

SENTENCE ADMINISTRATION AMENDMENT BILL 2017

EXPLANATORY MEMORANDUM

Overview of the Bill

The Sentence Administration Amendment Bill 2017 makes amendments to the *Sentence Administration Act 2003* (WA) (the Act).

The Bill seeks to introduce what are commonly referred to as 'no body no parole' provisions into the Act.

The proposed new provisions require the Prisoners Review Board (Board):

- when considering whether a relevant prisoner should be granted an early release order; and
- where the location of the remains of the victim of the murder is unknown to a member of the WA Police Force,

to not make a release order or release recommendation (as the case may be) unless satisfied that the prisoner has cooperated with a member of the Police Force in the identification of the location, or last known location, of the remains of the victim of the murder.

For ease of explanation, the term 'no body no parole' will continue to be used in this explanatory memorandum. However, it should be noted that the proposed amendments will apply to early release, which includes both parole and re-entry release.

Part 1: Preliminary

Clause 1 – Short title

Clause 1 provides that the Bill, once enacted, will be known as the *Sentence Administration Amendment Act 2017*.

Clause 2 – Commencement

This clause provides for the commencement of the Act.

Sections 1 and 2 come into operation on the day on which the Act receives Royal Assent.

The rest of the Act will come into operation on a day fixed by proclamation, and different days may be fixed for different provisions.

Clause 3 – Act amended

This clause provides that this Act will amend the *Sentence Administration Act 2003*.

Clause 4 – Section 12 amended

This clause amends section 12(4) by inserting a provision to emphasise that the Board is required to apply the 'no body no parole' provisions under subsection 66B(1) when reporting under this section.

Clause 5 – Section 12A amended

This clause amends section 12A(5) by inserting a provision to emphasise that the Board is required to apply the 'no body no parole' provisions under subsection 66B(1) when reporting under this section.

Clause 6 – Section 20 amended

This clause amends section 20(2) by inserting a new paragraph (aa) to emphasise that the Board is required to apply the 'no body no parole' provisions under subsection 66B(1) when deciding whether to release a prisoner on parole under this section.

Clause 7 – Section 23 amended

Clause 7(1) amends section 23(2a) by inserting a new paragraph (aa) to emphasise that the Board is required to apply the 'no body no parole' provisions under subsection 66B(1) when making any decision under this section.

Clause 7(2) amends section 23(3) by inserting reference to subsection 66B(1). This insertion confirms that the consideration of parole under this section is subject to the 'no body no parole' provisions of subsection 66B(1).

Clause 8 – Section 52 amended

This clause amends section 52(2) by inserting a reference to the requirements of section 66B(1) to emphasise that the Board is required to apply the 'no body no parole' provisions under subsection 66B(1) when making any decision regarding an application for a re-entry release order.

Clause 9 – Part 5 Division 1A inserted

This clause proposes a new Division 1A be inserted to Part 5 with the heading: "Division 1A — Homicide offence or homicide related offence".

Section 66A

Proposed section 66A inserts definitions for the terms used in Division 1A.

'Homicide offence' will encompass:

- the offence of murder, which includes the now-repealed crime of 'wilful murder' because of the interpretative provision in the *Criminal Code Act 1913* (WA) subsection 3(2); and
- the now-repealed offence of infanticide, which has been included because the provisions of this Bill are proposed to apply to all relevant prisoners as defined in the Bill, regardless of the date when they committed the offence (see proposed subsection 66B(3)).

'Homicide related offence' means:

- (a) counselling or procuring the commission of a homicide offence; or
- (b) inciting another person to commit a homicide offence; or
- (c) becoming an accessory after the fact to a homicide offence; or
- (d) conspiring with another person to commit a homicide offence;

insofar as these offences relate to the death of a person.

'Release action' is separately defined as making a parole order under paragraph 23(3)(b) of the Act. This is because this provision in the Act provides for mandatory early release.

The definition of 'release decision' covers the balance of the relevant considerations that the Board may need to undertake. That is, first, release recommendations to the Minister under sections 12 and 12A of the Act, second, parole decisions under subsections 20(2) and 23(3)(a) of the Act and, third, re-entry release orders under subsection 52(1) of the Act.

The definition of 'relevant prisoner' ensures that all appropriate prisoners are captured by the 'no body no parole' provisions.

Paragraph (a) of the definition provides for all prisoners who are serving sentences for homicide or homicide related offences.

There are some special types of custody that do not fall under this general provision and these have been specifically mentioned at (b), (c) and (d) of the definition.

The term 'remains of the victim' is:

- expressly used in relation to a homicide offence; and
- defined as meaning the remains of the person against whom the homicide offence was committed.

Subsection 66B(1)

Proposed subsection 66B(1) contains the essence of the 'no body no parole' provisions.

It envisages two scenarios:

- Under paragraph 66B(1)(a) the Board must not make a release decision, or take release action, in relation to a relevant prisoner in custody for a homicide offence or homicide related offence unless the Board is satisfied that the prisoner has cooperated with a member of the WA Police Force in the identification of the location, or last known location, of the remains of the victim of the homicide offence; or
- Under paragraph 66B(1)(b) the Board does not need to assess the cooperation of the prisoner if it is satisfied that a member of the Police Force knows the location of the remains of the victim of the homicide offence.

The Board's determination under proposed subsection 66B(1) will be informed by the Commissioner of Police's report (see section 66C).

The requirement under paragraph 66B(1)(a) is broadly worded so that a relevant prisoner who does not know the location, or last known location, of the remains of the victim, can nevertheless be found to have cooperated with a member of the Police Force.

Subsection 66B(2)

Proposed subsection 66B(2) has been included in order to deal with the situation where a prisoner has exercised the right to remain silent. This subsection provides that the Board can be satisfied that there was sufficient cooperation even if the prisoner did not cooperate before being sentenced or before the determination of an appeal against the conviction or sentence.

Subsection 66B(3)

Proposed subsection 66B(3) is inserted to indicate that the requirements of section 66B will apply to all relevant prisoners as defined in the Bill, regardless of the date when they committed the offence.. Whenever the Board is required to consider early release for a relevant prisoner then, notwithstanding when that offence was committed, section 66B is applicable.

Subsection 66C(1)

Proposed section 66C(1) ensures that the Board is provided with a report by the Commissioner of Police (Police Report) so that the Board has all the information it may need when it is required to consider whether to make a release decision, or take release action, in relation to a relevant prisoner. The Police Report must be provided when requested by the Board.

Subsection 66C(2)

This proposed subsection allows the Board the discretion not to request a Police Report if it is already satisfied that a member of the Police Force knows the location of the remains of the victim of the homicide offence. This may be the case when, for example, the Board has made a previous determination to that effect under paragraph 66B(1)(b).

Subsection 66C(3)

Proposed section 66C(3) sets out the matters that must be addressed in the Police Report.

The information required under paragraph 66C(3)(a) deals with the cooperation of the prisoner and will assist the Board in making a determination under paragraph 66B(1)(a).

The information must cover the:

- the nature and extent of the prisoner's cooperation; and
- the timeliness of the prisoner's cooperation; and
- the truthfulness, completeness and reliability of any information or evidence provided by the prisoner; and
- the significance and usefulness of the prisoner's cooperation.

The information required under paragraph 66C(3)(b) is whether a member of the Police Force knows the location of the remains of the victim of the homicide offence as this will assist the Board in making a determination under paragraph 66B(1)(b).

Subsection 66C(4)

This proposed subsection provides that the WA Commissioner of Police must give the Board the Police Report within a reasonable period of time after receiving the request from the Board.

Subsection 66C(5)

Proposed subsection 66C(5) ensures that the Board does not take into account matters that may appear on the Police Report that fall outside of the categories of information listed at subsection 66C(3).

Clause 10 – Section 112 amended

Clause 10 inserts, as paragraphs 112(ea) and (eb), two further items of information which must be included in the Board's annual report to the Minister, namely:

- the number of prisoners whose cooperation was considered by the Board for the purposes of section 66B(1)(a) during the previous financial year; and
- the number of prisoners referred to in paragraph (ea) who were released under an early release order by the Board or the Governor during the previous financial year.