

WA LABOR

# Law Reform Initiatives



**A Fresh Approach for WA**

WA Labor Policy | January 2017

## LAW REFORM INITIATIVES

WA Labor believes a proper functioning criminal justice system is essential to ensuring a peaceful and orderly society. We want to implement evidence-based policies that reduce crime and make our state a safer place to live and put the interests of victims front and centre in developing new approaches to reducing crime.

Important changes to the law will be made in a range of areas including:

- toughening dangerous sex offender laws.
- reforming domestic violence laws.
- introducing a high risk offenders board.
- laws against non-consensual publication of intimate photos.
- no body, no parole laws.

To implement smart policies we need an independent body tasked with gathering and analysing all crime related data in an open and transparent manner. This body should also be tasked with using the data to conduct independent research into crime fighting policy so it can benchmark WA's performance against world's best practice.

WA Labor will invest \$1.65 million over four years of new and existing budget allocations to create a better system for crime prevention and justice and improve how we treat victims of crime.



### STAY INFORMED:

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## EXECUTIVE SUMMARY

**A McGowan Labor Government will:**

- 1. Create a judicial system that is focussed on the victims of crime and will:**
  - Address the recommendations from the Law Reform Commission of WA discussion paper into Family and Domestic Violence.
  - Introduce a High Risk Offenders Board.
  - Introduce laws against non-consensual publication of intimate photos or videos.
  - Introduce No body, No parole laws.
  - Introduce changes to the dangerous sex offender laws to protect the community.
  
- 2. Introduce evidence based solutions to law and order and will:**
  - Partner with a Western Australian University to establish a Bureau of Crime Statistics and Research to provide independent, evidence based research on crime and justice.
  - Re-establish the Law Reform Commission as an independent body and task it to report on various matters of current sentencing policy.
  - Create a sentencing database in WA that will provide comprehensive data of all sentences imposed across the Supreme, District, Magistrates and Children's Court jurisdictions.
  - Amend the Director of Public Prosecutions (DPP) legislation to require the DPP to report to a Standing Committee of Parliament annually to bring greater accountability to the office.
  
- 3. Ensure greater community access to the judicial system and will:**
  - Legislate for class and representative actions in WA.
  - Allow live streaming of selected court proceedings.
  - Legislate to end the time limit therefore allowing child sexual abuse victims to take legal action.

## A JUDICIAL SYSTEM THAT IS FOCUSED ON THE VICTIMS OF CRIME

### Protecting Victims of Family and Domestic Violence

The legal system has an important role to play in tackling Family and Domestic Violence (FDV). Amendments to our laws are important and necessary measures in making it clear to perpetrators and the community that FDV will not be tolerated.

- **A McGowan Labor Government will strengthen legislation by addressing the recommendations of the ‘Enhancing Family and Domestic Violence Laws’ Discussion paper prepared by the Law Reform Commission of WA.**

Some of the recommendations include:

- Enacting a Family and Domestic Violence Protection Order Act to enhance the understanding of family and domestic violence within the legal system, and community generally, and to facilitate more consistent and appropriate decision-making;
- Ensuring that the maximum penalties for breaches of family and domestic violence protection orders are consistent with sending a clear message to the community and to offenders that this type of conduct will not be tolerated;
- Enacting amendments to the Criminal Procedure Act 2004 and the Sentencing Act 1995 to allow signposting of criminal offence and convictions to specify whether it is an offence that occurs in a family and domestic violence context;
- Enacting amendments to the Evidence Act 1906 to include Victims of Family and Domestic Violence

as “Special Witnesses” which will allow victims of family and domestic violence to have access to special arrangements to support them in the process of giving evidence including: (a) a support person; and (b) the option of giving evidence via video link or behind a screen; and

- Amending section 281 of the Criminal Code 1913 (WA) to extend the maximum prison sentence for assault resulting in death in “circumstances of aggravation” (as defined in section 221 of the Criminal Code) to 20 years. Family and domestic violence is considered a “circumstance of aggravation” under this section.

The implementation of the recommendations of the WA Law Reform Commission discussion paper is a holistic response to ensuring that the victims of FDV are supported by our legal system.

### Post sentence detention for violent offenders

WA Labor will initiate a High Risk Offenders Board to initiate action which would work in the same way as orders of detention or supervision apply to serious dangerous sex offenders.

The Supreme Court would receive evidence as to the prospect of further offending including from a psychiatrist and have the power to further detain to prisoner.

- **A McGowan Labor Government will introduce a High Risk Offenders’ Board.**

The function of the High Risk Offenders' Board will be to receive reports on prisoners nearing the end of their sentence, who were convicted of offences involving either:

- (a) Terrorism offences;
- (b) The infliction of serious injury to a victim of the offence; or
- (c) Any offence using a firearm during the course of a commission of any offence.

The High Risk Offenders Board, having assessed someone as being of high risk of re-offending in like manner and therefore presenting a high risk of danger to the community upon release, will ask the Director of Public Prosecutions to seek an order from the Supreme Court that:

- The person is a high risk offender;
- Should be detained in a State prison until such time as being re-classified as not being a high risk offender; or
- In the Supreme Court's opinion can be satisfactorily supervised within the community.

These outcomes would be supervised by the Supreme Court in the same way that those for dangerous sex offenders currently are.

This policy would not apply to prisoners serving life terms, as they remain under the control and supervision of the Prisoner's Parole Board and the Attorney General for the rest of their life.

## Laws against non-consensual publication of intimate photos or videos

Many Western Australians have been traumatised by the non-consensual transmission of photographs or videos displaying their intimate body parts. The overwhelming majority of victims of this conduct are women, many of whom are young and become deeply traumatised as a result.

This conduct can include what is known as "revenge porn" where one party to a domestic relationship has acquired intimate photographs or videos during the relationship and after the breakdown of the relationship distributes that material with the intention of causing their former partner distress.

This conduct also includes circumstances where persons have acquired photographs or videos of another person's body parts, where there was never any consent for those images to be published on the internet, nor any reasonable expectation by the person whose intimate body parts have been photographed or videoed to be published.

- **A McGowan Labor Government will introduce laws against the non-consensual publication of the intimate photos or videos.**

These changes reflect the laws in other parts of Australia where the non-consensual publication of the intimate body parts of another person constitutes an offence.

In the drafting of any legislation, the age of the offender would need to be taken into account.

## No body, No parole laws

In February 2016, WA Labor introduced 'No body, No Parole' laws into the State Parliament to ensure convicted murders that do not cooperate with investigations will not get parole.

The Legislation is designed to help the families of victims get some level of closure.

Currently, a convicted murderer can deliberately withhold information concerning the whereabouts of their victim(s) body and still be eligible for parole. The new laws would require the Prisoner Review Board to obtain and consider a report from police about the prisoner's cooperation in the investigation.

- **A McGowan Labor Government will introduce No body, No parole laws.**

The families of victims never get over such a loss, but these laws will give them some comfort with a proper burial.

The legislation is designed for people like convicted murderer Cameron Mansell who never revealed the whereabouts of his victims' remains. Without this law, Mr Mansell will be eligible for parole after 18 years in prison.

## Introduce changes to the dangerous sex offender laws to protect the community

WA Labor will strengthen the Dangerous Sex Offender laws to better protect the community by reversing the onus of proof which will require dangerous sex offenders to satisfy the Court that on the balance of probabilities they will comply with each and every condition stipulated by the Supreme Court as part of a community supervision order.

The problem with the current system is that a dangerous sex offender can seek to avoid conviction

by pleading not guilty and never admitting the offence, a constitutional right, however, after conviction the dangerous sex offender is not required to participate in any rehabilitation programs, nor admit the offence as a first step on the path to rehabilitation and a dangerous sex offender can sit and serve a full term of imprisonment.

- **A McGowan Labor Government will introduce changes to the dangerous sex offender's laws to protect the community.**

At the expiration of the term the Director of Public Prosecutions may seek a Community Supervision Order or continuing detention. If offered a Community Supervision Order a dangerous sex offender is not required to demonstrate any understanding of abhorrent behaviour, nor convince the Court of any resolve to abide by the conditions of any Community Supervision Order.

WA Labor will move apply a reverse onus of proof so that once the Court has deemed a person to be a dangerous sex offender, who is being considered for a post sentence Community Supervision Order, there will be a requirement or burden upon the dangerous sex offender to satisfy the Court on the lower civil standard, that is, upon the balance of probabilities, that they can be trusted to obey all requirements and provisions of the Community Supervision Order.

Perpetrators who break the conditions of a supervision order are regularly re-released into the community on bail pending the Court's investigation of an alleged breach and a further determination by the Supreme Court.

WA Labor will cease the immediate re-release into the community by providing that there will be no bail applicable to dangerous sex offenders against whom there is a credible allegation they have breached a Community Supervision Order. This means they will remain in custody until the allegation of breach has been dealt with by the Supreme Court.

## EVIDENCE BASED SOLUTIONS TO LAW AND ORDER

### Bureau of Crime Statistics and Research

WA Labor will partner with a University to establish a Bureau of Crime Statistics and Research (BOCSAR). This will bring a scientific approach to fighting crime including dealing with the methamphetamine crisis facing our community.

There is currently no independent crime statistics research centre in Western Australia.<sup>1</sup>

- **A McGowan Labor Government will partner with a Western Australian University to establish a Bureau of Crime Statistics and Research to provide independent, evidence based research on crime and justice.**

BOCSAR will focus on gathering information on offending, sentencing, social demographics and crime rates into a central database. It will enable objective assessments of crime trends. Professionals and the broader community will be better placed to determine whether or not government initiatives are successful.

BOCSAR will be responsible for:

- compiling, regularly publishing and analysing all crime statistics in Western Australia;
- compiling, regularly publishing and analysing a comprehensive sentencing database recording all sentences imposed across the four jurisdictions of the Supreme, District, Magistrates and Children's Courts;

- conducting ongoing independent assessment of crime fighting initiatives including legislation;
- monitoring worldwide initiatives in crime reduction and benchmarking the Western Australian justice system against world's best practice;
- conducting any crime related research required by government which is currently outsourced to contractors/consultants;
- developing and fostering an evidence-based response to crime fighting across relevant government agencies including Police, Corrective Services and the Department of the Attorney General; and
- educating the Western Australian public about crime rates, trends and best practice in crime reduction.

An independent crime statistics centre will provide consistent statistics criteria to allow for historical comparison and independent analysis.

Research in the field of criminal justice is important for a number of reasons. Independent research allows us to evaluate government initiatives and implement smart policies for crime and justice. Independent data will encourage scrutiny of government policy and will lead to smarter policy responses to crime and justice.

We believe growing trends in crime – for instance, methamphetamine use and violent drug-related offences<sup>2</sup> – evidence the need for the government to take a smart approach to crime.

<sup>1</sup> Previously this role was filled by the Crime Research Centre at University of Western Australia, created by Joe Berinson, however this Centre was closed in 2014.

<sup>2</sup> See for example Drug Aware, 'Methamphetamine Use in Western Australia' <<http://drugaware.com.au/Drug-Information/Amphetamines/Amphetamine-use-in-Western-Australia.aspx>>; Australian Institute of Health and Welfare National Drug Strategy Householder Survey detailed report 1998 and 2013 Canberra: AIHW; R. McKetin and J. McLaren, 'The Methamphetamine Situation in Australia: A Review of Routine Data Sources' National Drug & Alcohol Research Centre (UNSW).

## Law Reform Commission should be an independent body

The Law Reform Commission provides Government with independent evidence based advice on current sentencing regimes and critiques government proposed changes to WA Law.

A truly independent Law Reform Commission is vital to the development and reform of law in Western Australia.

- **A McGowan Labor Government will restore the independence of the Western Australian Law Reform Commission and task it to report on various matters of current sentencing policy.**

Under the Barnett Liberal Government the Attorney General seriously downgraded the Western Australian Law Reform Commission and hampered it in providing this vital role to Government.

Under the Liberal-National Government the ad hoc approach to the development of criminal law has seen us experience the most serious and sustained crime wave seen in Western Australia in a generation.

A McGowan Labor Government will restore the independence of the Western Australian Law Reform Commission and task it to report on various matters of current sentencing policy.

Sentencing is the judicial function which attracts the most public attention. Given that Western Australia has the highest imprisonment rate in Australia and by far the highest Indigenous imprisonment rate in Australia, whilst at the same time experiencing the worst crime wave in a generation, we clearly need some independent input as to how to deal with these troubling issues.

Given that Western Australia now has record numbers of people held in custody on remand, this is an issue

which must be addressed. Not only is the remand wing at Hakea Prison full, but nearly half of the prison muster at our maximum security prison at Casuarina are also prisoners on remand. Many of these may never face a term of imprisonment, yet it costs Western Australians \$120,000 per prisoner, per annum, to hold them in custody.

An independent Law Reform Commission will be asked to advise the government in this area.

The independent Law Reform Commission would review enforcement schemes from around Australia and advise on best practice.

Currently Western Australians are being imprisoned for fine default, which is “cut out” at the sum of \$250 per day. The average daily cost of incarcerating a prisoner is \$342 per day. An independent Law Reform Commission will be tasked to find a better way of enforcement.

## Sentencing Data Base

WA Labor will have an evidence based victim focus approach to the development of criminal laws and sentencing laws. Central to this is the development of a comprehensive sentencing database recording all sentences imposed across the four jurisdictions of the Supreme, District, Magistrate and Children's Courts. The Institute of Crime Reduction and Victims Support will be tasked with developing, maintaining and publishing the database.

- **A McGowan Labor Government will create a sentencing database in WA that will provide comprehensive data of all sentences imposed across the Supreme, District, Magistrates and Children's Court jurisdictions.**

It is only by having a reliable independent information base can we develop an effective response to the crimes being committed in Western Australia. In Victoria there is an independent agency of criminal statistics which reports to the Victorian Parliament and in New South Wales the task is undertaken by the NSW Bureau of Crime Statistics and Research.

The Sentencing Database will also be a reference point for Magistrates and Judges when sentencing an offender. The data base will also allow the community to have real time access to how the Courts are responding to community concerns about any particular offence.

## Director of Public Prosecutions legislation to bring greater accountability

- **A McGowan Labor Government will amend the Director of Public Prosecutions (DPP) legislation to require the DPP to report to a Standing Committee of Parliament annually to bring greater accountability to the office.**

The Commissioner of Police is accountable to the Minister for Police and the Corruption and Crime Commission; the Ministers of the Western Australian Government are accountable not only to the Parliament of Western Australia but also the Corruption and Crime Commission.

The Corruption and Crime Commission is accountable to the office of the Parliamentary Inspector of the Corruption and Crime Commission and accountable to the Parliament's Joint Standing Committee on the Corruption and Crime Commission but in terms of accountability, the Director of Public Prosecutions for the decisions he makes is not accountable to anyone.

It is true that in the course of a prosecution, there is accountability to the courts. But this is only in terms of how the prosecution is being conducted, what evidence is being presented to the courts and how the DPP is affecting full and timely disclosure of evidence to accused persons.

There are however, a number of other important decisions for which there is no accountability at all and in the 21st century, with all other elements of the public service being accountable to someone; it is time to move forward.

A McGowan Labor Government will amend the DPP's legislation to provide that the Director of Public Prosecutions would be required on an annual basis, to provide a report to a Standing Committee of the Parliament explaining the rationale for the decisions the

Director has taken in respect of:

- (a) The discontinuance of any prosecution before the Courts;
- (b) The Director's decision to decline to prosecute any charge where the matter has been referred to the DPP for prosecution by either the CCC, the Coroner or the Commissioner for Police;
- (c) The Director's decision to accept a plea of guilty to a lesser charge in discharge of one or more counts on an indictment; and
- (d) The Director's decision not to appeal in certain controversial cases.

The DPP will provide a report on a annual basis to a Standing Committee of the Parliament explaining the rationale of decisions and make themselves available to the Committee (as does the Commissioner of the Crime and Corruption Commission from time to time) to further explain the circumstances of those decisions made.

## GREATER COMMUNITY ACCESS TO THE JUDICIAL SYSTEM

### Legislating for class actions in WA

Class actions are all about access to the law. They allow greater access to the law and help individuals take on big, well financed opponents like corporations.

- **A McGowan Labor Government will legislate for class and representative actions in WA.**

Just one plaintiff would be needed to bring a legal action, allowing others to join the action and avoid the cost and trauma of separate legal proceedings.

In a Class Action, once the court determined an outcome, damages would be apportioned accordingly to each member of the class.

WA remains one of the few states where there are no provisions for class actions.

### Live Streaming of Court proceedings

WA Labor will investigate the capacity of the WA Courts to live stream selected cases. The cases to be live streamed will be selected by the head of each jurisdiction: that is, the Chief Justice of the Supreme Court, the Chief Judge of the District Court and the Chief Magistrate of the Magistrate's Court.

- **A McGowan Labor Government will allow live streaming of selected court proceedings.**

By affording the community the opportunity to see our courts in action it will debunk many of the myths that surround the operation of our court system and will encourage and promote more respect for our judicial system.

### End time limit on child sex victims taking legal action

WA Labor would allow exemptions under the Statute of Limitations to allow child sexual abuse victims to sue for damages for crimes committed many years ago.

- **A McGowan Labor Government will legislate to end the time limit therefore allowing child sexual abuse victims to take legal action.**

Changes under the Statute of Limitations would allow victims of child sexual abuse to seek justice and compensation.

Currently, WA law limits the time a victim has to sue for damages. For offences after 2005, time runs out by the age of 25. For earlier crimes, it is six years, or the age of 21.

However, the Royal Commission into the sexual abuse of children in institutional care found it took an average of 22 years for victims to come forward.

The sexual abuse of children is one the worst crimes imaginable and the fact these crimes may have happened many years ago makes them no less reprehensible. The passage of time should not be a barrier or an excuse.

Victims of child sexual abuse should have the right to seek justice and compensation for their pain and hurt regardless of how long ago it happened. Organisations shouldn't be able to hide behind time limits.

WA LABOR

# Law Reform Initiative

A Judicial System that is Focussed on the Victims of Crime

Evidence Based Solutions to Law and Order

Greater Community Access to the Judicial System