable that there are not a sufficient number of programs in prisons to allow for an orderly movement of prisoners out of the system, so that when they transition into the community, they have more skills and capacity to cope than they did when they were first incarcerated.

Another thing I want to say about the Prisoners Review Board is that, certainly under the previous government, the review board's reasons for both admitting and not admitting people to parole were made publicly and were accessible online. That is very important because I recall, when I was Minister for Corrective Services, there were a number of occasions when journalists would ring up and say, "Do you realise this person's been refused parole because they haven't been able to access a program?" That was always a matter of some embarrassment to us, and we would always then try to arrange for that prisoner to access the program.

Now the Prisoners Review Board does not publish its reasons when there is a refusal. I have asked both the Attorney General and Mr Cock about this, and both say it has never occurred—that reasons were never given publicly. I can tell members that they were, because I would frequently be asked about refusals of parole in situations in which the refusal was the result of a lack of programs. For transparency in the system, I say parole decisions should be published, irrespective of whether the person receives parole or not.

The report raises a number of issues and makes a number of recommendations that are, in fact, not covered in this bill. I am disturbed that, after three years, the government cannot introduce a bill that covers some very important issues. For example, the report on page 41 makes the point that sentencing options in the regions are very limited. Part of the reason we have a disproportionate number of Aboriginal prisoners is that there are fewer sentencing options and community-based options for offenders in regional and remote Western Australia. This issue is addressed quite extensively in this report. Conclusion 32 states —

> The current levels and types of resourcing available to effectively carry out CBOs, —

Community-based orders —

> particularly in regional and remote areas, is undeniably of concern to many stakeholders.

If we are really dinkum about reducing the levels of Indigenous imprisonment, we need to provide more sentencing options for community-based orders in regional and remote Western Australia. That simply is not happening and has not happened.

Interestingly, in the context of the government's so-called "war on meth", conclusion 7 on page 16 of the report is an excellent suggestion. It states —

> Many judicial stakeholders believed that ingestion of drugs should not be specifically defined as either an aggravating or mitigating circumstance. Nevertheless there are now a number of precedents, e.g. *Road Traffic Act*, for ingestion of drugs to be defined as a circumstance of aggravation. Whilst there are differences between the road traffic law and criminal law, there could be merit in considering the introduction of proved ingestion of prohibited drugs as a circumstance of aggravation.

So much crime is said to be driven by the ingestion of methamphetamine, in particular, so I cannot understand why this recommendation was not taken up. I am very pleased to see that there has been some change in the area of secondary victim statements. As members will be aware, in cases in which the victim is dead, the capacity to put secondary statements before the court is somewhat limited, so I want to congratulate the government for freeing up the capacity to do that.

Another issue talked about in this statutory review that the government does not seem to have addressed is the issue of options for the payment of fines. There is quite a lot of discussion about impecunious offenders, the level of inquiries courts should make about their capacity to pay, how that should influence a court's decision, and whether there are some other sentencing options to give offenders more opportunities for arrangements to make time to pay. Conclusion 26 states, in part —

> In response to stakeholder feedback, it is suggested that consideration could be given to having available to the court, persons able to assess a person's financial standing and advise the court accordingly.

Elsewhere, the report recommends that there should be the capacity to partially suspend the fine option as a sentencing alternative to enable an arrangement to be made with the Fines Enforcement Registry. That is a problem that commonly occurs. We are all familiar with situations in which constituents come to us about the current payment arrangements, under which the taxi meter keeps on running and more and more costs are clocked up; they cannot pay the original fine and they have additional costs imposed.

Obviously I have some concerns about the constitutionality of indefinite sentencing; of course, a similar issue was canvassed in the High Court in respect of dangerous sexual offenders. I think this issue is even more diffuse and, no doubt, the shadow Attorney General will canvass the issues at length with the Minister for Police when we go into consideration in detail.

As I said, the opposition supports the bill. I am disappointed that other, very sensible, recommendations in the statutory review were not taken up. It is not as though the government has not had time over three years to draft the legislation. This, at the eleventh hour, can be seen as little more than a panic reaction to prove to the community something that cannot really be proved—that passing this legislation at this late stage as a response to escalating rates of crime and the fact that law and order is out of control will somehow show the Western Australian public that this government understands the subtleties and implications of the criminal justice system and the punishment of crimes at an appropriate level.

MR C.J. TALLENTIRE (Gosnells) [5.59 pm]: I rise to begin my remarks on the Sentencing Legislation Amendment Bill 2016 and I take the opportunity to foreshadow some of the issues I want to touch on. The key issue is changing eligibility for programs.

Sitting suspended from 6.00 to 7.00 pm

Mr C.J. TALLENTIRE: At the core of this issue is the number of people who are incarcerated in Western Australia. The numbers are quite shocking. One has to ask whether these amendments will improve the situation in terms of just the raw number of people who are currently serving custodial sentences. This change is seeking to take it from six months down to three months; that is, if a person commits an offence and gets a three-month sentence, they will go to prison. That is what this change does; it takes it from six months down to three months. One would assume that will further dramatically increase the number of people in our prisons. Let us look at the numbers at the moment in our prisons. It is particularly frightening, disappointing and sad to look at the breakdown of Aboriginal prisoners and non-Aboriginal prisoners. In March 2016, we had 2 313 Aboriginal prisoners and 3 694 non-Aboriginal prisoners. In both areas, there was a dramatic increase of 71 per cent compared with the figures of 10 years before. In March 2006, we had 1 351 Aboriginal prisoners and in March 2016 that number had gone up 71 per cent to the figure I just quoted of 2 313. For non-Aboriginal

prisoners, it went from 2 181 to 3 694, which was a 69 per cent increase. What is perhaps most startling of all is that in that 10-year period, the number of women in prisons has gone up dramatically—amazingly, by 131 per cent. In 2006 we had 250 women prisoners and in March 2016 there were 577. I must acknowledge that these figures come from a paper presented by Chief Justice Wayne Martin. They tell a very sorry tale.

We need to look at the need for people to be serving custodial sentences. Of course, the question we have to ask is: why do we send people to prison? Probably the main reason for most of society is that we want to punish people for things they have done. Many offences carry custodial sentences because we have an idea that it will dissuade people from committing certain types of crime. When we look at the name of our prison service, it is called corrective services. We have a Minister for Corrective Services and I believe it is the Department of Corrective Services. I think this is a sign of a progressive mindset, in that we are not just looking to punish people and not just hoping for some dissuasive value with a custodial sentence, but also trying to correct people and assist them in moving on from whatever offences they have been responsible for or whatever terrible crimes they have committed in the past. The hope is that while they are serving a custodial sentence, they might have the opportunity to improve themselves and change whatever behaviours they currently have—lose those behaviours, move on from them and correct their ways—so that they do not commit similar types of offences. I am sure there would be some good examples of change when it comes to various forms of violent behaviour. Perhaps some people have very poor anger management skills and end up committing violent offences and crimes such as grievous bodily harm, or worse, and they end up in prison. Hopefully, through their time in prison, they can learn to manage the behaviour that caused their problem in the first place. That is the ideal, but I fear that all too often people go into prison and do not get involved in any of the programs that might change their lives. They do not get involved in the sorts of programs that would perhaps not make them necessarily better citizens but would make them reliable, safe citizens when eventually their custodial sentence has been served. That is where I am concerned with these amendments. I look forward to the discussion that will be had on this issue as we go through the legislation in detail.

I am really keen to know whether someone who is in prison serving, say, a three or four-month sentence will have access to the programs that could turn around their lives or at least make them better, safer and more reliable citizens—citizens who we will be able to feel, in the broader context, will not be a threat to society and will be reliable people. Is it really feasible for someone to begin—not even to complete, but to at least get underway—some program that will help them realise that their violent behaviour, which, as I was saying before, perhaps relates to an anger management issue, could be corrected, and that at the end of their sentence they could perhaps look to continue the program and see the benefit in doing that? All these sorts of things are essential to a person's successful outcome from their time with the corrective services part of our society. I am unclear about this. I have a feeling that by reducing the time from six months to three months, so that if a person gets a three-month sentence, they will go to prison, it will actually leave a bit of a gap. My understanding is that people do not actually access the programs unless they are serving a six-month sentence or more. I hope the minister will be able to explain that to me in detail, so that we can see that we are not creating an even bigger problem—that is, people going to prison, developing a network of contacts and in fact having the very worst outcome that one could imagine from them being involved with the whole corrective services sector, whereby they develop a familiarity with more criminal activity and discuss with people in the prison ways and means of break and enter or whatever offence it is. That would be the worst possible outcome.

However, I fear that will be the case, because we will actually put more people into prison, because this legislation is taking it down to those who have been given a three-month sentence. I am sure that could sound very attractive to a lot of people in the community—they will hear that someone has got a three-month sentence so they will automatically go to prison. However, if these people are not accessing programs that will change their behaviour, we will actually increase the likelihood of them becoming recidivists, and that is the worst possible result. That is what we really do not want. I hope there are other means by which we can tackle this problem—I know there are various means. I see in the legislation the possibility of post-sentence supervision orders. That supervision can go on for at least two years using GPS bracelet technology with which people can be tracked and their whereabouts checked. I think systems are even in place for people who are to exclude themselves from certain areas. Warning bells can ring when the person wearing the bracelet appears in an area they are not supposed to be in. Technology can potentially assist us, but I do not think we can escape the core issue—that is, making sure that time with the Department of Corrective Services is something that can actually improve people in some way. That has to be at the core of our thinking.

I want to say that I really admire people who serve as prison officers and the work that they do. I do not think the nature of the work can always be pleasant. I am sure that is it is unpleasant work much of the time. They deal with extremely difficult people. I know that there are procedures and there is training in how to go about it. Some of my constituents are prison officers and members of the excellent WA Prison Officers' Union. It is

a union that has a very high membership rate. I think something like 90 per cent of prison officers are members of the union, which says something about prison officers' appreciation of the quality of service that the union provides them with. It must be a great opportunity for prison officers to network in a different setting from the prison setting. The union provides an opportunity for them to discuss issues with other union members. Prison officers can discuss the sort of techniques that can be best used to deal with particular types of prisoners. That is to be applauded. I am sure that any progressive employer would realise the benefits of having a strongly unionised workforce. It provides for a lot more than just a group to speak to when there are issues of rates of pay. Unions provide much more than that. They can help with the efficient operation of any prison.

I want to go back to the sort of programs that I think are essential. One of them is a resocialisation program. I was very interested to learn about this program and see its objectives. I will quote from the Department of Corrective Services' document. It states that the objectives of a RSP are —

- to prepare the prisoner for return to the community so that any threat that the prisoner might pose to the safety of the public is minimised and the prisoner's ability to pursue an effective, constructive and law-abiding lifestyle is maximised

That is a laudable objective; it is tremendous. That is what time spent in prison should be about. However, I am concerned that not all people going into prison will get access to that program. Perhaps there is an argument that if people are inside for just a three or four-month period, they will not need the same level of resocialisation; I am not sure about that. I suspect there would be some people who are going in for a shorter period just because it is just their first offence and it is a relatively minor offence. Those prisoners are the very ones we want to get on to. They are the lives that we can turn around. It probably will not be possible to turn around the life of a hardened criminal who has a 15 to 20-year sentence, but we have a unique access opportunity for people who are there for only a short while. We can get hold of them and, I hope, turn their lives around.

Mrs L.M. Harvey: Can I explain about the resocialisation component of the legislation?

Mr C.J. TALLENTIRE: Yes.

Mrs L.M. Harvey: It is to enable prisoners who were sentenced prior to 4 November 1996 to have access to resocialisation programs. At the moment, they are the only cohort of long-term prisoner who cannot receive or be party to a resocialisation program because of an anomaly in the legislation and a prior amendment. This legislation fixes that and makes the resocialisation programs available to more offenders, particularly the 40 or so offenders who were sentenced prior to 4 November 1996.

Mr C.J. TALLENTIRE: I thank the minister for that clarification. I noted that as a footnote on the very document that I am looking at.

My concern remains for those people who are in prison for shorter periods; are they able to access these resocialisation programs? I am not clear about that. The minister is right; the intent of the change is to enable people who were sentenced over 20 years ago to access resocialisation programs. Those prisoners obviously committed some pretty awful crimes to have received 20-year sentences. I have no doubt that after 20 years of prison they will need resocialisation. One of the objectives of the program is to counter the negative effects of institutionalisation. It is true that after 20 years in prison, people are going to be institutionalised. Some people say that we get institutionalised in Parliament in a way, but a far pleasanter way than if we were in prison. Another objective of the program is —

- to facilitate the reintegration of the prisoner with his/her family and the community

That is an amazingly important issue to the likelihood of someone not reoffending.

[Member's time extended.]

Mr C.J. TALLENTIRE: I imagine that amongst those 40 or so prisoners the minister mentioned there may be some who have genuine families to go back to. If that is the case, I am sure that their family structure will be an essential support to their wellbeing. I would guess that the majority of the 40 will come out of prison without a family to go back to. In that case, it is more about how they reconnect with the community. We must bear in mind that it is a community that has advanced in 20 years. Any prisoner who was sentenced in 1996 probably would not have had much exposure to things like the internet and are unlikely to have had a mobile phone. Those are staples of our society now. I can well imagine the kind of shock and the potential pitfalls or traps that people could fall into if they were to come out of prison after 20 years behind bars and suddenly find themselves exposed to these technologies that they have never ever seen before. It might be that they recoil from technology and become museum pieces in their own way of thinking, that they are not geared up for our society and that

they would not be ready for the various employment and social opportunities that might be there for them in their new post–criminal behaviour lives after serving their sentence. I note that another objective is —

- to develop the prisoner's educational and employment skills

That is absolutely fundamental as well. If people have been away from the workforce for 20 years, we want them to be self-reliant, but the likelihood of them having skills that they can use, especially in cases of people who have been imprisoned for 20 years, is small. They perhaps will not be the same physical beings that they were. They may once have been well and truly capable of doing labouring jobs that did not require a high level of skills or training, but 20 years later they might find themselves really struggling to do anything that is of a heavy physical nature.

Some of the other objectives, which are absolutely laudable, include developing the prisoner's life skills, such as budgeting, finding accommodation, cooking et cetera, and developing the prisoner's social skills, including communication skills, assertion, and relationship skills. The objectives of these programs are very good. I am concerned that prisoners serving life or indefinite sentences may apply for a resocialisation program. These are the people the minister mentioned to me—the prisoners sentenced prior to 4 November 1996. The Department of Corrective Services document states —

> These prisoners must be assessed by the Department for their suitability to participate in a RSP no later than 2 years prior to their Statutory Review Date … irrespective of any Earliest Eligibility Date ...

The second point I am concerned about is —

> Following recommendation by the Prisoners Review Board ... for participation in the programme, approval by the Attorney General and the Governor is required for this group of prisoners to participate in a RSP.

Should this be another area in which the judiciary is involved? It is all very well for the Prisoners Review Board and the Attorney General to be involved but what about the terms of the sentence that offenders were given? Should the people setting that sentence be given an opportunity to mention the need for the prisoner to be enrolled in a resocialisation program? Those are some of my concerns with the program. I must say again that many of the objectives of the program are really positive. However, will they be accessible to all? Will all prisoners have ready access to it? I note that some of the program activities include placement at a minimum-security facility. That indicates that we are talking about people who are not likely to present a high level of risk to society anyway and that is why they are in a minimum-security facility. Their participation in supervised and unsupervised external activities is part of the RSP. Another activity of the program is inclusion in the reintegration leave program. We imagine that this gives prisoners the opportunity to perhaps have weekends in a family setting. Other activities are inclusion in the prisoner employment program; driver training and education, preferably in the final stage of the RSP; engagement with prison counselling services if experiencing difficulties with resocialisation; liaison with the transitional manager; preparation of a satisfactory parole plan, if applicable; and liaison with the community corrections officer who is likely to be supervising the prisoner on parole. As I said, there are many laudable aspects to this program but it comes down to who will be able to access the program. That remains my big concern.

As has already been mentioned in this debate, corrective services currently costs the state about $1 billion a year. I think it costs around $130 000 to $150 000 a year to keep someone in prison. It is an amazing amount of money. It is an incredibly costly process. Could we have avoided ever getting to this? Could we not have done something about it? Members on this side of the house have talked about and championed those early intervention programs. We would be much better off pursuing those sorts of things. Of course, I accept that there will be a need for a prison service and corrective services. That is why I mentioned my support for the objectives of things like resocialisation programs. I stress again the need for prisoners, regardless of the length of their sentence, to be able to access those programs. I am not sure how much more it would add to that cost of keeping someone in prison, but if we are already saying that it costs between $130 000 and $150 000 a year just to keep them locked up and fed, what is the additional cost of making sure that they are in programs that are likely to turn their lives around? That needs to be seen as an investment in stopping them being recidivists. We need to ensure that we are investing in that—otherwise we will only see our $1 billion a year outlay on corrective services grow.

That is not an area of expenditure that we want to see grow at all. After all, it is one of those things about which we can say, "But for the grace of God go I." Any one of us in this place could have had the misfortune to have been born into a dysfunctional family. I am sure that many people in custody come from families like mine—happy, middle-class families—who had all the opportunities in the world but somehow something went wrong.

I only have to think of some of my constituents. One in particular is a father who has a son in prison in Vietnam at the moment because of drug dealing. This father, who comes to see me regularly, is desperate to see his son transferred from a prison in Vietnam to Western Australia. I know that the Minister for Corrective Services is well aware of the case. I believe he is doing what he can to assist. Those sorts of traumas that beset a family are just devastating for the individuals involved. They are also making victims of the other members of that gentleman's family, who just made a stupid mistake of trying to traffic drugs in Vietnam. The consequences for his family are absolutely devastating and enormous. It is not an unusual situation. I think it is one that all too many people are faced with.

We are totally supportive of this legislation, which has many aspects. I will certainly be guided by the shadow Attorney General and we will learn from him about the key areas that need amendment. I hope that the government will listen to those arguments put by the shadow Attorney General and that we can have some reasoned debate on those amendments so that quality legislation can go through this house, even in these last days of Parliament. It worries me that we rush legislation through and we do not give enough careful hearing to reasoned argument on amendments. I will conclude my remarks. I look forward to participating in the remaining stages of the debate.

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [7.28 pm]: I rise to not make a contribution as comprehensive as the shadow Attorney General, as learned as the member for Girrawheen or as comprehensive as the contribution from the member for Gosnells. I thought the contribution of the member for Gosnells was very impressive for someone who does not come from the lawyering trade. Perhaps he has a future as an Attorney General one day.

Mr D.A. Templeman: A bush lawyer.

Mr R.H. COOK: Yes, a bush lawyer.

Mr W.R. Marmion interjected.

Mr R.H. COOK: If the minister is going to stretch credibility, perhaps we could perceive a situation in which he would be the Minister for Environment. No, I do not think we could.

As the shadow Attorney General indicated, we will be supporting the Sentencing Legislation Amendment Bill 2016 in total, but, of course, we have some amendments that we wish to put before the chamber. I think the shadow Attorney General appropriately pointed out that a range of issues are constitutionally offensive or unsafe around the role of the department as opposed to the judiciary.

This legislation comes to this place, as the minister observed in her second reading speech, because of a 2013 election commitment to target serious violent offenders, domestic violence offenders and serial arsonists under a new post-sentence supervision order.

I also heard from the member for Girrawheen that a lot of this legislation comes from a review that was undertaken and tabled in 2013 by the Attorney General. Given that one part of the motivation for this legislation is a law and order commitment at the last election and the other part of the motivation is a comprehensive review that was completed in 2013, I am left to wonder what on earth we are doing on the third-last day of the final year of a four-year term considering legislation that has taken a long time to get here. I would have thought that if a government was dinkum about an election commitment of this sort, it would want to see it legislated in its time so that it could have an opportunity to implement the laws that it wants to bring into being. It is extraordinary that the government should rush it in, in the final stages. I can imagine the exasperation around the cabinet table as ministers collectively sighed as the Attorney General provided another excuse for why he has failed to act on an issue, be it a question of public importance or policy or simply implementing a fairly long-term project. As I said, I think it is extraordinary that we come to this place in the final week of this government to implement what was clearly an important commitment at the last election.

We know that this government is prone to dabble in law and order debates, particularly when things get a bit rough and it finds itself under pressure in some policy areas, such as social services, health and education. It is to type that a government of this persuasion reaches into its back pocket and comes out with the law and order message, the tough on crime message and the message about how we will have mandatory sentencing for just about every offence known to mankind. But, of course, as I am constantly reminded by the Chief Justice, if one is serious about reducing crime, one knows that it is the likelihood and fear of getting caught that most greatly affects a person's behaviour and not some sort of calculation that is made in the throes of undertaking a crime about the level of sentence that they will receive in the event that they are caught. Therefore, we know that these changes are not serious attempts at making the community safer and addressing the issue of law and order in our

community. These are glib, sad, political gestures to simply trigger certain emotions in the hearts of the electors either to distract from another issue or to garner votes from a policy-weary electorate.

This government should be careful what it wishes for. We have already seen the impact of mainstream political parties starting to dabble in the world of the extreme. We saw it with the Liberal Party when it first came to power in 2008. The Liberal Party was held to ransom by the threat of its own ambitions to win government by the National Party, which insisted on implementing in full its royalties for regions policy. The Liberal Party, having achieved government and having paid its pound of flesh to the Nationals, was unable to stay its own hand because by then it had already slipped into a process of spend, spend, spend as part of its efforts to maintain government. The Liberal Party could not on the one hand say that as the government was spending a lot of money through royalties for regions, it had to stay its own hand in a few areas because it, like the Labor Party, is a mainstream political party that holds dear certain consensuses. What is the plural of consensus? Consensi? Consensuses?

Ms J.M. Freeman: Consensus is the plural.

Mr R.H. COOK: It is the plural. Parties that are part of the consensus of mainstream political parties look after the books, maintain a steady hand on the tiller of the state's economy and finances and do not enter into extreme policies simply to win votes. They do not push the fear and panic button—the button of hatred, misogyny and race—as we have seen in the United States of America. Mainstream political parties step away from that because we have the history and maturity to know that that is not the way we create and maintain a civilised society. But the government should be careful what it wishes for when, in the name of political gain, it goes down this path of demanding greater and greater punishments for people who offend.

We have already seen the Nationals under pressure to try to get themselves re-elected. They have now gone to a further extreme. Having spent the entire Treasury on their royalties for regions policy, they have now decided to raid other coffers to pay for their future profligate spending. Now, it is going to the mining companies to try to tax them. But, of course, it is not only looking for some sort of virtual fiscal envelope to continue to bribe the electorate with its policies, but also hedging its bets. It is immunising against a bigger attack and threat to the National Party—that is, One Nation. The Nationals know, having stepped across the threshold and passing from mainstream political life into the extremes of the electorate, they have to go further. They have to go beyond royalties for regions. They have to now attack the mining companies because they need the money for their promises and because they have let go of their pretensions to being a mainstream political party. The National Party has entered into the extremes and it now understands that it is going to have to compete with the Shooters, Fishers and Farmers Party, One Nation and all the other extreme political parties in the electorate to maintain its survival because that is where it has cast its lot.

Not far behind it is another political party—the Liberal Party. It dances with these ideas of being hard on crime, as it says. It will ramp up more and more mandatory sentencing and more and more policies about hatred and anger. Campbell Newman got it in one today. He painted the Liberal Party's future. He said that the next coalition government in Queensland will have One Nation on the government benches as One Nation slowly comes to chew away at the Liberal Party's flanks, its colleagues in the extreme—that is, the Shooters, Fishers and Farmers Party and the National Party, which once upon a time pretended that it was part of the mainstream political life of this state—are starting to come and eat away at the life of the Liberal Party. There is only one way you guys will be able to stay in government, and that is to take —

Mr J.E. McGrath interjected.

Mr R.H. COOK: It is a novel suggestion, member for South Perth, but somehow I do not think that is in the member's future.

The Liberal Party will have to enter into a coalition with One Nation. That is the only way that the Liberal Party will be able to form government in the future. Campbell Newman got it in one—today he said if Tim Nicholls is to be a future conservative Premier in Queensland, the reality is that the new force in conservative politics is One Nation. One Nation will slowly take the place of the National Party because the National Party no longer pretends to be part of the mainstream political debate. The National Party has decided it wants to go off with the extreme elements of our electorate and push those buttons that we saw Donald Trump push last week—those buttons around hatred, misogyny, race and so on. It is a slippery slope. The Western Australian Liberal Party is not far behind if it enters the law and order debate pretending to be concerned about people's safety in order to garner, for its own political survival, popularity from some of the more extreme elements in our community. I want Liberal Party members to contemplate a future in which they are in coalition with One Nation, because it is in their future—it is inevitable. As the Liberal Party continues to scamper to the right and rejects the consensus

of mainstream political parties, it will continue to move further and further to the right and it will find itself ultimately in coalition with those people whose values it currently repudiates. The Liberal Party ultimately has to be prepared to make that leap. The more it creeps down that path, the closer it will be to those elements.

The Sentencing Legislation Amendment Bill and its elements in relation to the Liberal Party's 2013 election promises are founded upon a solid gold emotional, political push-button that conservative parties are increasingly using and it is simply introducing the issue of distrust of the judiciary. In his very good analysis of this bill today, the shadow Attorney General summed it up beautifully when he talked about the provision of powers in our system of government and the way that ultimately the new post-sentencing provisions of this legislation rely upon the executive recommending to the executive the ongoing sentence of an offender. That undermines the checks and balances that we hold dear within our community and within the basis of our system of government.

I note that the Dangerous Sexual Offenders Act that was introduced by a Labor government has much the same mechanism to extend someone's sentence in the event that rehabilitation cannot be contemplated following the completion of their sentence. But that relies upon a decision of the judiciary working in conjunction with the executive rather than simply the executive making that decision itself. Under the old system, which Labor introduced, there were the checks and balances that are one of the cornerstones of our system of government—that is, the separation of powers. This takes us across the threshold on these issues—it is the executive recommending functions to itself that would ordinarily be the province of the judiciary. The shadow Attorney General said that these things may be found to be unconstitutional. I am not within a bull's roar of the level of expertise that the shadow Attorney General has in these matters, but it makes sense, when we consider the undermining of the separation of those powers, that we would see a situation in which these laws are potentially challengeable. The shadow Attorney General foreshadowed that the Labor Party proposes an amendment to that particular part of the bill, not out of spite for the whole legislation but in wanting to ensure that it stands the test of that principle—that is, the separation of powers.

[Member's time extended.]

Mr R.H. COOK: I understand that part of the motivation for this legislation is not just the election commitment that I spoke of earlier, but in fact comes from a comprehensive review of the Sentencing Act and introduces what are clearly some attempts to modernise our sentencing system with new ways that sentences can be given and carried out. It provides a much more modern framework in which judges can treat offenders in different courts. I saw the suspended fine section in part 4, division 3 of the bill and joined, I am sure, other members of Parliament in a superficial analysis saying that that was quite a good provision. If a judge did not want to fine an offender who is guilty of a fairly minor misdemeanour, because the payment of a fine would be too onerous in the circumstances, the judge could suspend payment of the fine for up to 24 months. The offender could avoid paying that fine on the basis they have been of good behaviour during that period. Superficially, that seems a pretty good idea and a good way to proceed. The criticism the shadow Attorney General had about that, particularly in terms of its capacity to drive someone further into poverty, further disadvantage and further into the marginal parts of our community, was that they ultimately risk further offending. Nevertheless, it joins the other provisions of the bill. It is clearly an attempt to modernise our sentencing structure to provide judges with more options and to provide a better transition for prisoners from prison to rehabilitation.

I was particularly heartened to see that changes are being made to victim impact statements. The complex family structures of people of Aboriginal and Torres Strait Islander descent will be taken into account. That seems to be a particularly civil and appropriate approach to that issue. Victim impact statements have become an important part of our judicial process. They allow people who would otherwise be silenced or felt ignored in the court process to have a very proactive and real role in talking about the way the crimes in question have impacted on them.

I understand that this legislation in its entirety makes an important contribution to the debate. I believe that as mainstream political parties, we have to be careful when we continue to dabble with issues of wanting to push fear and emotional buttons in the hearts of the electorate. The more we step down that path, the more we will continue to court those champions of anger and hatred in our community. The more we continue to move in that direction, the more we will find ourselves in a position of having to deal deliberately with those people and, as Campbell Newman said today, having to contemplate a future conservative government with One Nation. On that basis, I conclude my remarks and thank the house for its attention.

MS S.F. McGURK (Fremantle) [7.51 pm]: I would like to make a contribution to the Sentencing Legislation Amendment Bill 2016. One of the areas I would like to concentrate on is the changes to our sentencing legislation related to family and domestic violence. There has rightly been quite a lot of discussion in this state and also around the country about the need for our justice system, as well as our police systems and the systems that respond to people caught up in family and domestic violence, to be a lot more appropriate to the

circumstances of domestic violence. Despite being aware of the situation for some time, and despite people in governments and public office saying that the situation is unacceptable and that the number of incidents occurring is too high, we are still a long way from making sure that our criminal justice system, and in particular our policing system, are doing everything they can to respond effectively to family violence.

I think the statistics in Western Australia speak for themselves. They are bad across the country and I, like many other people, commend the work of Rosie Batty, who was Australian of the Year in 2015, for bringing to public attention in a very effective and unapologetically ferocious way the challenges before us to make sure we do everything we can to coordinate different services and areas of the law to better deal with trying effectively to stop the number of incidents of family violence. The most recent statistics of incidents of family violence in WA are not good. In 2015–16, there were over 53 500 incidents of family and domestic violence throughout the state. These figures were obtained through questions asked in the other place by Hon Stephen Dawson and answered by the Attorney General. There were over 53 000 cases of family and domestic violence. In 2015–16, there were 19 fatalities, which is an incredible number.

There has been a really a huge increase in the incidence of reports over the last five years, with a huge increase in the number of cases from 2011–12 to 2015–16. We are still not sure why there has been such a huge increase. A number of people think it might be because there is a lot more public awareness of family violence and the protections that might be available to its victims, so people are coming forward and reporting—and that is a good thing. But as the member for Armadale pointed out to me the other day, it does not account for an increase in the number of deaths, and clearly, we know how many deaths there have been in these circumstances. The figure of 19 deaths in 2015–16 is very shocking. The number of reports over the last five years has gone up over 27 per cent, which is a big increase. The number of incidents is not decreasing. In the last 12 months, from 2014–15 to 2015–16, the total number of family and domestic violence incidents has gone up by over 31 per cent. The total numbers are bad and they are not getting any better. There were 471 repeat reports by perpetrators. There were over 3 000 repeat reports by victims. That means that people are reporting incidents, and support services are needed to protect those victims to make sure those incidents are dealt with effectively. The fact there were 3 000 repeat reports in 2014–15 shows that reported domestic violence incidents are not being dealt with. Comparing sanction rates for crimes across the state with the monthly verified crime statistics for 2014–15, the sanction rates for domestic assault figures are notably lower than those for nearly all other crimes. Across the state the sanction rate is just under 25 per cent for over 16 000 incidents of domestic assault. In the metropolitan area, it is even lower at 21.5 per cent and it is slightly higher in the regions at just over 30 per cent. There is a high number of incidents and the sanction rates are low. I hope that some of the matters dealt with under the Sentencing Legislation Amendment Bill and the restraining orders bill, which we hope will come before us this week from the Legislative Council, will go some way to dealing with these figures. Of course, the figures are one thing, but the human stories behind them are shocking, and I am sure that most people in this place would agree that each and every one of those stories is unacceptable.

The frustrating thing about these changes coming before Parliament in the last week we are sitting is that this government has had over eight years to deal with a number of these issues, and in the last week that we are here in this place, we are being asked to deal with a number of matters quickly. Particularly regarding the restraining orders bills, I have had communication with the Women's Law Centre of Western Australia and other legal groups that represent victims of family violence who have some concerns about those bills. However, we are limited in what we can do about them because we do not want to hold up the passage of the legislation. Some improvements have been made, which is good. I think that most people who have followed this debate would view with some cynicism the government's attitude to the private member's bill that was put up with a range of changes to improve the Criminal Code regarding family violence, but it was voted down by this government for no good reason that I could see, except that it was initiated by the opposition. In fact, some of the changes that were proposed a number of times by the opposition, particularly by the member for Armadale, are contained in the Sentencing Legislation Amendment Bill. I refer to the part of the bill that goes to serious violent offences in which an offence involves serious violence, harm or death, particularly in circumstances of family violence. The opposition's bill came about because of the terrible and shocking circumstances of the death of Saori Jones. Her partner admitted punching her and leaving her to die with her children but he could not be charged with a greater offence than a single-punch attack. In this state, he could not be charged with an assault leading to death and, as a result, he served less than five years. I think most people would agree that that was a completely unacceptable punishment for the person who assaulted Saori Jones in a way that led to her death. That change in the bill before us is welcome, but long overdue.

Similarly, the possibility in this bill for a post-sentence supervision order to allow seriously violent criminals to be supervised in the community for two years following the completion of their sentence is also welcome, but I do not understand why we could not have put these sorts of changes through earlier. If that had been the case,

I would hope that not only some women and families who had been left unprotected would have been protected in the interim, but also it would send a message to the community that the Western Australian Parliament is concerned about the number of incidents—particularly serious incidents—of family violence and it is doing something about it. Instead, the Attorney General issued a series of press releases. In March 2015, with the Minister for Police, Liza Harvey, the Attorney General issued a press release on International Women's Day stating there would be family violence reform in Western Australia with new restraining orders for victims of family violence in response to the nearly 45 000 incidents of family violence reported to WA Police in 2012. That was released on 8 March 2015—18 months ago. The Attorney General and the Deputy Premier; Minister for Police; Women's Interests announced that the state government would overhaul the Restraining Orders Act 1997 as part of a comprehensive reform package to better protect victims of family violence in Western Australia. It goes on to describe what would be included in the bills. Of course, it has taken all this time to come before this chamber. I do not understand why. When the Deputy Premier responds to the number of issues that were raised on this side of the house during the second reading debate, perhaps she can address why it has taken so long to make these reforms to the Restraining Orders Act and, similarly, the changes needed to the Sentencing Act. That press release was from March 2015.

In June 2015, there was another press release about the new family violence court model that would involve providing dedicated support to victims of family violence. I guess people felt a little cynical about those improvements when the dedicated family violence units within the Magistrates Court had been taken away. In the Fremantle Magistrates Court, one was closed down under this government, and I know a number of people who worked in that unit who said that it worked very effectively.

We can then move forward to September 2016 when the government announced that it would put in place a GPS tracking system for serious offenders. It talked about the trial of a GPS tracking system, which, of course, was the policy that the Labor Party took to the election in 2013. I am not sure what has happened to the trial of the GPS tracking system. I think it is worth pursuing the possibility to see how it would operate in practice, but it is only one small part of a range of different improvements that need to be put in place to make sure that victims of family violence who come forward are protected. It may provide some protections, but only some, so I think a trial is warranted. As I said, the government announced the trial of a GPS tracking system, but I do not know what happened to it, apart from what was in a press release. In September, the Attorney General and the Deputy Premier released another press release, this time about the family violence restraining orders, which were to provide twenty-first century victim protection. I think the press release also related to the bills in the other place that are due to come to us, hopefully this week, in relation to changes to restraining orders.

[Member's time extended.]

Ms S.F. McGURK: As I said, I do not understand why it has taken this government so long to put these bills before the house. We know that the Law Reform Commission did its very comprehensive work on this subject a number of years ago; I think it was in 2013. It looked at the improvements that were needed but the Attorney General has done nothing. It has taken this long—until the final days of this Parliament—to introduce some parts of the commission's recommendations, but not all. The member for Girrawheen went through and raised some of the other areas that would have been useful to address in relation to sentencing that were raised in the Law Reform Commission's report. I think there are still a lot of things we can look at in not only the justice system but also policing and the resources given to service providers to make sure that people who seek protection away from their homes in another place, such as a women's shelter, have proper resources available, and that places are available to meet the needs of people who seek safe refuge from violent situations. It is my understanding that families, women and children in particular, are still seeking a place to go when they are trying to escape a violent situation. There are no rooms in refuges. Proper behavioural change programs need to be available for men who want to change because they can see that there need to be some changes in their behaviour and they need assistance to do that. At the moment, there are limited programs available for them. In particular, there is only one residential place, Breathing Space, and that is run by Communicare. There is a waiting time for that program. It obviously makes sense that if a male perpetrator is threatening or inflicting violence against people in his family, he should be the one to leave, leaving women and children safe and secure in their own home and able to continue with their schooling and their own networks. We should do everything we can to ensure that the perpetrators are held to account for their actions and are forced to change and move locations rather than the other way around. For too long it has been the other way around. That is a challenge to the way that we view this situation. I know that Rosie Batty talks a lot about those changes, as do many other people who work in this field. It is actually the system that has to change to respond to the particular circumstances of family violence.

Finally, I will repeat one of the comments I have made previously on this subject; that is, there is a need for us to look at comprehensive primary prevention work and education on how people view women in particular in our community and the disrespect or lack of regard for women that leads to violence against women and children. Some quite sophisticated work is being done on that front in other states, but not in WA. It has not been funded in WA. The Women's Council for Domestic and Family Violence Services does some of that work in schools, but it does not have particular funding to do that. For instance, I went to Hamilton Senior High School recently for a White Ribbon Day event. It has been trying, in conjunction with the women's council, to work on a much more comprehensive program of change throughout the school, and not just have a couple of teachers who are au fait with these issues and who get up and say that violence against women and children is unacceptable. I was very pleased to attend that White Ribbon Day event at Hamilton Senior High School last week, along with the Mayor of Cockburn, Logan Howlett, and a number of other visitors. I commend the school for doing that work.

Victoria has done some very comprehensive work in that area. I understand it is funding all schools to do some work on establishing an atmosphere of respectful relationships throughout the school community and is making sure that there are additional resources so that schools can look at how they introduce those principles to students at a very early age and in a fundamental way throughout their school culture. Similarly, it is providing resources for community groups and sporting organisations to do some of that work. In the same way that we have looked at behavioural change in public attitudes to wearing seatbelts, smoking and alcohol—we have a long way to go on a number of those fronts but we are making inroads—we need to make serious inroads into the way that people view violence in our community and, in particular, how they view violence against women and children.

As I have said, I have spoken about that before, but if we are going to turn around some of those very serious statistics that I referred to at the beginning of my speech, we will have to do some primary prevention work and some education work, not just the sentencing work, the policing work and the justice work that occurs after the violence has taken place. As appropriate as I think those changes are and as responsive as our justice system obviously needs to be to the particular circumstances of family violence, I look forward to the discussion on the amendments to the Restraining Orders Act and other legislation to improve the restraining orders system in our state. I understand that that bill should come before us tomorrow.

As I have said, I welcome the changes in the Sentencing Legislation Amendment Bill 2016 that relate to family violence and ensuring that our sentencing is appropriate to the circumstances of family and domestic violence.

MS J.M. FREEMAN (Mirrabooka) [8.15 pm]: I also want to speak on the Sentencing Legislation Amendment Bill 2016, but I will take a moment to note that you are in the chair, Madam Deputy Speaker, and I may not be able to note this again. Thank you for your good work as Deputy Speaker in this place.

Mr D.A. Templeman: Hear, hear! An outstanding Deputy Speaker!

Ms J.M. FREEMAN: As the member for Mandurah said, you are an outstanding Deputy Speaker, and I concur with that. As an Acting Speaker, it has been a pleasure to work with you. I know I am not supposed to talk about the Chair, but I wanted to take the opportunity to do that while I am on my feet.

I congratulate the previous speakers on their speeches in the second reading debate. They have highlighted a number of issues that are very important to the community that we represent. In particular, I thank the member for Fremantle for her considered contribution on domestic and personal relationship violence. Certainly, Rosie Batty and others who have been in this space campaigning on domestic violence and relationship violence for a long time need to be congratulated. The member for Fremantle was spot on the money in saying that these issues are about the status of women in our community and that we need to increase education on the role and status of women in our community. I am of the view that many of these things are about how women are overly sexualised and how their leadership skills are not held in the same regard as men's leadership skills. It came as a great disappointment to me—I am happy to put this on record—that someone who had expressed such vile views about women had become the leader of the nation at the recent United States election. Despite his protestations that he loves women, his history does not demonstrate that. Let us hope that now that he will have to act as a statesperson in the future, he can champion the status of women not only in the community that he represents in the United States, but also in the world as a whole. Frankly, we need to ensure that women have the capacity to participate fully and not be fearful of violence and of being stood over and told to behave in the way that people in their personal relationships want them to behave. Therefore, it is important that we articulate very clearly that violence against women, not only physical violence but verbal and psychological violence, will not be tolerated. I accept that this legislation will broaden the definition of "personal harm" to mean psychological harm in addition to bodily harm. That is very important in the communities that we represent.

This is indeed a challenge for many newly arrived communities and also for people who have been living in Australia for some time and want to be part of our community and society. People in these communities sometimes respond to disputes or conflicts within the family by being physically violent or psychologically

cruel, or by restricting their partner's financial independence. I have conversations with some of the men—they are predominantly men—in the communities that I represent, and they say that is their culture; that is what they do. I then need to have a conversation with them about how respecting women, and ensuring that women are safe and not the victims of violence of any sort, is at the heart of our justice system. Violence of any sort should be condemned in this place. We all know the case of Saori Jones, who was the victim of domestic assault by her husband. I have put it on record that I believe her husband effectively killed her. Had he inflicted that assault on a person whom he did not know, he would have suffered much more severe consequences. We are outraged when a person in our general community is subject to violence. We should have the same outrage if the violence is suffered by a person in a domestic or family relationship.

That goes to the issues that were discussed and highlighted by the member for Fremantle. It should go beyond saying to people, "Don't do it; it's wrong". It should go to educating people about the need to respect and value the contribution that males and females make in all parts of our community and society. No person's contribution is less valuable than another person's contribution. If a person decides to be the primary carer, that in no way makes it appropriate or justifiable to undermine that person's financial security and to use that as a tool for control in the relationship. It should be a fundamental part of our education system that how we define ourselves as Australians and Western Australians is by our respect for all people and our strong commitment against violence. The member for Fremantle outlined that very well.

We also need to ensure that those discussions are culturally appropriate. In the past, funding has been available to enable many different and diverse communities to have those discussions. At one stage I went to a set of performances by young people from the Metropolitan Migrant Resource Centre who had watched and dealt with violence in their families and who wanted to communicate to their families through a form of art and theatre that that was not acceptable. I also went to a performance that was run through ASeTTS, which works with the Sudanese and Congolese communities. A number of seniors and elders in the community put on a small play to show how they would deal with disputes in the family without them becoming violent. I have to say that at one point I thought that probably would not be the way I would have dealt with it. They explained to this particular person that he should not get angry because he was not getting his way, and he just had to be a stronger male and not worry about it. The way in which they articulated why it was not appropriate to react violently was not within my concept of why he should not act in that way. However, it was very telling for me that we cannot just stand from afar and say that violence against women, or violence against anyone in our community, is not appropriate behaviour. We actually need to have the communities tell that to each other. That is why those mechanisms are so powerful. That is also why it is important to have those conversations as early as possible, as the member for Fremantle outlined in terms of schooling.

I also want to talk about the impact of some of the new services that are being provided. We need to set up a safe system that will enable victims of family violence to remain in their own home. A new service has been funded at the Northern Suburbs Community Legal Centre called WREN. It provides a number of services for people who need assistance around domestic violence. However, the counselling service that it provides is quite limited. It deals more with the legal and practical aspects of how to get a restraining order, or how to leave home, and with a variety of other mechanisms that are available for victims of domestic violence. What I have heard in the community is that sometimes people want to have an initial discussion about their fear of what is going on in their home. The pressure is often greater now because of unemployment, and because of a range of expectations that families had when they came to live in Australia about what their lives would look like, and those stresses and strains can sometimes play out in families. I have heard of families, particularly women, who have come forward to access this service because they are not at the stage of wanting restraining orders, leaving their families, going into a refuge or finding alternative housing. Rather, they are at the stage at which they want to learn how to manage their situations and to have conversations with their partner about their behaviour. That counselling is not available. These women are very committed to their families, sometimes because of their various beliefs, including their religious beliefs in many instances. I have heard of Muslim women and newly arrived Australian community members who leave their relationship and their community but who are pressured by other community members to go back to their relationship. If they go back into their relationship it is not necessarily because of the pressure from other community members; indeed, they often seek ways to set up safe systems for themselves and their family so that their return to the family is successful. My understanding from speaking to service providers in the community is that the interim step of partners getting assistance to enable women to be safe at home with their family is not available and other services have found it difficult to meet their needs. The minister would be aware of Ishar Multicultural Women's Health Centre, which is one of those service providers. It has been given funding to run a group program for women who are experiencing domestic violence or for those who are concerned about their safety at home so that they can come together to talk. However, it has been said that in many instances women are not ready for a group dynamic. It is a short-term

funding project and there is real concern about its longevity. It is also concerned about the capacity to assist on a one-to-one basis so that people can learn strategies to live their lives safely and in many instances learn how to continue to maintain family relationships.

I note the provision of suspended fines as a direct alternative to fines. I would not mind the minister outlining how this will work for diverse and newly arrived communities.

[Member's time extended.]

Ms J.M. FREEMAN: I have told the story in Parliament of a young southern Sudanese gentleman who came to see me, although he was not young when he came to see me. When he first came to Australia from South Sudan, he would hang around the city with a group of young men, although they were not adolescents as we would know them. People in the southern Sudanese community are considered a youth until they are aged 27 or until they are married. People in their 30s can still be considered a youth if they have not married and had children. The young man was hanging out in a group in town. Someone in the group who had been drinking became rowdy and the police came. The group was distrustful of the police, not having lived in Australia for long and having spent quite a bit of time in a refugee camp. They talked back to the police and pointed out that now that they were in Australia, the police were not supposed to annoy them. This young man, who was older when he came to see me about his spent conviction, was told to move on. He did not move on and he was arrested for failing to do what the police officers said. I think he was arrested for resisting arrest, which is pretty serious. When he turned up to court, he was told to plead guilty and that he would be fine. However, he got a record. He did not get a sentence, but the incident had an impact on his record and it impacted him in the future in his occupation as a security officer. If a suspended fine will be a direct alternative to a fine, I am interested to know how a person's record will work. The second reading speech states that if after 24 months there are no further offences, the fine will be discharged. I assume therefore that that will result in no record. That is particularly important. The courts have to be aware of the different circumstances that may have led people to the situation in which they were fined in the first instance.

I also note that the definition of "victim" will be broadened because of complex family structures. Can the minister tell me whether those family structures go beyond the family structures of Aboriginal and Torres Strait Islanders? The newly arrived community from Burma, the Chin culture, has a complex structure of aunties and uncles. Often parents will give a child to an aunty and uncle because that aunty and uncle could not have children or because of some other aspect. For all intents and purposes, those aunties become the mother, but there is no adoption process. The aunties and uncles may bring those children from Thailand because their parents have passed away. Those relationships are very much based on the expectation that they will care for one another. The Chin community is a much broader matriarchal community in terms of its areas and, as I have said in Parliament before, that happens in other communities. I love to tell the story about the Karen community, which does not use surnames. When members of the Karen community first arrive in Australia, they have to have a surname for their Medicare card and all those sorts of things. Immigration officers and other people tell them that in Australia we take the man's name, but that is counter to their culture because, again, it is a matriarchal culture. When I find out these stories, I think it would have taken only a bit of time to do some research to understand those family structures and the way their community works. It is one of the things that we are getting better at.

It is the same with southern Sudanese communities. Many southern Sudanese men who have been killed in civil war may have had multiple wives. While one wife and her children may come to Australia as refugees, another wife and her family will come separately, but there is a complex structure because all the children are related. Some years ago in the member for Butler's area, a young southern Sudanese man was run over. His relationship with many of his sisters and brothers was not a direct one because they did not have the same mother and their father had passed away, but they were all equally devastated by the consequence of that particular crime. I know the member for Butler has been assisting that family to try to pick through the difficulties of that in criminal injuries compensation.

While we are talking about criminal injuries compensation, I point out that the amount of time one has to wait for compensation continues to blow out. Last year it blew out to 7.7 months. After reading this year's annual report, I see that that has now increased slightly to eight or nine months. That is really difficult, especially if the person seeking compensation dies or something happens to them during that intervening period. That can always cause some complexities because that finishes off a compensation claim. It is a serious issue when it takes such a long time for people to get compensation under the criminal injuries compensation scheme. It is really important in healing, moving on and resolving an issue that a person's claim be looked at and resolved quickly so that compensation can be received when they are entitled to it.

I conclude by saying to the minister that there is a really strong concern about crime, particularly petty crime, in the area that I represent—in Balga and Mirrabooka. When *The West Australian* showed the different levels of crime in 2016, we saw that Balga's crime rate increased by 10 per cent, from 658 incidents to 730 incidents. Every time we look at the number of incidents of crime in Balga, it is really high. The crime rate also increased in Alexander Heights by 2.4 per cent and in Mirrabooka by 4.8 per cent. We keep track of the figures and although it is still not a great figure, it is below the 500 incident mark for the gamut of incidents that occur. Balga consistently has a very high number of incidents, in particular petty crime. We have a group of very young teenage boys who call themselves the Boyz. They hang around the streets and cause real inconvenience and quite a bit of uncertainty and fear for the residents. One of the things that they have taken to doing is throwing rocks, particularly at buses and people's stationary cars, which is particularly dangerous. We investigate these incidents and talk to people in the community, the police, the schools and the people who are victims of these crimes. These young men are a bit aimless. They often leave their homes because those places are not really sustainable for them, with violence, heavy drinking and various other things occurring. I congratulate the local schools, the police, the community and businesses for coming on board to try to recognise this. I understand that they recently took some really good innovative action. That is what we need. We need those sorts of programs and we need mentors to work with these young people, otherwise they will end up in the justice system and we will not just end up with petty crimes being carried out by bored people; it will be much more serious. We need to fund places like the Wadjak Northside Aboriginal Community Group.

We have spoken about the resocialisation programs. I do not know whether this is resocialisation as such. In many instances, it is just working with these people to prevent an escalation of crime. I think that is really important. I still think we need something more. I have spoken to the community. Members of the community have come to see me. None of those community members are being vigilantes in any way; they are clearly concerned about their safety. We hear in their voices that they are really concerned that these young people are on the wrong path for their own lives into the future. They want to see something that will be sustainable for them so that they do not end up in the justice system. The minister knows that I have raised this in this place before. I think Balga needs a systemic process like a police and community model, not a neighbourhood policing model in which people come in and go out. We need something that everyone is working on together on an ongoing basis. We need somewhere that members of the community can come to and feel that they are being heard, in the way that we had at the Nollamara shops, which prevented a lot of petty crime. That is the sort of thing that we need in Balga. That is certainly something that I want to pursue very strongly for the community in Balga. This community has always worked together. It has great community markets. It has a great community soccer club. It wants to work for the benefit of the community as a whole.

MR D.A. TEMPLEMAN (Mandurah) [8.46 pm]: Madam Deputy Speaker, I would also like to speak on the Sentencing Legislation Amendment Bill 2016. Before I do, I would like to acknowledge you and your retirement from this place as Deputy Speaker and member for Kalgoorlie. I also praise you for what I think were some very measured and balanced comments on the challenges that your community in Kalgoorlie recently experienced after the death of a young boy and the subsequent angst amongst that community. I listened to you on the radio. I heard and read some of your comments. I think they were framed in a very measured but sincere and effective way. Although I do not want to attack or reflect on the Mayor of Kalgoorlie–Boulder, I think the comments he made—perhaps in retrospect, I am sure he has reflected on those—demonstrate the importance and the significance that words can have immediately after an event or events that a community experiences. I wish that common ground can be found within the community in Kalgoorlie–Boulder over the coming weeks and months and, indeed, that healing can continue. I hope that some positive change can occur around the issues affecting that community and, of course, the issues surrounding young people in that community and families that are at risk or have been identified as being at risk. I understand that much healing is to be done in the Kalgoorlie–Boulder area. Many fences, if we can use that term, need to be mended and trust restored. I wish your community very well in that endeavour.

It is never nice to see communities at flashpoint when tragic events occur. As you know very well, Madam Deputy Speaker, there are still more issues to be played out and legal matters to be addressed in the future. I hope, for the sake of your community, that that healing is achieved as quickly as possible and that it is a lasting healing. All the leaders in that community, whether they be departmental leaders, elected members, elders and family members et cetera, will play a crucial role in that journey forward. Madam Deputy Speaker, I wanted to acknowledge the significance of your words because I think they were very sobering, frank and honest but also very measured at a crucial time in the discussions. We need to be reminded that kneejerk or insensitive language does not have a place. When we have a lot of pent-up anger, anxiety, trauma and grief and all those elements come together, the last thing that is needed is inappropriate words that are not well thought out. Congratulations on the leadership that you showed in that, Madam Deputy Speaker.

This bill, as has been articulated by the shadow Attorney General, the member for Butler, is and will be supported by the opposition. However, obviously, during the consideration in detail stage, the member for Butler will make some appropriate comments. We will not necessarily support a couple of the clauses and certainly the member for Butler will make the case for that reasoning in the deliberations at the consideration in detail stage.

I am sure that the scourge of domestic violence is of particular concern to all members here and in all communities, whether they be in the regional remote areas of the state or the suburbs of the metropolitan area and our larger regional towns. The sad fact is this: Western Australia is, unfortunately, one of the leaders in the prevalence of domestic violence. It is not only abhorrent but a sobering reflection of where our community is. No doubt legislation, education, commitment and dedication by people of all walks of life is necessary to speak out against the alarming impact of domestic violence and family violence on children and women in the community.

Unfortunately, Peel has not escaped this scourge and as a region it has one of the highest incidences of domestic violence in Western Australia—indeed, if not in Australia. We are not proud of that—I am not proud of that—and indeed a concerted effort by numerous stakeholders is required to turn that around in my community. This Friday I will be marching silently with a large group of men and women in Mandurah at our Annual Silent March. We start off in the Mandurah CBD, and then we go to Mewburn Gardens and through the Smart Street Mall and along the foreshore to the Mandurah Ocean Marina. It is a very powerful march that sees people from all walks of life joining together to take a community stand. It is our sixth Annual Silent March. It is sad that we have to do it.

I am well aware that over the last 16 years that I have represented the seat of Mandurah, women and children in the electorate have been murdered as a result of domestic violence. I remember that a number of years ago a mum and her children suddenly lost their lives; it was an absolute tragedy. When I went into the community in which that occurred, the fear and desperation and in some ways a sense of "How could this happen in my street, my neighbourhood, my community?" were so stark. There are many tragic examples of these sorts of abhorrent tragedies occurring in communities throughout our state. Only very recently in the northern suburbs we saw what was possibly also an incident that resulted in the loss of life. These are tragedies and abhorrent experiences in our communities. The onus really is upon all of us, whether we are legislators, members of Parliament, fathers, grandfathers, sons, daughters or anyone, to understand the seriousness of this scourge that is domestic violence.

It is fortunate that today I received a response from the minister to some questions that I submitted on family and domestic violence in Peel. One of the problems or challenges when Peel was absorbed into the south metropolitan policing district is that a lot of the statistical data was combined with the published data for the policing district that is, I think, the largest district in population and coverage of the metropolitan policing areas. The minister provided me with statistics in answer to question on notice 5907, which was asked of her on 11 October. The answer refers specifically, interestingly enough, to domestic violence incidents in the Shire of Murray. The Shire of Murray is one of the five local government areas of the Peel region. The others, of course, are the Shire of Waroona, Shire of Boddington, Shire of Serpentine–Jarrahdale and the City of Mandurah. In previous questions I asked the minister for specific details about Mandurah and those were answered in a previous question. They showed, as is my real concern that, unfortunately, domestic violence statistics in Mandurah continue to rise and be of major concern.

The minister's answer to question on notice 5907, asked on Tuesday, 11 October, was quite alarming as well. I asked for comparative domestic violence incident reports for the years 2014–15 and 2015–16—that is, to the end of June this year. I want to highlight a couple things. I do not really want to highlight the suburbs, to be honest, although they are on public record now, the question having been answered. Some of the statistics are quite alarming. There are about 16 identifiable suburbs or communities in the Shire of Murray, where, overall, in 2014–15 there were 289 domestic violence incident reports. As at the end of the 2015–16 financial year, that number had jumped to 396. That is a significant increase in the number of domestic violence incidents within the Shire of Murray. There were nearly 400 for that financial year. That is well over one serious domestic violence incident a day somewhere just in the Shire of Murray.

In answer to further questions about the number of domestic assault offences, there was a marked increase from 2014–15 to 2015–16. In 2014, the total number of domestic assault offences was 112. Again, this is only in the Shire of Murray. In 2015–16, there were 158. I will look at the total in the four shires. Remember, I am not including the City of Mandurah in these figures because the city's figures were already accounted for in a previous question and they showed a significant increase in domestic violence incidents throughout the suburbs of Mandurah. Remember, too, that domestic violence does not discriminate with regard to suburb. All four shires

showed an increase. In the Shires of Murray and Serpentine–Jarrahdale—particularly in the Shire of Serpentine–Jarrahdale—there was a significant increase in the number of family and domestic violence incidents recorded.

In the caveat that comes with this question, there are a series of notes. I acknowledge those notes. One of them is about the data for all domestic assault offences reported in the Shire of Murray. It states that there may have been multiple domestic assault offences recorded, which I accept and understand. There is no doubt, from these figures alone, that the prevalence of domestic violence reports and offences continues to climb in the Peel. They are significant changes. From the figures I read out, there are significant changes in almost every suburb. Without mentioning the suburb, I will give one example in the Shire of Murray. In 2014–15, there were 146 domestic violence incident reports. Last year, there were 182. That is a significant increase. In another suburb, there was a doubling. In fact, in a number of these there has been nearly double the number of domestic violence reports.

[Member's time extended.]

Mr D.A. TEMPLEMAN: What does this tell us? It tells us that a range of things are happening in our community—domestic violence being the obvious one. Some issues need to be highlighted. A range of other factors are impacting on this serious offence statistic, including high unemployment, financial strain, lack of jobs and a lack of hope. All of those factors play into this. They are not excuses. There is no excuse for family and domestic violence, but they are factors at play. One would expect that in a region showing statistics like this there would be comprehensive domestic violence programs. Unfortunately, there are not. We have some crisis-related responses such as an overworked and overloaded Pat Thomas House, which is a women's refuge. People are overworked. It is in constant demand, it is underfunded and it is stretched to the limit. We have some of those services but where are the programs that deliver quality counselling to predominantly women and children who need urgent wraparound support services when they become the victims of domestic violence? They are not there. Our own programs are delivered by Allambee Counselling, which is a funded body. Allambee is a counselling service for victims of domestic violence, particularly in the Peel. It is totally underfunded. There are waiting lists for counselling. Counselling services simply cannot be provided to an ever-increasing number of women and children who need support. Support services previously provided to women who were going to court or facing court for violence restraining orders and other preventive or intervention measures have been diluted. Services that are needed are not being provided. Funding needed to provide a big boost to domestic violence support services and counselling has not been delivered. That is despite the fact that the Peel region now has, along with a couple of others, the highest prevalence of domestic violence in Western Australia.

I am glad the Minister for Child Protection is in the chamber. Anecdotally—I believe this—the Peel region's statistics are dismissed or certainly are not given a lot of credence, even by the minister's department, because the modelling and the data collection is out of date. That is the report I am getting from various people. It is one of the reasons the Peel has not been serviced in this area to the extent needed. If there is an issue about how the Department for Child Protection and Family Support, for example, assesses domestic violence statistics in a region like Peel, it needs to be reviewed.

Another thing of concern is an assumption that services to Peel—particularly Mandurah and probably Murray, because of their proximity to Perth—will be accessible. As I have said in this place time and again, that is not the case. Peel is a regional centre that is centred around Mandurah and Pinjarra. It requires services to be delivered locally to women and children who deserve and need those services. To simply expect that Perth-based services will provide some sort of outreach is quite flawed and wrong. Services provided by groups such as Allambee, for example, are basically running on a shoestring. They are not able to deliver the services that are demanded from the increasing number of women and children who need them associated with the impacts of domestic violence. That must change. Some rethinking has to be done by government, by ministers and by departments because the statistics do not lie. The statistics I read out tonight do not lie. They highlight very clearly an alarming trend in domestic violence incidents in not only Mandurah and the Shires of Murray, Boddington and Waroona, but also the Shire of Serpentine–Jarrahdale. The region itself—that is, the five local government areas—as highlighted in this answer to my question on notice on 11 October, clearly has a major problem. There is a prevalence of domestic violence in the Peel. It is increasing significantly year by year, but it is not being matched at all by appropriate, adequate and timely response by government. That has to change, because I do not want to hear or see in my community further murders and women and children experiencing the horror of domestic violence. What children witness in their households, their neighbourhoods and their community has an impact on their lives and their development. This legislation is in many ways applauded, but it is a shame that it has taken so long for this government to respond to this crisis of family and domestic violence in our communities throughout Western Australia. I hope that my contribution to the debate on this bill has at least highlighted the challenge my

community faces. I will finish with this. We are in the process of establishing a community-based stakeholder group that is going to be focused on how we as a community respond to this challenge, this scourge. We are asking people in leadership and members of various stakeholder organisations in sport or whatever it might be to step up and not just wear a white ribbon for the sake of wearing one, but genuinely to stand up and not only denounce domestic violence as being a scourge, but also work with government and non-government agencies to address this terrible element in our community.

MR R.F. JOHNSON (Hillarys) [9.12 pm]: I do not want to spend too much time delaying the house on the Sentencing Legislation Amendment Bill 2016. I want to start my comments by saying I find it extraordinary that, in essence, at five to midnight we are now dealing with a very, very important bill. After eight years of government, we are now dealing with a bill to adjust the sentencing and post-sentencing situation of dangerous violent criminals. The bill was introduced into the upper house only two months ago; that is all. There are two more days of sitting left after tonight for this house and we are now going to be rushing this bill through without proper consideration. I do not believe rushed legislation is good legislation, and I want to mention that.

I had a briefing this morning from the Department of the Attorney General and I thank those people for their briefing; they are in the chamber now. I asked them for some information, which they forwarded to me, and I appreciate that also. At the end of the day, we are dealing with serious offenders who, when their term of imprisonment is up, will wear a tracking device for up to two years. The other important part of this bill is that it will not just be the victims of the serious assaults but their families who will have some input into victim impact statements, and I think that is very, very important. But, as I say, it has taken eight years to get to this situation. We were talking about this, I think, nearly eight years ago when we took government from the Labor Party in 2008. It is now eight years down the track and we are dealing with a bill that will just about squeeze through. I hope everything in this bill will be legally binding and there will not be any flaws. The shadow Attorney General has mentioned some very serious flaws to me. He believes that the bill is unconstitutional in some areas. If that is the case, then it is not worth the paper it is printed on.

Apart from those particular aspects and the strict monitoring of those dangerous prisoners to try to reduce the amount of Aboriginal incarceration, options will now be open to the court for offenders to opt to have a work order, a community-based order, instead of paying a fine. I am pretty sure I know what I would go for if I was one of those offenders; I would go for the community-based order. I am told that if they do not complete the community-based order, the fine will stand, but we know that virtually none of these young people would have the money to pay their fines, so technically they would end up in prison. I just wonder whether they will, because the judiciary very often bends over backwards—I am not criticising it; I am saying it is what happens—to try to keep these young Aboriginal people out of jail, no matter what sort of offence they might have committed.

The other thing I have some serious concerns over and I ask for some detail on is schedule 4 of this bill, which lists a series of violent offences and the maximum terms of imprisonment. I have some serious concerns over these, because I believe hardly anyone has ever been sentenced to these maximum prison sentences. One or two have, but there is a whole ream of offences here that carry a penalty of basically 20 years' imprisonment. I will give a classic example of an offence, shall I? One classic example of an offence is dangerous driving causing death. Members will be aware that I introduced a private member's bill into this house for dangerous drivers causing death when those drivers are drunk or drugged and they kill an innocent person on the road. The maximum sentence for that is 20 years. I will tell members what they get. They are lucky if they spend three and a half years in jail for taking an innocent person's life. They can be drunk or drugged or whatever, and that is what they spend in jail. Why have a maximum of 20 years in jail, when the offenders are never going to get anywhere near it? I have a simple remedy—ban them from driving for life. The police minister would not have a bar of it, yet she is in charge of the bill now that has a maximum sentence of 20 years for that particular offence. She knows it will never, ever be implemented and that offenders will never serve 20 years. Some of the other offences listed here in the bill are quite horrific, really. One I found particularly distasteful was sexual offences against a child under 13, which has the maximum sentence of 20 years' jail. I can think of hardly anyone who has been given that sentence. I would prefer to have minimum mandatory sentencing for those sorts of horrendous crimes, in particular against children. There was the dreadful situation recently of the Evil 8, and I think it is probably difficult to talk about because it is before the courts. There is an appeal at the moment, so it is probably not appropriate that I go into the particular case, but that was a horrendous crime. I have heard other people in this chamber say that we should throw away the key, but do they mean it or are they just saying it to sound tough on crime? I do not think they are tough on crime. I would throw away the key. In fact, if it was my child, I would probably kill them, quite frankly, because that is too good, it is too quick for them. Anybody who commits that sort of offence against a child to me is not worthy of living.

There are other offences listed here. Another offence is unlawful assault causing death, the penalty for which is supposed to be increased to 20 years' imprisonment. It is 10 years at the moment. There is also the offence of attempting to unlawfully kill. I do not see a great deal of difference between those two offences. That attracts a penalty of life imprisonment. Then there is the offence of acting to or intending grievous bodily harm or preventing arrest, the penalty for which is 20 years. How can we equate that sort of crime with a horrendous sexual crime against a child? I cannot do that for one minute; I think it is disgraceful. I would like to see that being overhauled. I know the judiciary do not like minimum mandatory sentencing, but we have minimum mandatory sentencing for offences such as assault causing grievous bodily harm to our police officers. I was the first person to bring that bill into this chamber when I was in opposition, and I support that enormously. Why do we not have something similar with minimum mandatory sentences for offences against innocent children? I am pretty sure that our police officers would totally agree with minimum mandatory sentences for offences against children. They would probably even forgo some of the minimum mandatory sentences for assaults against them if they knew that children would be protected and that offenders who commit those horrendous crimes would serve an appropriate amount of time in prison. That is what I believe we should be doing.

There is not enough time to really go into detail on this bill. There are nearly 80 clauses. It is essentially five minutes to midnight in the term of this government. We are almost out the door; two more days and we will be out the door and saying "Happy Christmas, everybody; see you next year after the next election"—some will and some will not. At the end of the day, this is the sort of bill that should have been brought in at least a year ago, and I would say even before that. People have been sitting on their backsides and twiddling their thumbs and not doing what is appropriate, in my view, on serious law and order issues. People try to make out that they are tough on crime, but the proof is in the pudding. It is not just talking the talk; it is walking the walk. I have not seen much law and order legislation brought into this house in the last four years. I think I brought more law and order legislation into this house in the first four years of this government than did any other police minister. That legislation was some real tough law and order stuff, not that it did me any good. The media did not like it very much because it was too tough for some in the media. But, at the end of the day, it began to work and I think it is what the public wants. As representatives of the public, we should be doing what the public wants. We should be carrying out the wishes of the people who vote for us—the people we represent—not simply blowing hot hair into the wind and making out that we are tough on crime when we are not, that we are protecting our children when we are not and that we are protecting innocent people on our roads when we are not. None of those things is really happening in any serious way, and the most serious offences, as I said before, are offences against children.

There are some really serious offenders who are in prison at the moment and I hope they never see the light of day. Two cases were brought to my attention by the advisers. One got life, which equals 15 years, apparently. That is about the average sentence for some of these people. One committed a horrendous crime against a nurse just a few years ago while he was in prison. That is disgraceful. The man is evil. I call him a man, but he is an animal. He befriended the nurse. He talked to her in a very civilised, mature and friendly way but it was purely to gain her confidence. When they were out of the line of sight of anybody else, he took her into a linen cupboard and brutally raped her. That is the sort of person he is. He carried out many offences before that, and so he is still enjoying life in prison. I would give him hard labour, quite frankly. I would probably castrate him as well. I would do all sorts of things to those people because I think they are a disgrace. If they do it to a child, there is no question about it in my mind. These are some of the people who are taking up space in our prisons and I do not believe they deserve to be in prison. They need to be in serious institutions where they cannot in any way commit dangerous assaults, sexual assaults or whatever else against innocent people who may be working in the system.

I said that I was not going to talk for very long and I do not intend to because I know that other members want to go into consideration in detail. I think the member for Butler wants to go into consideration in detail. There are some questions that I would like to ask, and I think it is more appropriate that I ask them during consideration in detail, because at that stage the minister will have the advisers from the Department of the Attorney General at the table of the house and they will be able to furnish her with the answers that need to be given to members' inquiries. I will resume my seat now so that we can get on with this bill and hopefully conclude it as soon as we can.

MRS L.M. HARVEY (Scarborough — Minister for Police) [9.24 pm] — in reply: I thank members for their contributions to the debate on the Sentencing Legislation Amendment Bill 2016. As is consistent with second reading debates in this place, it was quite wide ranging. I will, however, do my best to address the issues that have been raised by members and, obviously, during consideration in detail, we may be able to address some of those issues in more detail. It is important that we understand the context of this legislation and I think there has been some misunderstanding of what we are attempting to achieve. This legislation will do a number of things. It will correct some inadvertent errors. One of those relates to the resocialisation programs. Some assertions that were utterly incorrect were made in this house. Resocialisation programs are quite involved programs. At

present, for offenders to be eligible for those programs, there is an approval system in place. Resocialisation programs are for people who have been institutionalised—people who have been incarcerated for long periods. The programs are designed to deinstitutionalise those people to teach them through a coordinated program of day release and other social engagement activities how to re-engage with the community. For some offenders who have been incarcerated for a long time, it may, for example, be learning how to use an automatic teller machine card, learning how to go online and set themselves up to pay bills, or learning how to engage with people other than prison officers and other offenders, which is very much what an institutionalised environment does. These programs are a very important part of the release program for offenders. For offenders who are eligible for parole, resocialisation programs will often pre-empt the parole period. However, due to an anomaly when some amendments to this legislation were put through at an earlier time, offenders who had been incarcerated prior to November 1996 were ineligible for resocialisation programs. Obviously, that needs to be corrected, because offenders who were incarcerated pre-1996 would need some considerable effort at the end of their sentence to deinstitutionalise them and try to reintegrate them back into society. This legislation will go some way to addressing that anomaly.

Resocialisation programs should not be confused with other offender behaviour programs that are available in the prison system. There are offender behaviour management programs to do with anger management, family violence, drug and alcohol addiction, and sexual offending. Cognitive skills programs are also available. Those programs are designed to specifically look at the offender's issues. Resocialisation programs look at the longer term institutionalised offenders to assist them when they are released into the community at the end of their sentence.

There was also some confusion about the post-sentence supervision orders. Post-sentence supervision orders are not orders that detain people indefinitely. Questions have been raised about the constitutionality of these orders. They were introduced in part 5A of the bill, which excludes these orders from the rules of natural justice. Currently, the decisions of the Prisoners Review Board also are excluded from the rules of natural justice via section 115 of the Sentence Administration Act 2003. There was some debate, and no doubt we will debate this further in consideration in detail. The head of the Prisoners Review Board is a judge of the District Court, so the applications for post-sentence supervision orders will, in effect, be reviewed by a judicial officer as part of a panel with the Prisoners Review Board, although it will not be in a court setting.

Mr J.R. Quigley: Nor sitting as a judge.

Mrs L.M. HARVEY: I did say that.

Mr J.R. Quigley: You said "reviewed by a judge".

Mrs L.M. HARVEY: Perhaps the member should listen to what I said. I said that the head of the Prisoners Review Board is a judge of the District Court; however, in their capacity as part of a panel with the Prisoners Review Board, they will not be administering in a court setting.

Mr J.R. Quigley: Or acting as a judge.

Mrs L.M. HARVEY: That is what I said.

Post-sentence supervision orders do not involve continued incarceration of an offender beyond the expiration of their sentence. If offenders have failed to participate in a program but have reached the end of their sentence, we have no capacity to detain them, unless they are part of another program, such as they are a dangerous sexual offender. If it is deemed that those offenders would potentially be a risk to the community, they would be eligible for a post-sentence supervision order. That would enable corrective services, and others, to manage those offenders in the community, under supervision, to ensure that there is reduced opportunity for them to offend, and to see whether their failure to participate in a program to address their offending relates to their propensity to reoffend should they be released. It is about providing a protection to the community. We do not believe that it is unconstitutional. I am advised that is the advice that has been provided by the State Solicitor's Office.

This legislation will also allow for sentences of under six months to be allocated. It is interesting that when sentences of under six months were removed, the belief was that there would be more fines and perhaps diversionary opportunities. In fact, one of the reports that looked into this, which I believe was in place two and half years after the original change to that sentencing regime was introduced, has shown evidence of sentence creep—that is, offenders who would ordinarily expect to receive a custodial sentence of less than six months were receiving a custodial sentence of higher than six months. That is because that was the only opportunity available for a custodial sentence.

Mr P. Papalia: Which report was that?

Mrs L.M. HARVEY: It was a Department of Corrective Services' report from 2006.

The other interesting fact is that prior to 1994 when the Fines, Penalties and Infringement Notices Enforcement Act came into place, over 7 000 people a year were in prison for fine default. It was a Liberal government at that time in 1994 that introduced that legislation. I am advised that as a result of that act, there has been a significant reduction in the number of people in prison for fine default, to the point at which now only around 600 people a year are in prison for fine default. Initiatives that have been put in place previously have certainly worked to reduce the number of people incarcerated for fine default. The number of imprisonment sentences as a proportion of all sentences in the Magistrate's Court has remained markedly consistent for the last 10 years. It is interesting to see some of the triggers that can be pulled and some of the outcomes of legislation that we do not necessarily expect. However, when the ability to imprison people for periods of less than six months was removed, nobody expected that there would be sentence creep to the extent that occurred as a result of that change in regime.

During the second reading debate, a lot was said about family violence. Should the legislation around family violence protection orders pass through the other place expeditiously, we will have the opportunity to debate that legislation in this place potentially tomorrow or Thursday. Family violence is obviously an important issue across the country. A couple of weeks ago, I had the privilege of attending a summit in Brisbane on family violence and of listening to some of the initiatives that are being offered and undertaken in other states. Interestingly for me, I was very pleased that other states are very excited about some of the initiatives that we have taken on here in Western Australia. That was a very important information sharing event. There are certainly some very good initiatives in other states that I believe would be effective in Western Australia, and we will continue to work on developing initiatives, and copying initiatives in other states should they prove to be successful. It was very apparent that there is now quite a collegiate approach between all the states and our federal counterpart to try to reduce the incidence of family violence in our community. When that legislation comes to this place tomorrow or Thursday, I have no doubt that we will have some passionate debate about those issues, which I know are of concern to every member in this place.

I thank members for their contribution to this debate and look forward to further interrogation of the bill in consideration in detail.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 5 put and passed.

Clause 6: Section 12 amended —

Mr J.R. QUIGLEY: This clause contains the amendments to section 12 of the Sentence Administration Act. Currently, the Prisoners Review Board can give a report to the minister under section 12(2)(b) if it believes that special circumstances justify the board in sending a section 12 report to the minister. Can the minister explain why this is proposed to be deleted?

Mrs L.M. HARVEY: I am advised this is at the request of the Prisoners Review Board, to broaden, if you like, the opportunity for the board to request a report on a prisoner. Therefore, this section is to be amended to allow the board to request a report if it considers that there is a requirement for a report to be produced, rather than, as is provided currently, that there must be special circumstances to justify the report.

Mr J.R. QUIGLEY: Section 12(2)(c) relates, of course, to those people referred to in paragraph (d) of the definition of "prisoner" in section 4(2)—that is, people who are detained at the Governor's pleasure. These people are not subject to a finite term, but merely to detention at Her Excellency's pleasure and, of course, such discretion will be exercised upon advice. When a person does not have a known defined term of imprisonment, it was thought appropriate that they at least be checked up on and reviewed once a year. The government is now taking it out to three years. Could the minister tell us how many of these people are currently within our prison system and how many have been reviewed in the last 12 months?

Mrs L.M. HARVEY: I am advised that this was removed because the review periods are now detailed in the schedule in division 1, so dependent on the offence and the period of incarceration, it is recommending a different review.

Mr J.R. Quigley: Which schedule is the minister referring to?

Mrs L.M. HARVEY: Part 2, division 1, schedule 3, "Reports and re-socialisation programmes for certain prisoners". It is on page 13. With respect to the number of prisoners who have been reviewed, I do not have that information with me. That question would need to be put on notice to the Attorney General.

Mr J.R. QUIGLEY: How many people are in the prison system at the Governor's pleasure?

Mrs L.M. HARVEY: I do not have that information available, member.

Mr P. PAPALIA: What is the projected additional annual cost to the government and taxpayers as a consequence of the unknown number of prisoners that will be included after this legislation is enacted?

Mrs L.M. HARVEY: I am not sure. That is a fairly broad question. I do not have that detail. If the member wants that information, he would need to put it on notice.

Mr P. PAPALIA: I asked the question for probably the same reason that the shadow Attorney General asked how many offenders will be subject to the legislation. In fact, what he actually asked was how many offenders currently in the system would be subject to the legislation. We would expect the minister to know that, noting that she has introduced this legislation to Parliament and is asking the house to support it. It is a natural expectation, assuming that the minister has the knowledge of how many might be impacted by the legislation, that the minister would know the subsequent cost to be incurred by the system upon enacting the legislation. It is just the basic business management and basic governance that we would expect. Noting the appalling state of the state's budget at the moment thanks to the government's mismanagement in government, we would expect that if the government is going to impose an additional cost, it would at least have some model to suggest the extent of that additional cost. I cannot understand why the minister has not done that. I know the minister is not the minister who introduced the legislation to Parliament, but I would have thought that that information would have been sought by now.

Mrs L.M. HARVEY: Member for Warnbro, the advice I have is that for the post-sentence supervision orders, which is where the potential additional costs could occur, we are looking at about 360 prisoners, one-third of whom might be considered for PSSOs. The expectation is that PSSOs will be put in place for about one-third of those offenders. However, once the legislation is passed, we will not incur these costs until the 2018-19 budget because it will take some time to put in place the regulations and the mechanisms to manage offenders on PSSOs. At that point, we would expect to have a firming up of the numbers and the cost. That has not been done at this point because, obviously, we are awaiting the passage of the legislation to determine those figures.

Ms M.M. QUIRK: I have some issues with the minister's response only because I would have thought that that information would have needed to be considered as part of the approval to draft and print legislation. Ordinarily, as I understand it, there is some assessment of the impact of legislation before it receives approval for draft and print. I am surprised that there is not ready access to the information for which my colleagues have asked.

The ACTING SPEAKER (Ms J.M. Freeman): Members, the question is that clause 6 stand as printed. Clause 6 will amend section 12 so that it will read that the board will report to the minister whenever it considers it necessary to do so. Subclause (3) will delete "offence" from section 12(5)(a) and insert "offence, or offences,". I need to direct members to the actual clause and what it will do in terms of the debate around the changes to section 12.

Mr J.R. QUIGLEY: The member for Warnbro and the minister might have been talking at somewhat cross-purposes. We will go into the detail of PSSOs —

Mr P. Papalia: It was my fault.

Mr J.R. QUIGLEY: No, I do not think it was the member's fault at all. I think it was the minister's fault because she went on about how many people are going to be on PSSOs and, of course, clause 6 has nothing to do with PSSOs, which is what our very perceptive Acting Speaker for the evening drew our attention to. Madam Acting Speaker, I would not palm the credit off like that; I would take it for myself, but that is me.

The minister said that an unknown number of detainees are being held at the Governor's pleasure. Section 12(2)(c) provided that their status would be reviewed—these people have no fixed term on their sentence—every 12 months. Blowing out their reviews to every three years will put an extra cost on the prison service.

Mrs L.M. Harvey: Not necessarily.

Mr J.R. QUIGLEY: If the government never releases any of these people, that will then do it. First of all, in response to the minister's interjection of "not necessarily", will the minister tell us how many people who are on indeterminate sentences at the Governor's pleasure were reviewed in the past 12 months and how many were released?

Mrs L.M. HARVEY: The advice I have is that the reason we do not have that data is that the reporting periods are not changing; rather, they will be shifted from one part of the legislation into a schedule. There is no change to the reporting periods that have already been set in the legislation. There is no perception of an additional cost as a result of changing where the reporting periods present in the legislation. This will effectively make it easier for the board to call for reports on a prisoner.

Mr J.R. QUIGLEY: I do not quite understand the last sentence that the minister offered to the chamber. I go back to section 12(2), which states —

> The Board must give the Minister a written report about a prisoner —

Then it sets out four circumstances under which the board must give the minister a report. Importantly, paragraph (c) states —

> in any event, in the case of a person referred to in paragraph (d) of the definition of **prisoner** in section 4(2) —

That refers to prisoners held at the Governor's pleasure —

> at least once in every year.

This is being deleted. I understand that the government is going to a schedule in which there is a statutory requirement to review it once a year. Why did the minister say that nothing is changing?

Mrs L.M. HARVEY: As I said previously, this deletion and insertion needs to be read in conjunction with the schedule on page 13, which clearly states —

> A Governor's pleasure detainee subject to a sentence of detention imposed under *The Criminal Code* section 279(5)(b)

The first report is due one year after the day on which the detention began. Subsequent reports are due every year after that. That is not changing. It has just been taken from this section and shifted into a schedule for clarity. The reporting periods are not changing. We are deleting those other two sections and inserting an ability for the board to provide a report to the minister whenever it considers it necessary to do so. Notwithstanding that we have those scheduled reporting requirements, this gives the board an opportunity to provide a written report about a prisoner to the minister whenever it considers it necessary to do so. When we get on to clause 7, the member will see that it further clarifies the interface between these clauses and the schedule.

Mr J.R. QUIGLEY: If I have ever heard an unsatisfactory answer, that is probably it. I will go back to the sections. The minister was referring to a schedule, not, as the minister will agree, in section 12 of the act, which we are talking about. It is not in section 12 at all. The minister is talking about a schedule in section 12A. Section 12A(2) states —

> The Board must give the Minister a written report about a prisoner at the times stated in columns 2 and 3 of the Table to this section —

That is, section 12A. We are not talking about section 12A at the moment; we are talking about section 12. Most importantly, it continues —

> whether or not it has given the Minister a report about the prisoner under section 12.

That takes us back to section 12(2)—I am sorry to be leaving the schedule so far behind in the dust—which states —

> The Board must give the Minister a written report about ...
>
> (c) ... in the case of a person referred to in paragraph (d) of the definition of **prisoner** ... at least once in every year.

That is what the board is mandated to do in section 12. Section 12A(2) throws a further obligation upon the board, stating —

> ... the Minister a written report about a prisoner at the times stated in columns 2 and 3 of the Table to this section, whether or not it has given the Minister a report about the prisoner under section 12.

Under section 12, the board is required to do that for a prisoner, as defined in paragraph (d) of the definition of "prisoner" in section 4(2) of the act, once every 12 months. Why are we moving away from this regime of every 12 months to three years as a mandated requirement of the board?

Mrs L.M. HARVEY: As I said, this needs to be read in context. The advice from the advisers is that the schedules for sections 12 and 12A have been brought together, so the schedule 12A the member referred to is deleted on line 28 of page 5 of the amending bill and then we insert —

Mr J.R. Quigley: Sorry, I was looking at the consolidated legislation so I was on a different page. Page what of the bill, sorry?

Mrs L.M. HARVEY: I am advised that clause 7(3) will delete the table in section 12A. The existing tables that the member is referring to are being deleted and then brought together at schedule 3.

Mr J.R. QUIGLEY: I understand that, but as the minister just said —

Mrs L.M. Harvey: My advice is that the detail in them is not changing.

Mr J.R. QUIGLEY: I understand that, but in the minister's answer she referred to the schedule in section 12, not section 12A. There is no schedule in section 12. That schedule is to be located in section 12A; is that not correct?

Mrs L.M. HARVEY: Could the member rearticulate his question? My advisers do not know what the member is asking.

Mr J.R. QUIGLEY: Could the minister take me to the correct page? The minister said that there is a schedule in section 12. I am asking to be taken to the page on which I can locate the schedule in section 12.

Mrs L.M. HARVEY: The advice I have is that there is no schedule in section 12.

Mr J.R. Quigley: Thank you!

Mrs L.M. HARVEY: Section 12A has a table, which will now be consolidated into schedule 3.

Mr M.H. Taylor interjected.

Mr J.R. QUIGLEY: We have got to some common ground. I take it that the minister misspoke when she referred earlier to the schedule in section 12. We do not have a schedule in section 12—we are at one on that. We go to section 12. What is the board required to do in section 12? In the case of prisoners held at the Governor's pleasure, the board must—it is required to do it—give the minister a written report. If we go to the Interpretation Act, "must" is compulsory. The board must, not may—it must.

Mr P. Papalia: You shouldn't be stopping this because he's going to fix up bad legislation.

The SPEAKER: Thank you, member for Warnbro.

Mrs L.M. Harvey: I'm not stopping anything, member.

Mr P. Papalia: According to the guy at the back.

Mr J.R. QUIGLEY: The member for Bateman is the one who voted for the unconstitutional Bell Group law, which the government is now being sued over because it fell flat.

The SPEAKER: Member for Butler, come back to the point and let us move on.

Mr J.R. QUIGLEY: I am dealing with the interjections.

The SPEAKER: No, we are not dealing with interjections. It started with an interjection by the member for Warnbro. You were doing a good job. Carry on.

Mr J.R. QUIGLEY: Certainly, and thank you, Mr Speaker, for your assistance in that regard. Let us go back to section 12. The Interpretation Act defines "must", and the Speaker, being a learned man of the law, knows that when there is a "must", the board must do it. We have rather laboriously got the concession from the minister that there is no schedule in section 12. We go to section 12, which says that in the case of a prisoner held at the Governor's pleasure, the board must, in any event, report to the minister at least once every year. I am asking why that requirement is being deleted. We have all these prisoners in custody; the minister cannot tell us how many. We have these prisoners in there; no-one knows how long they are in there for because they are in custody at the Governor's pleasure. They were required to be reviewed by the board on an annual basis and now the minister is deleting that requirement. I am asking why the minister is deleting this safeguard.

Mrs L.M. HARVEY: The answer is that we are not. The obligations for reporting have been taken from section 12 and put into section 12A, which refers to the schedule in division 3 with respect to reporting time frames. I reiterate that we have not changed the reporting framework or the compunction put upon the Prisoners Review Board to be reporting to the minister. We have merely taken it from one section and put it into another, and it refers to a schedule for clarity.

Mr J.R. QUIGLEY: There was a reporting schedule always in section 12A, was there not? The minister is deleting the schedule in section 12A and consolidating it back in the act in schedule 3, is she not?

Mrs L.M. Harvey: That is what I said previously.

Mr J.R. QUIGLEY: There was always a requirement in section 12A. It is not as though the government is removing the reporting requirement, is it? The reporting requirement is not being removed from section 12, is it?

Mrs L.M. HARVEY: The prisoners that the member is talking about who are detained at the Governor's pleasure do not appear at section 12A but they appear in schedule 3.

Mr J.R. QUIGLEY: I appreciate that. They used to appear also in section 12; is that right?

Mrs L.M. Harvey: Yes.

Mr J.R. QUIGLEY: They coexisted in section 12 together with the schedule in 12A, is that not right, until this evening?

Mrs L.M. HARVEY: I will say it one more time. We have not changed the reporting framework. We have changed the way that this legislation reads. We have taken the reporting requirements out of section 12, put them into section 12A, and then the reporting frameworks and the requirement for the board to provide a report to the minister are detailed with more clarity in a schedule that we will get to. I realise that this is confusing legislation. It certainly is not my legislation, but I cannot clarify any further what we are doing.

Mr J.R. Quigley: You're the Deputy Premier. You can't distance yourself from it like that.

The SPEAKER: That is enough.

Mrs L.M. HARVEY: The advisers tell me they cannot explain this with more clarity.

Question to be Put

Mr M.H. TAYLOR: I move —

That the question be now put.

Question put and passed.

Consideration in Detail Resumed

Clause put and passed.

Clause 7: Section 12A amended —

Mr J.R. QUIGLEY: I have to say that I am shocked that after the government has sat on this for six years, the guillotine has been applied. It has no shame. The government sat on this legislation for six years—before the member for Joondalup even entered Parliament. Six years ago the then Attorney General Mr Porter said that he would bring in this legislation and now, six years later, the minister brings it in at three minutes to midnight in the life of this government and then the government applies a guillotine. This is absolutely disgraceful.

The government will be applying the guillotine a lot more tonight, because if this is the treatment the government is going to hand out to the public of Western Australia by holding back this important piece of legislation for six years and bringing it in at three minutes to midnight and guillotining it, we can respond in like. It is just absolutely shocking. I will go to proposed section 12A, which is to be found in clause 7. Is the government ready to guillotine it, or can I speak a little while longer?

Mr M.H. Taylor: If you keep repeating yourself.

Mr J.R. QUIGLEY: Is the member ready to guillotine it? We will go to this. Section 12A(2), which will now be deleted, required the board to give the minister a written report at the times set out in columns 2 and 3 of the table in this section, whether or not it has given the minister a report under section 12. That provision is being deleted. Why is the government deleting that requirement, regardless of whether a report has been given under section 12? Before, section 12A reports were to be given irrespective of the discharge of the duties upon the board under section 12(2). Why is this being deleted?

Mrs L.M. HARVEY: It is not being deleted; it appears there under proposed subsection (1).

Mr J.R. QUIGLEY: Subsection (1) referred to wherever a report had been given on a prisoner under section 12. Under section 12, before the guillotine was applied, it had to be done every year. I am now asking why the government is changing the legislation in this way, to blow it out to—I will just go to the schedule —

Mrs L.M. Harvey: Member, if it helps, my adviser says that section 12 deals with prisoners generally, while section 12A deals with those indefinitely detained and lifers.

Mr J.R. QUIGLEY: Is "indefinitely detained" indefinitely detained at the Governor's pleasure?

Mrs L.M. Harvey: Yes, indeed.

Mr J.R. QUIGLEY: So section 12, as it now stands before the legislation passes, also deals with the same category of prisoners, does it not? Section 12(6) states, in part —

> In the case of a person referred to in paragraph (d) of the definition of ***prisoner*** in section 4(2) …

We have all agreed that that is a person serving an indeterminate sentence, and is to be reported on at least once every year. I am asking why section 12A is changing and taking out the schedule and putting in schedule 3.

Mrs L.M. HARVEY: The previous amendment to section 12, "Reports by Board to Minister about prisoners generally", deleted subsection (2)(c), which states —

> in any event, in the case of a person referred to in paragraph (d) of the definition of ***prisoner*** in section 4(2), at least once in every year.

That is the section that refers to this separate collection of offenders that are now redefined in section 12A, "Reports by Board to Minister about prisoners serving life terms or indefinite imprisonment". It is basically having section 12 deal with prisoners generally and then section 12A deal with prisoners serving life terms or indefinite imprisonment. It is not changing what currently exists, it is just an administrative tidying up of the drafting.

Mr J.R. QUIGLEY: I hope the minister gives me the indulgence to also address proposed section 12. Proposed sections 12 and 12A intertwine. As proposed section 12B clearly points out, "Combined reports may be given under sections 12 and 12A". In her answer, the minister said that section 12 applies to prisoners generally and section 12A applies to prisoners of indeterminate sentence. Did I get that right?

Mrs L.M. HARVEY: In the new legislation, member, yes; we have separated them out. In fact, in the existing legislation they are somewhat intertwined. For the sake of clarity, we have defined them separately under sections 12 and 12A. The reporting frameworks are described, as I have said, further along in the legislation in a table in schedule 3.

Mr J.R. QUIGLEY: It is not just a case of separating them out. As it currently stands at law, indeterminate prisoners were covered by reports in section 12—we have agreed on that—and they were required to be reported on annually. The minister has taken indeterminate prisoners out of that proposed section requiring an annual report and now has them in the schedule to section 12A. They are solely only referred to in 12A, which means that after the first annual review they will be reviewed every three years only. The question that the member for Warnbro asked was: what additional cost impost is there on the taxpayer by blowing out the review now to every three years?

Mrs L.M. HARVEY: Member, it has not changed. For life imprisonment for an offence other than murder, the report was due seven years after the day on which the term began or is taken to have begun. Subsequent reports are due every three years after that. For those offenders, it is exactly the same. I refer to division 1, "Current sentence types", on page 13 of the new table. Alongside, "A person serving a sentence of life imprisonment for an offence other than murder", it states —

> 7 years after the day on which the term began or is taken to have begun

That is when the first report is due. Subsequent reports are due every three years after that. Those reporting time frames have not changed, member. All we have done is cleaned up the legislation to make it read more clearly.

Mr J.R. QUIGLEY: I take it the minister does not mean "cleaned up" in the cricketing sense 6–0, because that is virtually what she has done. I take the minister back to the proposed section she drew my attention to—section 12A(1). It states —

> … whether or not a report has been given about the prisoner under section 12 …

We have to go back to section 12 to see what the board's obligation was. Under section 12, in relation to a person serving an indeterminate sentence, that would be every 12 months. That is what section 12A says. Section 12A(1) says irrespective of whether this report is given, it will be done every three years, but section 12 throws an obligation upon the board to do it annually. Why is that being deleted?

Mrs L.M. HARVEY: I know everybody is probably really bored with hearing me say this, member, but it has not changed. As defined in clause 7, proposed section 12A(2) states —

The Board must give the Minister a written report about a Schedule 3 prisoner —

(a) described in Division 1 column 2 of that Schedule — at the times provided in columns 3 …

If we go to the schedule, for those offenders who are a Governor's pleasure detainee subject to a sentence of detention imposed under section 279(5)(b) of the Criminal Code, the first report is due one year after the day on which the detention began. Subsequent reports are due every year after that. It has not changed.

Clause put and passed.

Clause 8: Section 12B inserted —

Mr P. PAPALIA: I am looking for the explanatory memorandum's commentary on clause 8.

Several members interjected.

The SPEAKER: That is enough.

Mr P. PAPALIA: I will let that go, because it is not clause 8 that I was concerned about.

Ms M.M. QUIRK: Under proposed new sections 12 and 12A the minister spoke about the differentiation in reports, yet clause 8 refers to a "combined" report and a "first" report. Could the minister explain the context of those terms given the answers she has given to the member for Butler on previous clauses?

Mrs L.M. HARVEY: The advice I have is that under proposed section 12 the board may be required to provide a first report on a prisoner. Under proposed section 12A there may also be a requirement within three months of that first report to report on the same prisoner. This will allow those reports to be given about the same prisoner and for it to be given concurrently.

Clause put and passed.

Clauses 9 to 11 put and passed.

Clause 12: Section 27A amended —

Ms M.M. QUIRK: Could the minister explain the amendment that will replace "people who are in custody during the Governor's pleasure" with "a Governor's pleasure detainee"? I am curious about that subtlety.

Mrs L.M. HARVEY: Once again, it is similar to a consequential amendment, whereby there have been different references to prisoners detained at the Governor's pleasure. This clause amends the section to refer to "a Governor's pleasure detainee" to be consistent throughout the act.

Clause put and passed.

Clause 13 put and passed.

Clause 14: Part 11 inserted —

Mr P. PAPALIA: I am not choosing any of these particular clauses, but how many of the pre-1996 prisoners are currently in the system?

Mrs L.M. Harvey: At present, 41.

Mr P. PAPALIA: Does the amendment in any way alter the methods by which they are considered for release or does it just accommodate them being included in the amended legislation through changing of the wording and structure of the legislation?

Mrs L.M. HARVEY: It does not change the considerations or conditions for release for those offenders, but it does enable them to participate, if appropriate, in a resocialisation program prior to release.

Mr P. PAPALIA: My understanding of the pre-1996 prisoners, the 41, is that as a consequence of when they committed their offence and how they were sentenced they are not subject to the same opportunities for release as those who committed identical offences after 1996 in many cases. In some cases they end up being in this perpetual incarceration, whereas had they committed the same offence after 1996 and been subject to different legislation, many of them would have been released. Is that not the case?

Mrs L.M. HARVEY: There are two considerations. One is obviously the suitability of those prisoners to be released. But the member is right: sometimes the successful completion of a resocialisation program can be taken into consideration when they are being considered for release, and prior to this amendment those offenders could not participate in a resocialisation program. It does not preclude them from other programs available in the system to address their offending behaviour, but resocialisation programs are somewhat different. They involve

a release, moving about the community under supervision and those sorts of things. Due to an unfortunate error in the previous amending legislation, those opportunities have not been afforded to those pre-1996 offenders.

Mr P. PAPALIA: Finally, the effect of this amendment is to enable those 41 offenders to be admitted to resocialisation programs and therefore to be eligible potentially for release in cases in which prior to now they were not even eligible. Is that correct?

Mrs L.M. HARVEY: First of all, for the prisoner to be eligible for a resocialisation program they need to fit certain criteria. Some of those pre-1996 prisoners may not have fit the criteria for a resocialisation program, but it is fair to say that the resocialisation program opportunity has been denied to all those offenders. Notwithstanding the fact that they can participate in other programs, obviously if someone has been incarcerated for a long time, it is desirable for them to complete a resocialisation program. This effectively allows that to occur. Some of those offenders could have been considered more favourably for release had they participated in a resocialisation program. I cannot advise the member about how many of them there are; however, this amendment enables all those offenders to participate in programs if they are suitable.

Mr P. PAPALIA: I was not aware that this legislation did that. For some of the individuals whom I have met and who I believe are very suitable for resocialisation and ultimately rehabilitation, this is an incredible move forward. I congratulate the minister for doing it.

Clause put and passed.

Clauses 15 to 24 put and passed.

Clause 25: Part 5A inserted —

Mr J.R. QUIGLEY: I want to go to the amendments contained in the new sections proposed in clause 25. The minister said that in her opinion post-sentence supervision orders did not impede upon a citizen's liberty as to render it unconstitutional in the sense that a diminishing of a person's liberty was not something that warranted judicial judgement. The minister cited the opinion of the State Solicitor. Is the minister prepared to share the State Solicitor's opinion with us?

Mrs L.M. Harvey: That's not what I said.

Mr J.R. QUIGLEY: I ask this question because when the Premier was sitting on this side of the chamber in 2008 he said, "If we win the election, we will be a transparent government." Section 74 is of crucial importance to the administration of the law and the separation of executive, judicial and legislative powers. The minister is relying upon the opinion of the State Solicitor. I am sure that the minister will not want to make a liar of the Premier who said that he would be transparent, so could we please see a copy of the State Solicitor's opinion?

Mrs L.M. HARVEY: The member is not accurately reporting what I said. I said that the advice we have is that post-sentence supervision orders introduced in part 6A of the bill exclude these orders from the rules of natural justice. Although post-sentence supervision orders put conditions around the supervision and management of offenders to protect the community, they do not involve the continued incarceration of an offender beyond their sentence. The Attorney General's view is that it is not constitutionally invalid.

Mr J.R. QUIGLEY: When the government and cabinet arrived at this opinion, did they have the benefit, or does the Attorney General have the benefit, of a legal opinion as to the constitutionality of the imposition of post-sentence supervision orders after the expiration of a sentence? Has the government received legal advice on the constitutionality of that?

Mrs L.M. HARVEY: The member needs to ask that question of the Attorney General.

Mr J.R. QUIGLEY: The minister is representing the Attorney General and she is the Deputy Premier. I am asking whether the government has received legal advice as to the constitutionality of that, or is this just one of the government's fly-by-night, shonky schemes like the Bell litigation, when legislation was brought into this Parliament that was contrary to the Australian Constitution, all on the Attorney General's word? His word on constitutional law is worth nothing in this chamber. Would members agree?

Several members interjected.

Mr J.R. QUIGLEY: Yes. There is resounding agreement. We know that he got cleaned up 5–0 and even went to the desperate measure of changing the law during the running of the High Court case. What a shambles! What I am asking this time is: does the Attorney General have an opinion from the Solicitor General on the constitutionality of that and does he have any legal opinion from anybody, be it the SSO or anybody else, on the constitutionality of what is proposed in proposed section 74A?

Mrs L.M. HARVEY: In any event, should the Attorney General have received legal advice from the State Solicitor's Office, the convention is not to table legal advice. That has been a parliamentary convention. If the member checks *Hansard*, he will find that members sitting in front of me now have refused to table legal advice based on that convention. The member would need to ask the Attorney General whether he has received legal advice. I cannot answer that. My advisers are not aware of whether the Attorney General is in possession of specific legal advice on the constitutionality of this amendment, so the member would need to put that directly to the Attorney General.

Mr J.R. QUIGLEY: The first question I would ask the minister is: as she said in her answer that members sitting in front of her now have refused to disclose legal advice, what is she talking about? Which members who are sitting in front of her? I have never refused to disclose legal advice. Who is the minister talking about?

Mrs L.M. HARVEY: I am interested in getting on with this legislation. The constitutionality of the legislation was tested by the parliamentary committee in the other place. The Attorney General's advice to me is that, subject to section 115 of the Sentence Administration Act, the Prisoners Review Board is excluded from the rules of natural justice. This does not introduce a constitutional issue.

Mr J.R. QUIGLEY: It does introduce a constitutional issue. I can assure the minister that it does introduce a constitutional issue. Proposed section 74G refers to additional requirements as the board thinks fit, which include requirements normally found in community service orders, which are imposed only by the judiciary. I will wind it back; we will have to unravel this constitutional question. Let us say that a prisoner has been charged with and sentenced for grievous bodily harm and given a six-year term. He probably should have got more but Mr Percy, QC, was acting for him and he got it down to six years, with eligibility for parole after four years. At the expiration of four years, the prisoner does not get parole for whatever reason, and he has to come to the expiration of the finite term at six years. At the five-year-and-nine-month mark, the CEO—that is, a public servant—must give a report to the Prisoners Review Board on the proposed section 74G requirements. They go to Tom's client Bloggs in cell block A and say, "You're up for release. Your term expires tomorrow. We require you to be subject to a post-sentence supervision order." Can the minister tell me the process after that? What will the prisoner have to do? Will the prisoner not have to agree?

Mrs L.M. HARVEY: As I have said previously, we believe the Prisoners Review Board is the appropriate jurisdiction to determine whether a post-sentence supervision order should apply. That is our view; the member has a different view. We do not believe it is unconstitutional, otherwise we would not have put it in the legislation. The advice I have, aside from getting into a very detailed argument over case law, which I do not have the qualification to prosecute —

Mr J.R. Quigley: That's what we are going to do. Do you want the white hanky again?

Mrs L.M. HARVEY: The member's condescension is noted. I am saying that we do not believe there is a constitutional issue with this. I am advised that the case law of Fardon v Attorney-General for the State of Queensland from 2004 and Kable v Director of Public Prosecutions for New South Wales determine the constitutionality or otherwise of these sorts of measures. My advisers say it has been tested and they do not believe there is a constitutional issue.

Mr J.R. QUIGLEY: I will get back to the question I asked the minister. On the expiration of the prisoner's term, the board has made a PSSO and the prisoner is in his cell and says that at midnight his time is up, what will happen then? What will the prisoner have to do?

Mrs L.M. HARVEY: Obviously, for the types of offenders who will be considered for a post-sentence supervision order, sections 12 and 12A provide review periods during the detention, which will determine their suitability, if you like, for release and their potential success of reintegrating into the community, with community safety being considered upon release. Prior to an offender's release date, a series of assessments would be made, and during that process the offender would obviously have some input through the normal processes of the Prisoners Review Board. The PSSO considerations would be similar to those already weighed up by the PRB in consideration of parole and would look at whether the offender may require further rehabilitation, especially offenders who have never been on parole. A range of considerations could be put into the context of the PSSO. These are designed not to be punitive but as a management regime around offenders who are considered to be a risk to the community. In making parole assessments of offenders, the Prisoners Review Board is the right board to take those considerations into account.

Mr J.R. QUIGLEY: I refer to the schedule and serious violence offences such as "Murder", section 279; "Manslaughter", 280; or "Unlawful assault causing death", 281. A prisoner is in jail for killing someone, and on

the last day of serving his head sentence, he is in his cell and the news is broken to him that he will be made the subject of a post-sentence supervision order, and he says, "No, I'm not. You can get nicked. I'm having no part of this". Would that prisoner still be released?

Mrs L.M. HARVEY: Member, in the absence of this legislation, if the prisoner has finished his sentence, we have to release him, without any ability to supervise. Proposed section 74B, "PSSO considerations", provides a range of considerations that need to be taken into account. It provides in specific detail what is expected of the report from the chief executive officer that is made to the board with respect to prisoners, and the nature of the PSSO. That is all detailed in the clause that we are considering. One of the requirements relates to the protection of the victim of an offence. These are all considered as part of the making of a PSSO. At present, should a murderer, as the member has described, reach the end of the sentence that has been imposed by the court, they will be released, and, in the absence of this legislation, we have no ability to do anything with that person upon their release. This will give us an opportunity to manage their behaviour and supervise them for a maximum period of two years in the community post-release.

Mr J.R. QUIGLEY: I understand all that. We can get all that from reading the bill, the minister's second reading speech and the explanatory memorandum. I am not being condescending. The minister has said nothing more than what has already been presented to us. My question is this. The prisoner gets to the last day of his sentence and is advised by the superintendent that he is required to comply with a PSSO, and the prisoner gets abusive and says, "I've served my time. Get stuffed. I'm having no part of this." Excuse the colloquial language that I am using, but it is the language of the prison population. The prisoner is in jail. It might be a day, or a week, before the end of his sentence, and the superintendent says to him, "I've got paperwork here, which is a decision by the Prisoners Review Board that says you are subject to a two-year PSSO", and the prisoner gets abusive and says, "I'm at the end of my sentence. Go away." Would that prisoner still be released?

Mrs L.M. HARVEY: Member, proposed section 74L provides that it is an offence to breach a PSSO. As I said previously, at present, an offender can walk out of prison at the end of their sentence and that is the end of the government's management of their behaviour. If a person is eligible for a PSSO and it is considered by the Prisoners Review Board that the person should be subject to a PSSO, if this legislation passes through this Parliament, they will be given a PSSO and they will be required to comply with the conditions of the PSSO. Those conditions are detailed clearly. If they breach the PSSO, penalties will result from that breach. I agree that some offenders have quite a belligerent attitude and have no remorse for their offending behaviour. Under the current system, at the end of their sentence, they have served their time and are released into the community. The opportunity that is provided by a PSSO is to try to manage their behaviour and manage community safety. Should there be a breach of a PSSO, a suitable offence would be imposed by the court, which potentially would be incarceration, depending, obviously, on the severity of the breach.

Ms M.M. QUIRK: Following that answer, is the minister telling the member for Butler that a refusal by a prisoner to participate or subject himself to the constraints of the post-sentence supervision order itself constitutes a breach? Proposed section 74L, which the minister referred to, makes reference to a breach of a PSSO. What the member for Butler is really talking about is the refusal to participate in the first place. That is the first question. The other question I raised during my second reading contribution is that I am concerned that the ability to impose a PSSO at the end of a sentence will mean that Corrective Services personnel may not be as assiduous in ensuring that during the currency of the sentence, training or programs will be made available to a prisoner, but instead say, "Oh well, if the worst case scenario happens we can bung him on a PSSO at the end." I want to know the guarantees there are to make sure that at the earliest available time that prisoner gets the programs or rehabilitation he or she needs.

Mrs L.M. HARVEY: Member, Corrective Services has a responsibility for the rehabilitation of prisoners, and the Inspector of Custodial Services holds them to account. With respect to a breach, it is detailed in proposed section 74A, which reads —

> ***breach***, in relation to a PSSO, means to contravene any obligation or requirement of the order;

So, yes, if an offender does not want to have a PSSO but the Prisoners Review Board decides that a PSSO is appropriate and the offender chooses not to comply with the conditions of the PSSO, that would be a breach. The breach would be brought before a court, and a judicial officer in a court would determine whether that breach should result in imprisonment for three years or a penalty of a fine.

Mr J.R. QUIGLEY: I still want to get back to this point. This is not getting back to supervision in the community; this is getting back to the constitutional point that we are examining forensically. That is: the prisoner becomes belligerent and says, "I'm not going to cooperate with you in any measure; I am at the end of my term." Is that prisoner released, notwithstanding?

Mrs L.M. HARVEY: The prisoner would be released subject to the conditions of the PSSO, and then their compliance with the PSSO would be monitored. Member, there are many individuals in the community—for example, we were talking about domestic violence earlier—who do not wish to comply with the conditions of a violence restraining order. They are brought before the court for a breach and the court deals with it as appropriate. With a PSSO, we have no ability to detain, unless the court, at the time of sentencing, imposes an indefinite or indeterminate sentence or whatever it might be. Once a prisoner has completed their term of imprisonment, we are required to release them. However, if this legislation goes through, we will be able to release certain prisoners who we think are a risk to the community, subject to a PSSO. If they refuse to comply with that and they breach or offend, they will be brought back before the courts. That is the system we are putting in place to protect the community from certain offenders who, for example, may have a PSSO imposed on them because they have refused to participate in any programs offered to them during their period of incarceration and they are deemed to be a danger to the community.

Question to be Put

Mr M.H. TAYLOR: On the basis of repetition, I move —

That the question be now put.

Division

Question put and a division taken with the following result —

Ayes (28)

Mr P. Abetz	Mr J.M. Francis	Mr S.K. L'Estrange	Dr M.D. Nahan
Mr F.A. Alban	Dr K.D. Hames	Mr R.S. Love	Mr D.C. Nalder
Mr G.M. Castrilli	Mrs L.M. Harvey	Mr W.R. Marmion	Mr D.T. Redman
Mr M.J. Cowper	Mr C.D. Hatton	Mr J.E. McGrath	Mr A.J. Simpson
Ms M.J. Davies	Mr A.P. Jacob	Mr P.T. Miles	Mr M.H. Taylor
Ms W.M. Duncan	Dr G.G. Jacobs	Ms A.R. Mitchell	Mr T.K. Waldron
Ms E. Evangel	Mr A. Krsticevic	Mr N.W. Morton	Ms L. Mettam *(Teller)*

Noes (7)

Mr R.F. Johnson	Mr M.P. Murray	Mr J.R. Quigley	Mr D.A. Templeman *(Teller)*
Mr D.J. Kelly	Mr P. Papalia	Ms M.M. Quirk	

Pair

Mr I.M. Britza	Mr M. McGowan

Question thus passed.

Consideration in Detail Resumed

Clause put and passed.

Clause 26: Section 75 amended —

Mr J.R. QUIGLEY: I will not participate in a debate that has been reduced to a farce. This was very important. There are 13 new sections proposed in clause 25 and the government guillotined it on a point of absolute constitutional importance before we could discuss half of them. The minister said repeatedly that she did not have the expertise or did not know. That this legislation is being guillotined is a disservice to this Parliament. I will not take part in a debate that the government will reduce to a farce!

Adjournment of Debate

Mr D.A. TEMPLEMAN: I move —

That the debate be adjourned.

Question put and negatived.

Consideration in Detail Resumed

Clause put and passed.

Clauses 27 to 55 put and passed.

Clause 56: Section 49 amended —

Mr P. PAPALIA: There is a reference in the explanatory memorandum and also the second reading speech to types of activities that a CEO may approve, including educational, vocational or personal development programs, any unpaid work and any other activity that the CEO considers appropriate. Who would deliver these programs?

Mrs L.M. HARVEY: With respect to these conditional release orders, we would potentially be looking to partnerships with some of the not-for-profit sector. Some offenders would work with the not-for-profit sector by providing volunteer work, for example, as part of a CRO, depending on where they are located and the ability and willingness of some of those not-for-profit agencies to engage. The work on who those individuals would be has not been completed at this point. However, I am advised that New South Wales has set up a community work portal, which is being considered here. Basically, not-for-profit sectors will upload into the portal work that they require for their facilities—volunteer or unpaid work that they cannot afford to pay for, for example. The not-for-profit sector then agrees to become the supervisor. The system to implement that in WA has not been set up yet but that is the model that has been proposed because I understand that it is working successfully in New South Wales. As I said, a lot more work still needs to be done on that with conditional release orders.

Mr P. PAPALIA: The system in New South Wales is effectively administered by the Aboriginal Legal Service, which vets voluntary organisations and non-government organisations to determine whether they are suitable for provision of the service. This is particularly with respect to Aboriginal offenders who are released on community work orders. The individuals are directed towards the non-government organisations or other volunteer organisations that have been authorised or certified by the Aboriginal Legal Service on behalf of the state. Is that the intention of the government in this case, noting that it does not really have a structure? Are we going to try to replicate the New South Wales structure? Is that the concept?

Mrs L.M. HARVEY: It is intended that we would absolutely have similar checks and balances in place to ensure that the not-for-profit group that will provide that supervisory capacity of offenders with conditional release orders would have the capacity to supervise. Obviously, it is important that this is managed appropriately and, as I said, a lot more work is still to be done on it. We are looking at the New South Wales model as the most promising model. It may be that court officers would be supervisors of CROs in certain areas of the state or it could be managed through the Department of Corrective Services. It would depend on different locations.

Obviously, for CROs our intention is to try to engage as many Indigenous people as we possibly can in remote communities and regional areas to try to keep them out of detention. It would depend on the capacity of each community and the spread of the not-for-profit groups that would be available. Indeed it might be community organisations, correctional services officers or court officers who would supervise.

Mr P. PAPALIA: I am not sure that the government has engaged with the Aboriginal Legal Service in Western Australia or would even consider that as an action. I note that the Aboriginal Legal Service is crucial to the system working in New South Wales and it plays a key role. That aside, in the minister's reply to the second reading debate she referred to the number of people who are incarcerated in Western Australia as a consequence solely of a fine default having dropped to 600. Where was that number acquired, and where is it available publicly? How many have been incarcerated solely for fine default in recent years? I note that until I published my paper in 2014, under this government it was about 1 100 a year. The next year, after I published the paper, it magically dropped to 750. Subsequently, I have not heard anything because the department does not publish any data at all, yet the minister is claiming now that it is 600. If that is the case, is that an aberration or has there been a trend downwards? Has the government stopped locking up fine defaulters at the ridiculous rate it was locking them up? By what mechanism has the government achieved that, noting that apparently nothing has changed legislatively or regulation-wise, as far as I know?

Mrs L.M. HARVEY: My advice is that out of some of the initiatives from the Department of the Attorney General around enhanced fines enforcement, the number of warrants of commitment has dropped and that has resulted in a reduction in the number of fine defaulters who are finding themselves in detention. In addition, we have set up some initiatives at many of the courts. I believe in all our courts now we have an opportunity for people to enter into time-to-pay arrangements at the time that a fine is imposed. Many offenders will take up that opportunity and will allow us a garnishee order of their bank account.

Mr P. Papalia interjected.

Mrs L.M. HARVEY: We have had a very concerted focus on trying to capture offenders who have been given a court-imposed fine into entering a time-to-pay arrangement so that we can work with them to try to keep them out of the detention system. That is one of our initiatives. Some of the other initiatives around wheel clamping, for example, to encourage offenders to pay or take that step to enter into a time-to-pay arrangement have resulted in fewer warrants of commitment that previously resulted in detention.

Mr P. PAPALIA: Is the number 600? What is the number in the last financial year, for instance, or whatever period in which these things are normally recorded, of people incarcerated solely for fine default?

Mrs L.M. HARVEY: My adviser says that a report was published by the Inspector of Custodial Services in June or July, in which the number of fine defaulters is 600 a year.

Ms M.M. QUIRK: I just need a bit of clarification about the proposal the minister talked about to have non-government organisations engaging offenders in various forms of voluntary work. I am a bit curious about this because the original statutory review made the point that sentencing options were limited in remote and regional Western Australia. Will we not have the same difficulty under this regime as we would have had in the scheme identified by the statutory review? NGOs themselves do not have a large presence in regional and remote Western Australia, so the capacity to have people to supervise or administer the schemes would be equally problematic.

Mrs L.M. HARVEY: I am advised that this is slightly different. Previously, those sentencing options were always put in the context of being managed by a different regime. In regional and remote communities there are more opportunities to engage, for example, with local governments and some of the Aboriginal corporations that run the communities to have those entities take on a supervisory role. As I said, these opportunities are currently being investigated and interrogated, but there is an opportunity in regional and remote communities. For example, many years ago police officers would have offenders doing work around the police station and working off fines in that way. These conditional release orders give us an opportunity for offenders to have something other than the imposition of a fine, or to have that fine forgiven should they complete some unpaid community work or work for a volunteer organisation as required, or a local government, or whoever it may be, once we have done our due diligence and understood the capacity out there, and who can be delivering these programs. This also ties in with some of the regional and remote communities work that the Minister for Regional Development and the Minister for Child Protection are driving, looking at building capacity in our regional and remote communities to have opportunities like this for offenders to be managed in the community on conditional release orders, and so that capacity can be built to keep people out of detention, but still performing a useful purpose in the community and having a consequence for their actions.

Ms M.M. QUIRK: The way the minister describes the work is analogous to what community corrections officers do. I am a bit puzzled and perplexed about why they cannot actually perform the role that the minister is contemplating.

Mr P. PAPALIA: I will follow on from this because it is a related question. The New South Wales system, as the minister's advisers are probably aware, is not just about providing work for people in the community in an effort to have them repay their debt. A large amount of the obligations placed on individuals relates to their condition. In the event, for instance, of the individual having a mental health condition, they are referred to a mental health provider as part of the payment of their fine. Similarly, if they are drug addicted or an alcoholic or have some sort of substance abuse problem, they are compelled as part of the payment of their fine to attend a service provider. Following on from the member for Girrawheen's concerns, it is difficult to envisage that sort of service being provided in a lot of our remote Aboriginal communities. Even though New South Wales is a reasonably large state, it is pretty small in comparison with Western Australia and it has a larger population spread over a smaller geographic area. It is probably easier to get services to people. Western Australia has a serious problem of a large number of the type of people we are talking about coming from remote communities. I am not sure that that service provision is available at the moment.

Can the minister confirm whether that is the model we are talking about; that is, the intention is that offenders, as part of their obligations, can be sent to a service provider for interventions for rehabilitation if necessary or appropriate? If so, how will those services be provided in remote communities and where will the funding come from for that service provision in addition to current service funding, which is completely inadequate in those locations?

Mrs L.M. HARVEY: This will operate at a different level from some of the orders that are currently managed by the Department of Corrective Services. Conditional release orders are only an opportunity as a replacement for a fine. Generally, a fine is given as a penalty by the court for a low-level offence. Proposed section 49 details that one of the conditions of the CRO could be to seek any educational, vocational or personal development program. It could be any other activity set by the CEO of the Department of the Attorney General that the CEO considers appropriate. It could be drug and alcohol counselling or mental health counselling or some kind of educational program. As I said, the costing on this has not been done. We are looking at whether the New South Wales portal can be implemented in Western Australia or whether we need a couple of different models because of this state's geographical challenges.

Mr P. PAPALIA: If we assume there are around 600 prisoners annually, and we know that on average fine defaulters are incarcerated for 4.2 days, that is 2 520 days' worth of incarceration. There is a potential funding stream available but it requires the minister to implement effectively the justice reinvestment principle of taking the funding otherwise allocated to incarcerate these people and allocating it towards this service provision. I am wondering whether the minister would consider trying that to actually make this system work. In the event that we do not have funding, all that will likely happen is these people will be assigned an intervention that cannot be delivered because we do not have the funding to provide an adequate provision.

Mrs L.M. HARVEY: My understanding is that the arrangement we are looking at is to fund more the infrastructure that we need to put in place, but not the supervision. Yes, it will need to be funded. Yes, this is a justice reinvestment strategy similar to the ability to suspend fines and other initiatives that this government has implemented. We need to try these things. We certainly need to look at alternatives to incarceration. If the court imposes a fine as a penalty, obviously we would prefer to see that fine worked off in one of these community supervision orders or the offender paying the penalty that was imposed by the court. We do not want to see people working off these fines by spending a couple of nights in a correctional institution. In a way, that is what this is designed to ameliorate.

Mr P. PAPALIA: I will not delay this any longer other than to say that I do not say it is a justice reinvestment program; I say it is a concept of utilising funding that would otherwise have been assigned to incarceration in advance. A way of preventing that cost is within the framework of justice reinvestment. There is no one program that can be called justice reinvestment. In New South Wales the concept, particularly of preventing Aboriginal people from being incarcerated for fine defaulting, is reliant heavily on the Aboriginal Legal Service being directly involved, being part of the service provision and being a partner with government. That is my understanding. I think if we were to try to achieve the same outcome in Western Australia of not incarcerating fine defaulters—because they have not done so in New South Wales since 1995; I cannot remember the exact date—then we would need to engage particularly with the massively overrepresented population of Aboriginal people in prison and this particular sector of the prison population. We would need to have the Aboriginal Legal Service as a partner of government. That should be embraced and acknowledged at the outset, because that is what works in New South Wales. If we are going to model our system on that—I commend the government for doing that because it is the best system in the country—we will have to work with them. I know they want to. I know they are enthusiastic advocates for this system and they are just looking to the government to embrace that opportunity.

Mrs L.M. HARVEY: Indeed, Hon Lynn MacLaren tabled in the other place a letter from the Aboriginal Legal Service in support of this program. Whether it would be considered to be a manager or to act as supervisor in the program is yet to be determined. I would put to the member that the ALS would have an intense interest to ensure that they have as many Aboriginal people as possible come through the conditional release order mechanism. That is the purpose of the legislation.

Clause put and passed.

Clauses 57 to 78 put and passed.

Title put and passed.