SENTENCE ADMINISTRATION AMENDMENT BILL 2017

Second Reading

Resumed from an earlier stage of the sitting.

HON NICK GOIRAN (South Metropolitan) [5.09 pm]: I rise to speak on the Sentence Administration Amendment Bill 2017. As members may be aware, this bill was referred to the Standing Committee on Legislation, on which I serve as the deputy chair. In the brief time I have I would like to take members through three very important dates last year. The first is Tuesday, 15 August 2017.

The PRESIDENT: Order, members. There is a little bit of discussion going on here and people talking in places where perhaps they should not be talking. I know we are all settling back in and Hon Nick Goiran is being uncharacteristically quiet in his contribution today, so it is a bit harder to hear him. I ask members, if they want to have a conversation, to perhaps take it outside so we can hear what he has to say.

Hon NICK GOIRAN: After all, this is a bill that the government has emphasised on numerous occasions is very important and very sensitive, so I would have thought there would be a level of interest in the progress of debate on it.

On 15 August last year Hon Aaron Stonehouse moved without notice the following motion —

> (1) That the Sentence Administration Amendment Bill 2017 be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than Tuesday, 28 November 2017.
>
> (2) The committee has the power to inquire into and report on the policy of the bill.

On that day, 15 August 2017, when the honourable member moved his motion without notice—quite a legitimate and reasonable motion to move, for the reasons he outlined on that day—the opposition spokesperson for this issue, the shadow Attorney General, Hon Michael Mischin, made a brief contribution supporting the motion by Hon Aaron Stonehouse. There followed a slightly longer contribution by Hon Alison Xamon and then a very brief and concise contribution by Hon Rick Mazza. We then had one contribution from the government by Hon Sue Ellery, the Leader of the House, who, amongst other things, said, and I quote —

> We will not be supporting the referral.

On 15 August 2017 the government set the tone for how it was going to handle the referral motion by Hon Aaron Stonehouse by indicating that it would not support it. Fair enough; it is within its right to do so. I note that it even took the measure, when the question was put, of calling for a division. As I look at the *Hansard* of that vote, the result was 21 ayes and 12 noes.

I hasten to add that it is within the right of the government to oppose the referral motion by Hon Aaron Stonehouse; it is not as if the government needs to agree to every motion he moves. It was quite within its rights to oppose it, as it did on that day, and to call for a division.

The next day, 16 August 2017, this is what happened in the other place. I quote the *Hansard* of question time in the Legislative Assembly of Wednesday 16 August 2017, when Ms J.J. Shaw asked the Attorney General—

> I refer to this government's support for the loved ones of victims of crime, such as Margaret Dodd, Don Spiers and the Puddy family, a group the member for Hillarys said are hurting when they should not be hurting.
>
> (1) How are these families now being treated?
>
> (2) How is their chance of closure being hindered?
>
> (3) Who is responsible for this treatment of grieving families?

The Attorney General replied as follows, according to *Hansard* —

> (1)–(3) In short, the Liberal Party and the National Party have joined forces in the Legislative Council to hinder the passage of the Sentence Administration Amendment Bill 2017 through this Parliament and send it off to a committee, no doubt, for debate and Lord knows what. We know that the shadow Attorney General in the other chamber is diametrically opposed to this measure of no body, no parole.

The Attorney General's lengthy response to the question from Ms J.J. Shaw continues on to say —

> Now, the Liberal Party and the National Party in the other place are giving comfort to murderers! I assure this chamber that Cameron Mansell, who murdered Mr Puddy and disposed of his body Lord knows where, will sleep a lot easier in his cell tonight knowing that he has got the Liberal Party and the National Party in his corner protecting him.

The Attorney General went on and later said —

> Listen to what the member for South Perth said then —
>
> > We, as an opposition, will completely support this legislation.
>
> Well, the Liberal Party is not doing that in the other place. It is giving comfort to murderers. If we look at what the opposition spokesperson for legal affairs said here—this is the member for Hillarys —
>
> > … the opposition supports this legislation and wishes it speedy passage.
>
> Go and tell that to Hon Michael Mischin, who is doing his best to stop this legislation by bringing on board the National Party and sending this legislation off into the never-never.

It does not end there—this very lengthy response to the question from Ms J.J. Shaw continues with the Attorney General saying —

> We brought this legislation in as a private member's bill last year, as the second state in Australia following South Australia. I was contacted by Attorneys and shadow Attorneys around Australia. They have now all introduced this. Queensland has now passed it, and thanks to the Liberal and National Party members in the Council, they have frustrated this.

The Speaker then intervened and said —

> Wrap it up now, minister.

The Attorney General concluded by saying —

> They have got on the side and offered comfort to the murderers. This has been pushed back into the nether. This is quite wrong. On behalf of the families of the deceased—on behalf of Margaret Dodd, the Puddys and everybody—I plead for a rethink by the Liberal and National Parties for their irresponsible position in the Legislative Council.

There is so much that could be said about that response by the Attorney General, not the least of which is that the mover of the actual motion was not mentioned once. Quite apart from that, it is appalling to suggest that there has been anything but a desire for proper scrutiny of this legislation to ensure that it does what the government says it is going to do. I will not speak for the National Party; I know that National Party members will speak on this in a moment, but I dare say that they would feel the same way.

It does not end there. That was 16 August, one day after the motion moved by Hon Aaron Stonehouse. I refer now to the *Hansard* of the very next day, Thursday 17 August 2017, in the Legislative Assembly. Mr M. Hughes asked this question of the Attorney General —

> I refer to the decision by the Liberal Party to delay the passage of the no body, no parole laws. Which jurisdictions already have these laws and what have the families of victims told the Attorney General about what they think of the delaying tactics of the Liberal Party?

The Attorney General took a very long time to answer the question and towards the end of his remarks he concluded —

> In front of Don Spiers, the father of the late Sarah Spiers, and whilst Margaret Dodd, the mother of the late Hayley Dodd, and many, many others were watching the live broadcast, they really went out of their way to support this legislation. What they did not say was that there was a plan afoot that when it got to the Liberal party room, Hon Michael Mischin, the shadow Attorney General, would lead the argument to defer this off to a committee. What we need to know from the Leader of the Opposition today is whether this was his plan to kick it into the long grass and have the Liberal Party withdraw its support for the legislation in the upper house. What we need to know is whether the member for Hillarys, who was previously speaking for the shadow Attorney General when he said that we needed to get this into law as quickly as possible, voted in the Liberal party room for this scurrilous plan for the Liberal Party to withdraw support at the last moment. As to the last part of the question—what has been the reaction of the families—it has been sheer, utter frustration and disappointment with the Liberal Party. The first thing that was said to me was, "What hypocrites." They supported this in the Assembly and then pulled the rug from underneath it in the Council.

Several members interjected.

The ACTING PRESIDENT (Hon Dr Steve Thomas): Order! Hon Nick Goiran has the call.

Hon NICK GOIRAN: Thank you, Mr Acting President.

It is truly staggering to read these remarks from 16 and 17 August 2017, in the two days after the motion moved by Hon Aaron Stonehouse, to which the house agreed, to refer this bill to the Standing Committee on Legislation. I remind members that the government opposed the referral of the bill to the committee. It felt so strongly that it called a division, as I recalled earlier. If the bill came back to this place with no suggestion of any amendment whatsoever, the government would have been right to oppose the referral motion, and there would potentially be a case for the kind of remarks made by the Attorney General. I do not at all commend him for the tone of those remarks, impugning members of the Liberal Party and the Nationals WA about the so-called delaying tactics on our part, but we could at least understand the frustration if the bill were to come back with the suggestion that it be unamended.

I am going to take a moment to advise members what the Standing Committee on Legislation stated in its 113-page report into this bill, for which the Attorney General has felt the need to impugn the motivation of the members of the Liberal Party and the Nationals WA. I start at the very beginning with finding 1, which states —

> **The Committee finds that the number of prisoners who would currently be affected by the provisions would be around 14.**

This is very important, because members will recall the very frustrated remarks by the Attorney General in August last year stating that we are right in there with murderers and so on. The question that needs to be asked, and will be asked when we get into committee, is: in the intervening time, since August last year, how many of these people have been let out on parole? If the government's concern is that because of the so-called delay in the passage of this legislation there has been a grand release of prisoners who have not been cooperating with police and are hiding the bodies, I look forward to finding out from the Leader of the House, who is representing the Attorney General, when we get into committee, how many of these people have been released since August. The committee has found that the provisions would affect around 14 prisoners, as at the time of the tabling of the report. I pause here to note that the government, with all of its fury, and the tone of the comments made to the members of the Liberal Party and the National Party about this grand scheme to delay the passage of this legislation when guess what? The Standing Committee on Legislation tabled this report on 28 November last year. The government, which gets to choose what we are going to debate in the final week of last year, decided not to bring this matter on.

Hon Sue Ellery: We had already set the list of bills we were going to deal with and, if you recall, there were certain parties that were not giving me certainty about when we were going to finish anything.

Hon NICK GOIRAN: There is the explanation. This is the bill that is so important that the Attorney General of Western Australia thinks it is appropriate to impugn the shadow Attorney General, the member for Hillarys, all the members of the Liberal Party, and the Nationals WA about this grand conspiracy to delay the legislation. The government has control of what is going to be debated in the final week, and does not even bring on this bill for debate. The explanation was provided by the Leader of the House.

Hon Sue Ellery: You're embarrassing.

Hon NICK GOIRAN: Leader of the House, the only things that are embarrassing are those remarks by the Attorney General—the Leader of the House's friend and colleague in the other place—in his ridiculous response on 16 and 17 August. If the Leader of the House thinks that is appropriate, that is fine. When she sums up her remarks later, she can let us all know as a chamber that she supports those remarks from 16 and 17 August. Those are the things that are embarrassing.

I move to finding 2 of the committee, which states —

> **The Committee finds that the Prisoners Review Board has no role in advising the Attorney General or the Governor of Western Australia in the exercise of the Royal Prerogative of Mercy.**

I hope that members will take that on board, because, irrespective of what happens here today with the passage of the bill, that means that the Attorney General and the Governor are still the final arbiters of any request for the exercise of the royal prerogative of mercy. It is not the Prisoners Review Board; those two individuals have the final say. The third finding of the committee states —

> **The Committee finds that the legislative regime whereby the authority to release on parole a prisoner serving a life or indefinite sentence lies with the Governor of Western Australia rather than the Prisoners Review Board or its equivalent is unique amongst Australian jurisdictions.**

We are the only jurisdiction that operates on that basis. None of this has been mentioned previously by the Attorney General in his outrageous remarks. All we have been told is that there is a delay here, and all the other jurisdictions are doing this, but he never draws to anyone's attention that our scheme is unique. Finding 4 of the committee states —

> **The Committee finds that the reason advanced for leaving the commencement of the Sentence Administration Amendment Bill 2017 to the Executive is now redundant.**

I hope that the Leader of the House will be across that provision, because that has to do with clause 2. Remember, part of the fury from the government about the so-called delay in the passage of this legislation is that the government would like it to be brought in as soon as possible, yet clause 2, the commencement clause in its own bill, leaves it up to proclamation. Clause 2(b) reads —

> the rest of the Act—on a day fixed by proclamation, and different days may be fixed for different provisions.

It may not even happen on the day on which the act receives the royal assent, or the day after; it will happen in the fullness of time when the government decides to proclaim the legislation. That is how the government deals with so-called urgent legislation—legislation that is so urgent it cannot possibly be referred to a committee for further review, because it is a flawless piece of art, apparently, but meanwhile the government will not even fix a commencement date. It will just be given to the Attorney General, whenever he decides to proclaim it. This is the same government that decided not to bring it on in the final sitting week of last year, and it has delayed the passage of the bill until now, March 2018. It is quite interesting that the Legislative Council has only just resumed today, deep into March 2018.

I move on to finding 5 of the committee, which states —

> **The Committee finds that the Government should monitor the information gathering process of the Western Australia Police Force on interstate prisoners for reports prepared under the proposed section 66C of the Sentence Administration Act 2003, to ensure its efficiency and effectiveness.**

I draw members' attention to remarks by the committee on pages 30 and 31 about interstate prisoners and the fact that the committee has brought this to the government's attention and suggested that the information gathering relating to reports on interstate prisoners should be monitored. I look forward to hearing from the Leader of the House, as the Attorney General's representative, when we consider this matter under clause 1, what if anything the government proposes to do about finding 5.

I move on to finding 6, which states —

> **The Committee finds that an examination of equivalent legislative provisions in other Australian jurisdictions assists the Committee in its consideration of the Sentence Administration Amendment Bill 2017 in two respects:**

Remember, this is clearly flawless legislation. There was no need for it to be referred to a committee, according to the government. In fact, it caused such fury on the part of the Attorney General in the other place that he has decided to throw us in as comforters of murderers and the like. It is such an excellent piece of legislation it could not possibly be scrutinised, and we could not possibly find any amendments.

Lo and behold, finding 6—a unanimous decision of the five-member bipartisan and well-chaired committee, I might add, states —

> **The Committee finds that an examination of equivalent legislative provisions in other Australian jurisdictions assists the Committee in its consideration of the Sentence Administration Amendment Bill 2017 in two respects:**
>
> - **the possible inclusion of the offence of manslaughter in the definition of '*homicide offence*'**
>
> **and**
>
> - **the possible inclusion of a requirement for the Prisoners Review Board to consider the mental capacity of a prisoner to cooperate at the time that it makes a release decision or takes release action under proposed section 66B.**

As I turn to page 34 of the report, I seem to recall that the second of those provisions came from the Victorian legislation and the other provision possibly from the Queensland legislation. In any event, the point is that the legislation before the house, prepared by the Attorney General and promoted by the Leader of the House, which apparently could not be referred to the Standing Committee on Legislation, has two significant flaws. If they are not flaws, why is the government proposing to move amendments? The amendments proposed by the government are the same, word for word, as those proposed by the committee. I draw members' attention to recommendations 1 and 2 and challenge any member who supports the government to find the placement of one coma is different from what is in the wording the government is proposing and what the committee recommended.

Hon Sue Ellery: Isn't that a good thing?

Hon NICK GOIRAN: I congratulate the Leader of the House on the fact that she is proposing to move these amendments. My frustration is the ridiculous comments by her colleague and friend, the Attorney General, throwing us into the same camp as comforters of murderers, saying that the opposition has some grand scheme to delay the legislation, but, lo and behold, when Hon Dr Sally Talbot turns her mind to it, she and four other members find there are two problems. That is the problem here.

Hon Sue Ellery: We are resolving them and that is a good thing.

Hon NICK GOIRAN: It is and I am looking forward to the passage of the legislation. I hope this whole episode, if nothing else, Leader of the House, ensures that her friend and colleague from the other place is never again so foolish as to make those types of remarks about members of the Liberal Party or the Nationals to impugn the motivations of members on this side of the house. Why on earth would we be interested in delaying this legislation? Plenty of political games go on in this house and in the other place; that is politics. But why would any member be interested in delaying this legislation? Why would Hon Aaron Stonehouse have moved that motion for any other reason than the ones he gave on that day, which were to ensure proper scrutiny of the legislation? Lo and behold, there are two flaws in the legislation—that flawless piece of art the Attorney General has prepared for us and the Leader of the House gave us last year.

I move on to finding 7, which states —

> **The Committee finds that, from the point of view of the friends and family of victims, and also from the point of view of the Western Australia Police Force, the proposed provisions are desirable. Moreover, in the Committee's view, it is ultimately desirable that prisoners will be aware that their cooperation in locating the remains of the victim will be a statutory pre-requisite to parole.**

Finding 8 states —

> **The Committee finds that the proposed legislation is clear with regard to the primacy of considerations for the Prisoners Review Board—satisfactory cooperation in locating the remains of the victim is a gateway to any consideration of the matters set out at sections 5A and 5B. The inclusion of a proviso to section 5B, as suggested by the Prisoners Review Board, is unnecessary.**

For members who are interested in that, there was some significant consultation by the committee with the Prisoners Review Board and some of that consultation is outlined in the appendices to the report. Members will see that some reservations and concerns were raised by the chair of the Prisoners Review Board. It is precisely for that reason that the committee had to turn its mind to whether it was necessary to add anything further and it has determined that it is not. I move to finding 9, which states —

> **The Committee finds that concerns regarding miscarriages of justice, whilst relevant to certain aspects of the judicial process, do not arise in the consideration of the proposed provisions.**

Members will find more detail about that in the lead-up to page 45 of the report. I note that the genesis of that concern, the member who raised that, from memory, is not readily apparent to me, but in any case, I note that my learned friend Mr Simon Millman touched on this issue during the debate on the bill in the other place, and at page 5 of the committee report he says the following —

> *if someone has had all the advantages of the criminal justice system and all the benefits of a trial before a judge and jury and they have been convicted, they have been convicted—they are no longer an accused but a prisoner. Parole should never operate as a hedge against conviction. If someone has been wrongly convicted, they should enlist the support of a fearless, tireless advocate and have that conviction overturned*.

I thought that was an excellent contribution by that member, who obviously understood precisely that issue and, like the committee, has despatched that as a concern about this bill. I move to finding 10, which states —

> **The Committee finds that cooperation rather than the recovery of a body is the critical criterion for a prisoner's eligibility for parole consideration.**

I hope members will take this matter under advisement because there has been plenty of talk about this Sentence Administration Amendment Bill being labelled the no body, no parole bill. In some respects, it is regrettable that it has been labelled in that fashion because it misleads people to suggest that if we pass this legislation, parole will be available to people if the body is produced. That is not necessarily the case. The provisions of this bill, which the government is proposing and the opposition is supporting, will allow for the release of a prisoner on parole in the event there has been cooperation and the cooperation may not necessarily lead to the recovery of the body. It is an important point to make. Indeed we could say that the bill would be better described as "no cooperation, no parole" rather than no body, no parole. I move to finding 11, which states —

> **The Committee finds that the existing mechanisms in place for the rehabilitation of offenders will not be impacted upon by the provisions of the Sentence Administration Amendment Bill 2017.**

Again, I encourage members to refer to pages 48 and 49 of the report. As I seem to recall from the consideration of this matter, there was some suggestion—I think the original concern arose from Hon Alison Xamon, who is away on urgent parliamentary business—that perhaps rehabilitation of offenders might be impacted on by this bill, but the committee found that that is not the case.

I move then to finding 12, which states —

> **The Committee finds that prisoners convicted of manslaughter should be included within the scope of the proposed provisions.**

This goes to my earlier remarks on finding 6. Indeed, the committee has gone so far as to make a recommendation in statutory form. As I mentioned earlier, the government has already earmarked its intention to move an amendment in the precise terms that the committee has recommended in recommendation 1. Finding 13 reads —

> **The Committee finds that the mental capacity of a prisoner to cooperate in locating a victim's remains should be specifically taken into account by the Prisoners Review Board in making a release decision or taking release action, and that the Commissioner of Police should be required to report on a prisoner's mental capacity to cooperate, to the extent that this is known to the Commissioner of Police, where this is relevant.**

That has led to recommendation 2, which is a proposal to insert subclauses into the Sentence Administration Amendment Bill 2017. I note once again that the government has foreshadowed its intention to move amendments in those same precise terms as the committee recommended. Finding 14 reads —

> **The Committee is satisfied that there is no 'right' or 'entitlement' to parole which would be affected by the terms of the Sentence Administration Amendment Bill 2017.**

Indeed, it is important for members to appreciate that parole is not a right or an entitlement; rather, it is a privilege. There is no guarantee of being granted parole; it is up for consideration in certain circumstances. Finding 15 reads —

> **The Committee finds that the Government should give consideration to creating a mechanism for prisoners to receive advance copies of reports prepared under the proposed section 66C, given that the police force has no objections to this and that the report would be obtainable under the freedom of information process in any event.**

The committee found that when the Prisoners Review Board considers a report that it has been provided by the Western Australia Police Force, it would be appropriate for the prisoner in question to receive a copy of that report rather than have the nonsense of the prisoner needing to apply for it under freedom of information. What would possibly be the problem with the prisoner finding out the police's view as to their level of cooperation? The very worst thing that could happen is that the police would indicate to the Prisoners Review Board that they are not happy with the prisoner's level of cooperation and, after receiving the report, the prisoner starts cooperating. It would be in the best interests of all concerned if the government agrees to the spirit of finding 15. There is no specific recommendation, but I foreshadow that at clause 1, I will ask the Leader of the House what the government's attitude is to finding 15. There are two more findings. Finding 16 reads —

> **The Committee finds that the Sentence Administration Amendment Bill 2017 appropriately protects against self-incrimination.**

In other words, there is no problem here because the person has already been convicted and they are quite entitled to the right of silence. This refers to the parole provision. The person has already been convicted and either they cooperate or they do not. There is no issue whatsoever about the issue of self-incrimination.

The committee's final finding in this 113-page report that the government did not want the house to have—indeed, it did not want the bill to go to the committee—is finding 17, which reads —

> **The Committee finds that the provisions of the Sentence Administration Amendment Bill 2017 do not affect rights and liberties, or impose obligations, retrospectively.**

That was considered by the committee, as it should, as an important aspect of fundamental legislative principles. I draw members' attention to appendix 3 on page 107, which sets out all those principles.

In summary, I am pleased that my colleague Hon Michael Mischin has had the opportunity to set out the position of the opposition on this bill and our support for the bill, which is quite contrary to the assertions of the Attorney General in the other place. He made all kinds of remarks about not only my colleague, but also my other good friend the member for Hillarys in the other place and, indeed, all members of the Liberal and National Parties

in this place. I am very pleased that Hon Michael Mischin has had an opportunity to get his position and that of the opposition clearly on the record to correct the outrageous remarks made in the other place. I hope, as I mentioned earlier, that for the remainder of this fortieth Parliament, we never have another episode like this. A member in good conscience moved that this bill be sent to a committee. A decision was made by this house—not by just one member, but by a majority of people in this place—that the bill go to the committee and then certain members were lambasted for having supported the referral of the bill. I hope we never, ever have that kind of episode again in the remaining three years of this Parliament. I am very pleased that as a result of the motion moved by Hon Aaron Stonehouse, and as a result of the work of the committee, the government has been brought to the point of having to confess that its bill does not quite measure up and needs to be amended. The best way for this whole episode to end would be if the Leader of the House had an opportunity to confer with the Attorney General and offer on his behalf, during her reply on this bill or at some later stage, an apology to members of the National and Liberal Parties, particularly the shadow Attorney General, for the remarks that were made on 16 and 17 August 2017. An apology for those remarks is well justified in all the circumstances, given that the government now concedes that its bill was not up to the mark and needs to be amended. We will support those amendments, plainly; we are supporting the speedy passage of this bill. It was not us who had an opportunity to bring the bill on for debate in December. The government had the opportunity to do that, but it decided not to. To the extent that there has been a delay from December last year to today, 13 March 2018, that is all at the feet of the government. I do not want to hear nonsense from any member opposite that somehow we have had some part to play in that. That decision was made by the government. The government had other priorities—really important pieces of legislation—such as the Salaries and Allowances Amendment (Debt and Deficit Remediation) Bill 2017. That bill was top priority in the final sitting week in December last year. It took an inordinate amount of time and it was more important to the government than this piece of legislation, which had the benefit of a comprehensive review and could have been dealt with easily in that final week. The government is now moving, word for word, comma for comma and full stop for full stop, the same amendments that have been proposed by the committee. This could have all been done in December but, no, it had to wait until March when the government felt sufficiently rested after Christmas and was celebrating its first year in government and was ready to deal with this legislation. All that delay is at the feet of WA Labor and the McGowan government. Any suggestion otherwise is utter nonsense and, in fact, it probably qualifies for the same level of ineptitude as the remarks made on 16 and 17 August 2017. I hope as a result of this episode that those two members—Ms J.J. Shaw and Mr M. Hughes—will have a rethink the next time they are delivered a piece of paper by the government and told, "Let's dish this up during question time and wait for the Attorney General to respond with some kind of spectacular response to those questions." Members should think twice before reading verbatim the rubbish that is served to them, because they arrive at exactly this situation—they are embarrassed that the legislation falls far short of what is required. The government did not do its homework. It had not checked what had happened in Victoria. It did not know what was happening in Queensland. It took the Standing Committee on Legislation, chaired by Hon Dr Sally Talbot and its other four hardworking members, to do that work on behalf of a lazy government that was too busy taking an opportunity to score points on something that we all agree is a very, very serious matter.

Hon Peter Collier: How many were unanimous recommendations?

Hon NICK GOIRAN: They were unanimous recommendations, by all five members.

I take the final few moments to congratulate Hon Aaron Stonehouse for moving the referral motion in August 2017. Probably little did he know what it would lead to, but that was not the point of moving the motion; the point of moving the motion was to find out. Thanks to him for moving the motion and thanks to all 21 members who supported the motion. We thank all of them because, as a result of that, the government now understands what is happening with this legislation, and the legislation will be better because of that process. I thank all my colleagues for their ongoing support of the legislation and reiterate the opposition's support for its speedy passage today.

HON JACQUI BOYDELL (Mining and Pastoral — Deputy Leader of the Nationals WA) [5.51 pm]: I also rise to put on the record the Nationals WA's support for the Sentence Administration Amendment Bill 2017 in its amended form. I also want to put on the record my concerns when Hon Aaron Stonehouse moved the referral motion. Members of this house were under enormous pressure because it was a very sensitive issue and a sensationalised issue within the media at the time. At the end of the day, real people and real families are affected by decisions that are made in legislation. It was for that reason that I and my National Party colleagues wanted to get this legislation right, on behalf of all those families, and we did that by supporting its referral to the Standing Committee on Legislation. That was absolutely the right thing to do. After doing that, Margaret Dodd, the mother of Hayley Dodd, called my electorate office—I am sure that other members received a similar call. I returned her phone call and had a difficult conversation. I felt I owed it to her to explain the reasons that I as a member of this house needed to support the referral motion. I spoke to her at length. One of my concerns, which I expressed to her, was that we have only one opportunity to get this right. At the end of the day, we need to ensure that this legislation captures all the right victims and their families, and the offenders. The Legislative Council was

doing its job to ensure that families like those of Hayley Dodd's can be sure that we have tight legislation that will support them and will allow justice to be done through our justice system. After that conversation, Margaret Dodd at least understood my reasons for supporting the referral motion. I promised her that when the committee reported to the house, I and my colleagues would consider the recommendations of the committee and that I hoped the government would consider the recommendations of the committee and take them very seriously. I was very pleased to hear the Leader of the House indicate earlier during the debate that despite some comments made by other members of the WA Labor Party, in particular the Attorney General in the other place, which were quite disparaging to members of this house at the time of the referral motion, that it was the Legislative Council at its best, ensuring that legislation delivers the intended outcomes and that there will be no unintended outcomes as a result of, possibly, rushed legislation. I know that when election commitments are made, the government feels as though it really needs to get its legislation passed. I concur with Hon Nick Goiran that this bill could have been debated towards the end of last year, but I am glad it is here now.

Finding 7 of the report reiterates what all members of this house knew at the time—that is, it was the point of view of friends and families of victims and also the point of view of the Western Australia Police Force that the proposed provisions are desirable. We knew that was the case from the communications we were getting from people in our electorates and the fact that it was a very serious and sensitive issue. Also imminent at the time was the trial of the alleged murderer of Hayley Dodd, so it would have been very difficult for that family in particular to understand why the Legislative Council would not support the no body, no parole legislation. As I said to Mrs Dodd in our conversation, it was not that the Legislative Council did not support the outcome she desired; it was the view of the Legislative Council to get the legislation right, and we had an opportunity to do so, and that is what we do in the interests of the Western Australian public.

I am very glad that the committee was given the chance to produce a very well rounded report. I congratulate the members of the committee because it would not have been easy, given the public pressure at the time. When these amendments are put through and we hopefully get an outcome for families like Hayley Dodd's family, I would like the amendments to be supported and the legislation to be expedited through the house.

With that I, too, thank Hon Aaron Stonehouse for the referral motion. It was absolutely the right thing to do. I think all members understand we will have a better piece of legislation as a result because the committee had an opportunity to consider other jurisdictions. I think it is exceptionally important that we considered how similar legislation operates in other parts of Australia. That is very important when bringing together legislation that the house considers. The National Party will be supporting the proposed amendments to the legislation.

I thank Margaret Dodd for calling me as a member of this house and expressing her distress at the time that the Legislative Council was not being supportive. I tried to reassure her that we were being supportive but that we wanted to make sure that the legislation would result in the right outcomes for people like her who had found themselves in this situation. For her and her family and other victims, I am very glad to be supporting this legislation.

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.58 pm] — in reply: I will start my comments but will obviously need to complete them after the dinner break.

Hon Peter Collier: You have two minutes.

Hon SUE ELLERY: I do, but does the member not want me to respond to all the issues that were raised?

Hon Peter Collier: Yes, but talk quickly.

Hon SUE ELLERY: I cannot. We have just wasted 30 seconds, so thanks for that.

I thank all members for their contributions to the debate and I thank those members who are supporting the Sentence Administration Amendment Bill 2017. I also place on the record my thanks to the Standing Committee on Legislation for the work it did. I note that its recommended amendments have been accepted by the government. Members will notice that the supplementary notice paper contains amendments that are, as I think Hon Nick Goiran pointed out, precisely in the terms the committee recommended to ensure that the bill is amended in the way the committee wanted it to be.

I will start by responding to some of the issues that have been raised. A lot of things were raised about the bill, but Hon Michael Mischin asked whether the bill is really necessary and whether it really makes any changes to current processes. We believe it does because it sends a message to the relevant prisoners that cooperation has been elevated above the other conditions that apply and are tested when release is considered.

Sitting suspended from 6.00 to 7.30 pm

Hon SUE ELLERY: I had begun my second reading response, thanked members and was starting to address the range of issues that had been raised, including those raised by Hon Michael Mischin. Some questions were raised about the potential for an increased number of reviews, or what if there were further judiciable issues. Only time will tell how many will be taken on review; however, the Sentence Administration Amendment Bill 2017 will not change any of the existing rules relating to review for the provision of reasons and documentation and the like. They will remain as they are in the existing act and consistency will be maintained. If the Prisoners Review Board decides not to grant parole, that decision is reviewable. If that decision is made by the Attorney General or Governor, it is not reviewable, and that is how it is under the current act. In respect to finding a body without cooperation, the parole board will still look at all the release conditions. Part of what it will look at will be remorse, cooperation and rehabilitation; they will still be relevant considerations.

The issues raised by Hon Alison Xamon were on sentencing. The courts take the issues the member raised into consideration, but those are sentencing considerations. Parole is obviously separate to a sentencing consideration and relates to early release. There may be some overlap, but they serve two completely different purposes. Homicide-related offences are not on the schedule; the member was correct in her comments on that. As to removing the discretion from the parole board and not enabling it to consider these matters together, although the discretion is being removed on this issue in that it is dealt with before release considerations, it is still the government's view and community's position that this consideration be elevated.

Hon Alison Xamon raised issues in the case of somebody being wrongfully convicted. Second appeals will provide for individuals to seek the leave of the court to launch a fresh appeal if new and compelling evidence has come to light since sentencing. Ultimately, the royal prerogative of mercy is still in existence. Hon Alison Xamon raised what is really the threshold issue of those who do not know where the body is. The government, and indeed the committee in its report, found that the bill is sufficiently broad to cover these situations.

Hon Nick Goiran asked whether any prisoners who would be captured by this scheme have been let out on parole since August. The answer is no. I think that answers the critical question that Hon Nick Goiran wanted answered.

Again, I thank members for their contributions. I again thank the committee for the work it did, and I am happy to answer any further questions or any that I may have missed when we go into Committee of the Whole, because there are several amendments on the notice paper.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Committee

The Deputy Chair of Committees (Hon Robin Chapple) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon MICHAEL MISCHIN: As the second reading has now been agreed, I hope that puts beyond doubt the opposition's support of the principle behind the bill and the like. However, I am still concerned about some of the matters that Hon Nick Goiran canvassed in some detail and were touched upon by me as to the government's position regarding this, particularly the comments of our first law officer that somehow this has been deliberately delayed as part of a plot. I wonder whether that is the government's position or whether that was the Attorney General just sounding off as usual.

Hon SUE ELLERY: I am happy to undertake to raise the member's concerns with the Attorney General. I am really not in a position to tell the member what I think is inside his head in respect to where he sits right now, given the committee's report. I am happy to pass on to him the issues that the member raised in his second reading response about how we got to this point. What we have in front of us now is the bill, the committee's report and the recommendations made by the committee, which the government is supporting and indeed moving.

Hon MICHAEL MISCHIN: Actually, I was not asking about what is going through his head. I was asking whether it is the government's position that this has been unreasonably delayed by either one or two of the parties in this place, or that there has been a proper scrutiny of this bill and it has been dealt with in a timely fashion given that it was not brought before this house last year after the report had been delivered.

Hon SUE ELLERY: I am not able to give the member any more information than I have already. I am happy to answer any questions I can about the content of the bill now before us and the amendments. I give the member the undertaking that I gave before—that I will raise the member's concerns with the Attorney General. If the

Attorney General feels the need to say anything to the member directly or in any other forum about that, I am sure he will.

Hon MICHAEL MISCHIN: That is worthless frankly, but there we go. Let me put it another way: does the government consider that this bill has been delayed unreasonably—yes or no?

Hon SUE ELLERY: I am unable to answer the question in any other way than I already have. I am happy to answer any questions that Hon Michael Mischin or other members might have about the content of the bill and about going forward with the committee's recommendations, and to pass on to the Attorney General and my other cabinet colleagues, if the member would like me to, the concerns the member has raised.

Hon MICHAEL MISCHIN: Let me put it another way. Does the Leader of the House think that this chamber has delayed the passage of this bill? What does the leader think?

Hon SUE ELLERY: I do not think I can answer the question in any other way than I already have. I am happy to debate the content of the bill.

Hon MICHAEL MISCHIN: The Leader of the House is managing this bill on behalf of the government and the Attorney General cannot help us by telling us what she or the government think. When the Leader of the House conveys the views of this place and the members to her cabinet colleagues, will she convey back to us the answers they give? Can she do that?

Hon SUE ELLERY: We seem to be going around in a circle and not talking about the content of the bill. I will raise with the Attorney General the issues that the member has raised with me and I will get back to him with the Attorney General's views, if that is what the member would like me to do. But if the member has an issue with the Attorney General, I reckon he could have a conversation with him himself.

The DEPUTY CHAIR: Leader of the House.

Hon PETER COLLIER: I wish I was!

The DEPUTY CHAIR: I am sorry, Leader of the Opposition—try that again!

Hon PETER COLLIER: Yes, they were the good old days!

I have absolute confidence in my deputy here, but I think, as the Leader of the House would be aware, that the standards that we often garner from the other place are not nearly as, dare I say it, quality driven as they are in this place, and we get a little bit precious sometimes when we feel that our integrity is being questioned. That is what happened in this instance. As Hon Nick Goiran and Hon Michael Mischin have pointed out in their contributions, some of the comments made by the Attorney General were quite frankly insulting—they were insulting to me. We did not in any way, shape or form try to delay the progress of this piece of legislation; we simply did not. We wanted to make sure that the legislation was watertight. It is a very, very sensitive piece of legislation and we had to make sure it was right. When someone from the other place had a go at us and made those ridiculously false allegations that we were somehow hindering the progress of the legislation, legitimately, we were going to get our backs up. I appreciate that it is not part of the policy of the bill, but at the same time I do not think we are in any way, shape or form doubting the Leader of the House's credibility. Also, I do not think it would hurt in this instance for the Leader of the House to say, as Leader of the Government in the Legislative Council, that as far as she is concerned there has not been any attempt by the opposition or any members of this chamber to delay the progress of this bill, because we simply have not done that and we certainly will not do it.

Hon SIMON O'BRIEN: We are contemplating the short title on this bill and much of the discourse on the floor of the chamber has been about allegations and responses to claims that this bill has somehow been delayed by the due processes of this chamber. I think we have probably canvassed that adequately. Those matters needed to be canvassed; however, it seems even a little quixotic to pursue that matter now instead of moving on to the actual processes of dealing with the bill. My contribution to this clause 1 debate is as a member of the Standing Committee on Legislation that provided our thirty-fourth report. There have not been a great deal of bills put through this chamber for new members in particular to draw some experience from, so I just wanted to highlight a couple of things about this bill in respect of the report. If members have not had the opportunity to examine the findings and the recommendations of the report, I urge them to take the trouble to do so. I remind members on all sides that the reason that this bill was referred to the Standing Committee on Legislation was that it provided a far more convenient and effective mechanism to scrutinise certain matters that would have been very difficult to scrutinise in the Committee of the Whole. The committee worked well to provide the answers that we have provided. The purpose of this report that I have here, almost paradoxically, given some of the exchanges we have had, is to streamline the passage or the dealing with of this bill through the house. That is the first thing I would ask members, particularly newer members, to take note of.

The second thing within the context of the clause 1 debate is to draw members' attention to the several findings contained in this report, because as frequently happens when a standing committee commences an inquiry, in this case an inquiry into a bill about a fairly heated issue of the day, ultimately we discover that there might have been some preconceptions or assertions made out there that upon closer examination were not quite right—that the truth was a bit different from what a lot of people might have assumed. I urge members to examine the findings of this report when they contemplate this bill. I will illustrate that with a couple of references now. In the course of the second reading debate one of our colleagues—I think it was Hon Alison Xamon—made reference to matters in this bill being to impose retrospective provisions, something our good friend, that member, has some very strong views on. We examined this as a committee and I draw members' attention to one of the findings contained in our report that specifically relates to that. It is our final finding, 17, in which we examine that very question about whether rights, liberties or obligations are imposed retrospectively as a matter of principle as part of this legislation. We discovered, formed the view and reported accordingly that they do not. It would be very easy to make the assumption that they do when one canvasses what has been said in the public domain, but the fact is that that is our finding, and if members wish to take advantage of the discourse there around page 61, I think they will find it very, very interesting indeed. That is the sort of benefit that a standing committee inquiry into a bill can deliver by being conducted somewhere outside this place when it is in the Committee of the Whole House, when we have access to witnesses, we can get down to the nitty-gritty and we can ask witnesses to go away and provide us with some documents or research some further matters—the sorts of things that cannot be done and cannot be expected to happen when the minister responsible for the bill is at table assisted only, but very significantly, I am sure, by an adviser. The thing is that there is not the recourse needed to all the departmental players in perhaps several different agencies that we had access to. I think that makes the point that I needed to make to demonstrate to members the value of doing that. The report itself has been able to be examined and digested by government outside this place without taking up any of our sitting time, and it has come back with a series of amendments that will be moved in due course. I will refer to those in passing in the course of considering clause 1.

That helps us cut to the chase, but I hope that it also enables us to do so with confidence because the committee, as was constituted for this inquiry, was a multiparty committee, as inevitably they are. We took up the concerns, in the first instance, of Hon Aaron Stonehouse who moved the motion agreed to by the house and we took specific note of the reasons raised in debate about why the bill needed to be referred to a standing committee. Other members here contributed to the debate and the house ultimately decided it and now we have the report. When it comes to contemplating this, whether it is people of a political bent wanting to work themselves up into a bit of a foam about whether people have been delaying bills and whether they are in league with murderers and all of the other scurrilous things that we have heard said, this report answers all those questions and it is signed off unanimously by a multiparty committee chaired by a Labor member.

Those are the opening remarks that I might contribute to this debate on clause 1. In so doing, it has taken me a few minutes to place some essential things that should be placed on the record in the course of clause 1 contemplation. I am sure some of my colleagues want to deal with some other matters as well. I will leave my contribution at that, but our processes are the better for the course that the house has pursued and the product that will come out of this house at the end of this stage and the stages that follow will be better than the one that we were lectured about late last year and earlier this year by the government. Again, members will refer to the findings in the course of debate. We found out some ways in which what the bill will do is not necessarily what was promised, but we have also found some ways we can toughen it up, and that has added quality to the bill and also taken cognisance of people with mental problems. That would be good, but I clearly support clause 1. Now we can all get on with our further contemplation of the bill.

Hon NICK GOIRAN: I apologise; I have been away on urgent parliamentary business. I note in the minister's response to the second reading of the bill that she indicated to the house that no prisoners have been released since August or November last year. That might have been impacted by the so-called delay of this bill, and I thank her for confirming that there has been no impact whatsoever as a result of the passage of this bill. Perhaps she answered this question while I was away. Finding 15 states —

> **The Committee finds that the Government should give consideration to creating a mechanism for prisoners to receive advance copies of reports prepared under the proposed section 66C, given that the Police Force has no objections to this and that the report would be obtainable under the freedom of information process in any event.**

Can the minister indicate what the government's position is on that?

Hon SUE ELLERY: I had intended to respond to that. Hon Alison Xamon has put some amendments on the notice paper about that. The government will not be supporting the amendments on the notice paper to be moved by Hon Alison Xamon. I am happy to have a conversation about that now or we can do it when the amendments are moved. Essentially, the Prisoners Review Board does not provide prisoners with copies of materials and reports that have been submitted to it by external agencies. If we were to start to do it in respect of this, we would be

inconsistent with the way the parole board deals with other matters before it and the release or non-release of those reports. I am sure the honourable member is aware that section 107B of the Sentence Administration Act 2003 deals with the board's obligations to provide a prisoner with a notice of a decision that effects them. That obligation is moderated by section 114 of the act, which permits reasons to be withheld if it is not deemed to be in the best interests of the prisoner, another person or the public. If we were to act on finding 15 or if we were to accept the amendment in the name of Hon Alison Xamon, we would be setting up a two-tiered structure of arrangements in respect of whether information contained in reports is released or not. The government is not of a view to do that.

Hon NICK GOIRAN: Does the government concede that a prisoner would be able to access the report under the freedom of information process in any event?

Hon SUE ELLERY: Yes, FOI is applicable to the police reports, but not to the Prisoners Review Board's consideration. There was one other bit that I should have added to the answer I gave to the member a little earlier.

I am not sure whether this takes us all that much further, Chair, but the CEO of the Department of Justice is required to prepare reports, for example. Those are not currently provided to prisoners. If we were to go down this path, that would be inconsistent with that area of practice as well.

Hon NICK GOIRAN: I take the point the minister is making with regard to setting some form of precedent. I think we can distinguish this to those other matters, because this is about encouraging the prisoner to cooperate. If we give the prisoner the report from the police and the police say the prisoner has not been cooperating, is it not a good thing that the prisoner finds out that the police are saying, "You're not cooperating and therefore the board is not going to give you parole"? That might incentivise the prisoner to now start cooperating.

Hon SUE ELLERY: We note finding 15 but we are not of a mood to act on it in the absence of considering whether we need to change the provisions across the board for what information is provided to prisoners. That work has not been done. I am not in a position to give the member an undertaking that that work will be done. I suspect it will not be because that is not the government's policy objective. In any event, there is an amendment on the notice paper. I guess if the member was of a view that he thought that we should, that would be the member's opportunity to pursue that. We are not of a mood to establish, effectively, a second or separate structure for dealing with the release of reports when in fact reports are prepared throughout the system, and we do not want to start a secondary stream just for one group. We would have to look at that policy proposition as a whole across the whole system and make a policy decision about whether that kind of information is released. The government's current position is that we are not of a view that that is a position that we want to pursue.

Hon NICK GOIRAN: This is my last question on this point. I understand what the minister has said. Given that the prisoner, should he or she wish to do so, will be able to access police reports under the freedom of information process, does the government have any appetite to ensure that the prisoner will be exempt from a fee to access that report?

Hon SUE ELLERY: I cannot answer that question because I am being asked to tell the member what the Attorney General's appetite is for pursuing that policy objective.

Hon Nick Goiran: I said the government.

Hon SUE ELLERY: Yes. The member would be well aware that in the first instance I would need to go to the Attorney General. I have not done that. I am happy to pursue that outside of this process, but I do not have advice in front of me right now about whether that is a policy pursuit that we want to undertake.

Hon MICHAEL MISCHIN: The amendments being posited by Hon Alison Xamon and even the government rely very much on an understanding of the process that is currently in place. As I have pointed out, to my mind and in my experience, the processes that are available now have a certain amount of flexibility about them that allows for a more nuanced dealing with particular cases. The result of the passage of this bill will be a very rigid process, albeit with its own doubts and vagaries about the meaning of certain terms and whether thresholds will be triggered in certain circumstances. I have already mentioned my concerns that it may expose the Attorney General, the Prisoners Review Board and the state of Western Australia to legal processes that can add to the anguish of secondary victims because certain things are prescribed.

It might assist if the minister were to outline the current process and contrast that with what is proposed. Let us assume that prisoner X is due for consideration for release on parole at the expiration of the first statutory period in a life sentence. The first statutory review is about to come up after 20 years in prison. No body has been recovered or cooperation has been provided. The prisoner's review date is 1 August, just for argument's sake. No; we will make it 1 July—the start of the new financial year. What happens in those circumstances? What does the Prisoners Review Board do? How far in advance of that date does it do it? What sorts of reports are obtained and from whom? What is put up to the Attorney General in addition to its formal report? What is the availability of those documents to prisoners? Then I would like to see the contrast of this with the process that will be involved

here and see where the differences and similarities are and perhaps expose, if it is to be exposed, where complications might arise. I have some doubts about the extent to which the Prisoners Review Board can sensibly refuse to consider someone's parole on the basis that the prisoner has not met a precondition without, in fact, informing the prisoner of that precondition and the reason they have not managed to provide the information. At present, the Prisoners Review Board would release certain materials or they would be available to the prisoner. It would also provide the prisoner with a certain amount of information if they have been unsuccessful in achieving a positive recommendation for release, so that the prisoner can learn from their shortcomings and try better the next time. I would like to see that outlined so that everyone is clear about what is involved in the process now, what is provided and what documentation comes into existence, what goes to the Attorney General, what his abilities are in gaining further information, what is made available or could be available to the prisoner, and what challenges are available if there is a dispute about those things and, likewise, the process that is proposed under the bill.

Hon SUE ELLERY: If the PRB thinks that there has not been cooperation, that is the first threshold it will have to determine—we are talking about people with life sentences—it will make a recommendation to the Attorney General not to release. That decision will not be reviewable. If it determines that there has been no cooperation, it will make a recommendation to the Attorney General that that person is not to be released and that decision will not be reviewable. The reports that it will rely upon to reach that decision will be reports from the police or anything that it might request itself. It may be material that is provided to it from the prisoner or from the victims et cetera. It will decide on cooperation or not before it takes the next step. The PRB will work proactively on this. It will have prospective dates in front of it so it will know and the material will be prepared in advance of the dates that people are due for consideration. It will work proactively to gather all that information, including the kinds of reports that I have already identified. If the decision is not to release, that will be internally reviewable. If it goes to the Attorney General, it will not be reviewable.

Hon Michael Mischin: I am sorry to interrupt. Could the minister say that bit again?

Hon SUE ELLERY: If a decision is not to release the prisoner, that will be internally reviewable. If it goes to the Attorney General, it will not be reviewable, except through the Supreme Court processes that are already in place. No changes are recommended there. The PRB will give reasons for decisions it makes in both the circumstances I have outlined.

Hon AARON STONEHOUSE: I had a question along those lines, but I think the minister clarified most of what I was going to ask. On that same thread, what kind of feedback is provided to a prisoner at that time if a decision not to release is made? Hon Nick Goiran raised the issue; I am wondering about the prisoner's capacity to know whether they have cooperated sufficiently. If they are not provided with reports and they have the onerous process of going through a freedom of information request, is feedback at least provided when the PRB reaches its decision; and, if so, what kind of feedback is provided?

Hon SUE ELLERY: I referred to this a little earlier. Section 107B of the act deals with the board's obligation to provide the prisoner with a notice of the decision that affects them. The reasons for a decision are provided to the prisoner. That is not unqualified. There is a qualification to that at section 114 of the act that permits those reasons to be withheld if it is deemed not to be in the best interests of either the prisoner, another person or the public to release those reasons.

Hon AARON STONEHOUSE: What level of cooperation is required? Would that be deemed suitable information that the board would provide to the prisoner? That is what I am getting at. The PRB obviously uses a threshold, but can the minister give us any kind of measurement that would give us an idea now? The determination of whether a prisoner has cooperated with locating the remains of the victim is the first step, and that is the gateway, as the Standing Committee on Legislation has pointed out. If we are going to cut off parole hearings at the pass based on the prisoner's level of cooperation, it seems to me that providing feedback, at least to allow people to progress to the next stage, might be prudent in providing an incentive for prisoners to cooperate with police to locate the remains of their victims.

Hon SUE ELLERY: Although the Prisoners Review Board has not had this legislation before it before, the board is used to dealing with the complexities of the priorities as set out in the act and how it best determines that it is meeting the requirements of the act. For example, the board determines what reports it needs to rely on now to ensure that it can satisfy itself that it has met the requirements of the act as it stands now. It uses the expertise of the membership of the board now to deal with those other matters and in a similar way it will determine, if this act becomes law, how it will satisfy itself that it has all the information it needs in front of it, including information from the prisoners and whether that information is satisfactory to it. The board will determine whether it wants to seek further information from a prisoner, for example, to demonstrate or test the notion for itself about whether the cooperation requirement has been met. The board manages a complex process now as it is and it has put in

place its processes to get the information that it needs. If this becomes law, it will modify those processes to the extent that it needs to, to get the information it wants, including from the prisoners, and to determine whether the cooperation requirement has been met.

However, if the question goes to whether we can set a finite defined set of words that determines whether a set of circumstances qualifies and meets the test for cooperation but this set of circumstances does not, that is too prescriptive to take into account all the different circumstances and the complexities of the nature of the matter with which the board is dealing. We put experts on that board. We put legislation in place that says we want the board to meet these tests. It does that now about complex matters. It will do that for this matter as well.

Hon ALISON XAMON: We are ascertaining, as I think we already knew, whether somebody is deemed to have cooperated is an entirely subjective matter for the purposes of this bill. I certainly agree with the suggestion that it is difficult to prescribe any sort of test or line or quantify what constitutes cooperation in an act, but the one thing we would expect then is at least a component of procedural fairness that would enable those sorts of matters to be better determined.

One thing that I am concerned about is that it lists a range of areas within which the board's decision can be subject to review, but a very limited right of appeal is available to appeal decisions of the Prisoners Review Board. Effectively, it is really around errors of law, rather than errors of fact. How can we be assured that a prisoner can adequately respond to the reports that are being presented that make these assessments about whether they have cooperated or not when they do not even have an automatic right to see the reports on which the determination is based? A prisoner may put in a submission but completely miss the mark because they have no idea what they are meant to be responding to.

Hon SUE ELLERY: I want to make a couple of procedural points first. We have already determined the policy of the bill. This is the clause 1 debate, but it is not about revisiting and questioning whether we can change the policy of the bill. That has already been set by the house. The second point is that an amendment goes to this issue.

Hon Alison Xamon interjected.

Hon SUE ELLERY: I know what they are. I am trying to make a procedural point. I am happy to have the debate now, but I do not want to have it twice. We can do it now, but I hope that when we get to the amendment that addresses this, we do not have the exact same argument again. Alternatively, we can stop having this discussion now and we wait until we get to the amendment. I am relaxed about which way the committee wants to go, but an amendment goes to this very point. We could debate it now and then when the amendment comes before the chamber, the mover will move it and we will go straight to the vote.

I make this point: the principles of natural justice very deliberately do not apply to the way that the Prisoners Review Board carries out its work. That is a longstanding decision made by previous Parliaments. It is not something to be revisited here, because we have already set the policy of the bill and the policy of the bill does not envisage us changing that longstanding position. Although I note the point made by Hon Alison Xamon, we are not revisiting that matter here. That issue is not within the scope of the bill that is in front of the committee now, because that has been a longstanding bipartisan position for a very long time.

The DEPUTY CHAIR (Hon Robin Chapple): I give the call to —

Hon Sue Ellery: Can we establish, Deputy Chair, whether we will do the debate now or when we get to the amendment? I do not mind which one it is.

The DEPUTY CHAIR: From the Deputy Chair's perspective, I believe clause 9 will be dealt with in due course. As such, I think that the debate on that should be restricted to the amendment at clause 9.

Hon MICHAEL MISCHIN: I was not proposing to debate clause 9 with any specificity. Thinking back nostalgically, I cannot recall ever having had the extension of a luxury of having the debate only once when I was in the minister's position, but there we go. Different rules seems to apply.

Hon Simon O'Brien: It is another form of government cutback, I imagine.

Hon MICHAEL MISCHIN: That is right, yes.

I thank the minister for outlining some of the processes but I need to deal with this in a little more detail. I accept that the minister is not the person responsible for the administration of the act and that she is relying on advice on processes and the like.

Hon Sue Ellery: Very good advice.

Hon MICHAEL MISCHIN: Yes, absolutely; Mr Fernandes is well known to me.

I would like to tease out a bit more about the process and the question of natural justice. Certainly, the access to material is a little more limited. I do not think there is entirely an exclusion of natural justice because there are provisions for review and for a prisoner to have some idea of what they are seeking to have reviewed so that the philosophy and the fair administration of a parole system can be implemented. Otherwise, we are looking at arbitrary decision-making without any accountability or any ability for a prisoner of whatever category to learn from where they have gone wrong and what they need to do. We will get to that in a moment. If I could just talk through the process as I understand it and, rather than me having to sit down after every few words and the minister getting up to utter a word or two, with the leave of the Deputy Chair, some responses from the table might assist if I put a proposition to the minister that can be answered in just a couple of words by interjection.

Hon Sue Ellery: I can answer by interjection; I will try that and see how it goes, as long as Hansard can deal with it.

Hon MICHAEL MISCHIN: Yes, I am sure they will differentiate our voices, so I hope that will be done.

Let us say that a prisoner is due for review on 1 July—their first statutory review date after 20 years' imprisonment. The Prisoners Review Board has to provide a report then or shortly afterwards. At some stage prior to that review date, the board, through its agents, would start gathering material relevant to its report. Would that be correct?

Hon Sue Ellery: That is correct.

Hon MICHAEL MISCHIN: It would gather material from not only the chief executive officer or the director general of Corrective Services—whatever department it may be part of nowadays that is responsible for the management of the prisoner—but also other sources. Prison reports would be informed by other reports prepared by prison officers and others working within the prison and dealing with the prisoner. Would that be correct?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: Are those reports available to the prisoner at their request, as a matter of course, or under the freedom of information process?

Hon SUE ELLERY: No on all counts.

Hon MICHAEL MISCHIN: Other reports that the Prisoners Review Board would seek to inform itself of would be specific specialist reports such as from a psychologist; is that correct?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: It would seek reports from a psychiatrist, perhaps; is that correct?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: Sorry, I am doing this for *Hansard* so there is something on the record.

If the prisoner has engaged in workshop programs from time to time, picking up skills and that sort of thing, they would obtain reports from the officers who had supervised them or conducted the courses and the like; would that be right?

Hon Sue Ellery: For issues related to, for example, a whole range of matters arising out of rehabilitation—yes.

Hon MICHAEL MISCHIN: In those three cases—psychologist reports, psychiatrist reports or rehabilitation reports—are any of them available as a matter of course to the prisoner, on request, or under FOI?

Hon Sue Ellery: None of those.

Hon MICHAEL MISCHIN: All of that material is gathered together. Amongst other things that the Prisoners Review Board would have access to and include reference to in its report would be the transcript of the trial and/or sentencing of the prisoner; is that correct?

Hon Sue Ellery: Yes, and sentencing remarks and the like.

Hon MICHAEL MISCHIN: If there is no complete transcript, at least some kind of statement of material facts or the prosecution's outline of the material facts would come up in the sentencing process as well, and if there has been a trial, any judge's remarks on both sentencing and perhaps otherwise; would that be correct?

Hon Sue Ellery: Yes, and some of that material may be available to the prisoner.

Hon MICHAEL MISCHIN: Yes, because that material, as a matter of course, will be available to the defence counsel representing the prisoner and so to the prisoner even though they may have, in the interval, eaten it, lost it, or whatever.

Victim impact statements that are presented during the course of sentencing would not automatically be made available to the prisoner, although any comments that the judge makes and any sentencing remarks would be available; is that correct?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: They are confidential to the victim.

Hon Sue Ellery: The member is quite right that the judge might make some comments about that.

Hon MICHAEL MISCHIN: Yes, they would be about the effect on the victim as gleaned from the evidence, submissions made by the prosecutor, or from victim impact statements and the like to draw a picture as to how serious the crime was.

The prisoner's criminal history is another thing that the Prisoners Review Board would have access to and, as necessary, statements of material facts on relevant offences that it thinks informs it properly of the sort of character of the prisoner and his prior misdemeanours; is that correct?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: Those statements of material facts and the criminal history itself would be available to the prisoner, would they not?

Hon Sue Ellery: Yes.

Hon MICHAEL MISCHIN: The Prisoners Review Board has all that material. It would also seek, perhaps, reports specifically from the police if there is something in the material that it needs to know about the background of the offence, whether a body has been recovered, the level of cooperation that the prisoner has provided the authority since their incarceration, or since their arrest if it has not come out in the sentencing process. Would that be correct?

Hon Sue Ellery: Police reports—yes, and they would be FOI-able but we would anticipate that the police would redact certain information within those reports that went to identifying particular people and perhaps a range of other things as well.

Hon MICHAEL MISCHIN: Right. If, for example, there are matters of criminal intelligence that are relevant to determining whether a person is a risk to the community or is rehabilitated, such as connections they have made through visitors in prison, the sort of characters they hang around with in stir and that sort of stuff, would that also be available to and sometimes sought by members of the Prisoners Review Board in order to inform themselves whether this prisoner is suitable for release?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: Those would not, as a matter of course, be provided to the prisoner; is that correct?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: They would not be available, either by request, but possibly by FOI—but perhaps not; is that correct?

Hon Sue Ellery: It depends really. If they were prepared by police, for example, they could be subject to the FOI process, but, again, we would anticipate that the police would redact —

Hon MICHAEL MISCHIN: Sensitive information?

Hon Sue Ellery: Yes.

Hon MICHAEL MISCHIN: Another thing that the Prisoners Review Board would have access to as a matter of course would be the views of secondary victims. The primary victim, of course, is the deceased or anyone who has been harmed. Secondary victims are those who are left behind—family, friends, next of kin and the like. Their views would be sought by the Prisoners Review Board as part of its function to determine the attitude of those secondary victims to the release of this prisoner; would that be right?

Hon Sue Ellery: Correct, and the legislation provides that they may not be given to the prisoner.

Hon MICHAEL MISCHIN: That is right, because they reveal matters personal to the victims, and we would not want to have some salacious interest on the part of the prisoner. The Prisoners Review Board would have all the material as to whether the secondary victims are agreeable to or object to the prisoner's potential release on parole, and the reasons why. The Prisoners Review Board would then put that into a report, and that report would go through, at length, the criteria for release that it has to take into account, such as the safety of the community, which is the paramount consideration at the moment. Is that correct?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: Although in the case of the particular prisoners that we are concerned about, that would no longer be the primary factor, by implication. Perhaps I will put it more accurately and help out the minister by saying that that would be the threshold before the board starts assessing the other factors.

Hon Sue Ellery: Correct. That is a better way of describing it.

Hon MICHAEL MISCHIN: Under what is proposed, the board would not get to assess those other factors until it had gotten over that hurdle.

Hon Sue Ellery: Correct. There is a threshold issue to be determined first.

Hon MICHAEL MISCHIN: Right. The minister mentioned the sorts of things that are reviewable and the like. What happens now, more or less, is that the Prisoners Review Board would compile its report, with all the necessary supporting documentation—although generally no supporting documentation is provided, it is available to the Attorney General on request as a rule—and set out its relevant considerations and the conclusion it has reached about whether the particular prisoner should or should not be released on parole. Is that correct?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: Is that report made available to the prisoner as a matter of course, on request, or by way of freedom of information?

Hon Sue Ellery: The answer is no. I have already said that it is no.

Hon MICHAEL MISCHIN: Okay. I am not trying to give the minister a hard time. I am just setting out the sequence so that people can understand the way in which it works. That report to the Attorney General is not available to the prisoner. What is provided to the prisoner at that point so that they know whether a recommendation has been made for or against parole? Is there essentially a redacted report, with the reasons set out in point form, and what the prisoner needs to improve? How does that come about? The minister's adviser is good. I have seen his work.

Hon SUE ELLERY: Yes. He is checking the facts, and that is a good thing. Once the decision—not the recommendation to the Attorney General—is made, it is made available to the prisoner, and the reasons for the decision are also made available to the prisoner, subject to whether any of the things that we have gone through in the member's stepping through of the process might need to be removed from the reasons for the decision or something like that. The decision is made available to the prisoner. If the decision made is not to release the prisoner, the decision is internally reviewable. If it goes to the Attorney General and the decision is made by the Attorney General, it is not reviewable, as I set out about 20 minutes ago.

Hon MICHAEL MISCHIN: I am now a bit confused. I am talking about a report for a life prisoner. I am not talking about a report for a prisoner with a finite term, when the decision has been made by the Prisoners Review Board. I am talking about a life-termer who is coming up for their first review, so there is no entitlement to parole, but only an entitlement to have their status reviewed. Would the Prisoners Review Board then recommend to the Attorney General, and hence to the Governor, who ultimately signs off, with a report that says, "This is all I can tell you about the prisoner and how they have been going and whether they are suitable, and our recommendation is that he not be released for parole", or, "Our recommendation is that he be released for parole in, say, five years, with the following conditions and the following management plan"? Is that correct? That is the recommendation that goes to the Attorney General. The Attorney General at present turns his mind to it. When the minister talks about a decision that is or is not reviewable and the like, is she talking about the Attorney General's decision?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: The Attorney General then looks at the report and says, "I do not understand this bit", or, "I do not understand that bit."

Hon Sue Ellery: I wonder whether by interjection you will let me add a caveat to that, which of course we should. Ultimately, it is the Governor's decision.

Hon MICHAEL MISCHIN: I know. That is what I said.

Hon Sue Ellery: I know you said it, but I need to say it as well.

Hon MICHAEL MISCHIN: That is fine. The process is that it goes through the Attorney General first, because the Attorney General then looks at the report and says, "I have read the report, and I have a few questions about this bit or that bit, which do not seem to be covered", or, "I am a bit confused about the strength of the evidence to support that conclusion." The Attorney General might write to the Prisoners Review Board and say, "Can I have some more information on this?", or, "Why did you come to that conclusion?" There might be a bit of toing and froing. The Prisoners Review Board might come back and satisfy the Attorney General's questions, or it might

not, and the Attorney General turmoils over it and decides to accept the recommendation on those terms. An Executive Council minute is then prepared, it goes to the Governor, and all is sweet. Another possibility is that the Attorney General says that he does not agree with the recommendation to release. There is also the rare possibility that the Attorney General might choose to release against a recommendation not to release. I do not know of one of those occasions, and I think an Attorney General would have to be pretty brave to do that and would need to have a good reason to do that, so we will discount that possibility. Another possibility is that a recommendation for release is made that the Attorney General does not agree with. It used to be the case that the Attorney General would simply say, "I do not agree." Mr Fernandes might be able to confirm that. It was quite a simple process at one point.

Hon Sue Ellery: Yes. It is not so simple any more.

Hon MICHAEL MISCHIN: No. In fact, one of the challenges has been to properly frame reasons for a decision to reject a Prisoners Review Board recommendation, because that will ultimately go to the Governor. If it is simply in line with the recommendation of the Prisoners Review Board, that is simple. The Attorney General says, "I advise you, Governor, that X can be released", or the Attorney General might say that X should not be released. If it is against the recommendation, the Attorney General has to prepare some reasons for the Governor. The minister is saying that those reasons would be available to the prisoner. Is that correct?

Hon Sue Ellery: Yes, correct.

Hon MICHAEL MISCHIN: But the report itself would not.

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: Would the recommendation of the Prisoners Review Board be available to the prisoner?

Hon Sue Ellery: No.

Hon MICHAEL MISCHIN: Because we of course have had instances—Mr Greer being an example more recently—whereby the publicity has been that the Prisoners Review Board has in the past recommended that he be released. He must have found out about that somehow, so obviously the information gets out there somehow. Okay, so the reasons are there, the Governor sees them, the Attorney General knows about them and the prisoner knows about them. When the minister talks about an internal review of the decision, what does the minister mean by that? Is this an internal review of the Attorney General's decision to accept the recommendation, or what is being discussed then?

Hon SUE ELLERY: In respect of lifers, if the PRB thinks there has been no cooperation and makes that recommendation to the Attorney General, that is not reviewable.

Hon Michael Mischin: I am not talking about what you propose under this bill; I am talking about the current process. I will get to what you propose in a minute because I need to try to work out the difference. I am just talking about the process at the moment in respect of a lifer.

Hon SUE ELLERY: The Governor's decision is not reviewable. So, if the parole board now makes a decision—a recommendation not to release—that is not reviewable and the Governor accepts that decision. That is not reviewable. That is the situation now.

Hon MICHAEL MISCHIN: What about the PRB making a recommendation not to release, and it goes to the Attorney General? That recommendation is not reviewable—correct?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: And the Attorney General's decision to then advise the Governor, and the Governor deciding to accept that recommendation is not reviewable.

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: If it is the PRB recommending a release and the Attorney General says no, he does not agree, that decision by the Attorney General is not reviewable, and his advice to and the decision of the Governor, if the Governor agrees with that advice, is not reviewable.

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: But reasons are provided to the prisoner in short form saying that it has been rejected and basically the reasons.

Hon Sue Ellery: Decision and reasons.

Hon MICHAEL MISCHIN: He is a danger to the community, he has not cooperated sufficiently with the police, too tall, too short—whatever it happens to be.

Hon Sue Ellery: Probably not about the height of the prisoner, just to be clear!

Hon MICHAEL MISCHIN: I am glad that the minister is paying attention.

Hon Sue Ellery: And the reports are not always that short either.

Hon MICHAEL MISCHIN: No, that is right. I am making a reference to the criteria that need to be considered. So when the Leader of the House was saying that something is internally reviewable, where is the internal review? At what stage and under what internal mechanism is there an internal review at the moment? What is it that is internally reviewable? I am talking about one where there is an indefinite term or a life term, the sort of murderers that we are talking about here.

Hon SUE ELLERY: My response earlier about being internally reviewable related to those cases—finite terms—where the PRB is able to make a decision.

Hon MICHAEL MISCHIN: Okay. That is what I was getting confused about. We were talking about finite terms. In the case of indefinite or life terms, the only review then is one if there is a challenge to the Attorney General's advice, if you like; would that be right? I think the Borrello case is one that springs to mind. The minister's adviser might be able to assist me. It is one of the cases that discussed the matter. But the Attorney General basically has to give some good reason for rejecting it, or at least it is potentially reviewable.

Hon SUE ELLERY: I am sure that the honourable member would be aware of a kind of inherent capacity to review. So in respect of a judicial review of administrative decisions, that is within the general jurisdiction of the Supreme Court, pursuant to section 16 of the Supreme Court Act.

Hon MICHAEL MISCHIN: So that is the sort of basis that —

The CHAIR: Order! Minister, have you finished?

Hon Sue Ellery: Yes.

The CHAIR: I give the call to Hon Michael Mischin. I do not want to have two members on their feet at once.

Hon MICHAEL MISCHIN: I understand. Thank you. That is the reason the Attorney General, if he is going to reject a recommendation for release by the Prisoners Review Board, in the case of lifers cannot simply do that on a whim. He has to think it through, make a decision and have a rational basis for it.

Hon Sue Ellery: Because it is a high bar to review.

Hon MICHAEL MISCHIN: Okay. In this particular case, after this legislation has passed, in accordance with the scheme that is posited, there is an earlier decision that needs to be made, and that is being made by the Prisoners Review Board. That is whether or not there has been satisfactory cooperation; whether it is satisfied on the evidence it has that this prisoner has cooperated in the relevant sense as outlined in the bill; is that correct?

Hon SUE ELLERY: Correct. Just to be clear: it is the first part of the decision, and if the first part of the decision is that it has not been demonstrated to the satisfaction of the parole board that the prisoner has cooperated, the parole board can take its determinations no further. It will determine that that person is not suitable for release.

Hon MICHAEL MISCHIN: Right, thank you. That is the part about which have concerns, not in the sense that I have any sympathy for murderers and the like, as might be suggested, but just as a matter of process. The board has to be satisfied: to what level of satisfaction does the board have to be satisfied, and on what material apart from a police report?

Hon SUE ELLERY: We are kind of back to where we were about 20 minutes ago.

Hon Michael Mischin: That's right, but there's a point to this.

Hon SUE ELLERY: I am sure there is, honourable member. The board must use the police report, but it can use any other material provided to it or that it seeks itself, including from the range of sources that we canvassed earlier in this line of questioning.

The CHAIR: I am just about to give the call to Hon Michael Mischin. Members, I am not sure whether a lot of this debate might take place under clause 9. Similarly, I notice also that members are canvassing the bill in its entirety in their discussion. I will not interrupt the flow any further, but I point out that I do not want to see this debate done twice. I will leave it to members if they wish to continue to pursue the detail of this here, but it might be better if, having done the general, we leave the rest until clause 9, but I am in your hands.

Hon MICHAEL MISCHIN: I do not propose to repeat the debate twice or at all, but I think it is useful to understand the scheme that is being introduced under this bill and to relate that scheme to the manner in which

things are being done now, because a number of things flow from it. One of them is the question of what is disclosed to the prisoner and how conducive that is to obtaining sensible cooperation or assistance not only in this respect, but in rehabilitation generally in prison. There is also the matter of whether this stuff being reduced to rules and legislation exposes some further form of administrative decision that will have to be or potentially can be reviewed. At the moment, as the minister has outlined, in the case of lifers, if the Attorney General's decision, as I understand it, does not follow the recommendation of the Prisoners Review Board and hence it is against the prisoner's interests, that is subject to potential review by the Supreme Court to see whether the Attorney General made a rational, reasonable decision in the circumstances. It is not necessarily a correct decision from the point of view of the court, but it is about whether there was a basis for the Attorney General coming to the conclusion that he did. Here, we are introducing another stage, which is a little earlier, in which, again, a rational decision has to be made, and that is the threshold decision before the Prisoners Review Board can go any further. I have been through the case of a lifer or someone with an indefinite term, when the discretion is ultimately with the Attorney General as to what he or she may advise the Governor to do. In the case of a finite term, the decision that is reviewable would be two potential decisions; would that be right? There is the decision about whether the prisoner has cooperated and the ultimate decision that, even if they have cooperated, they can be released or ought to be released. Would that be correct?

Hon SUE ELLERY: Sorry, I was getting advice during the last part of the question, but I think the member had started to outline where he was going, so he can tell me whether I missed something in the last bit of what he was saying. If these laws are passed, various parts have to be gone through for the threshold test. The first part that has to be gone through is whether there was cooperation. If there was not, the board will make the decision that it cannot go any further and it will not recommend the prisoner for release. What is reviewed is whether the person is or is not to be released. It is different to the extent that the matters that led to that decision being reviewed are around cooperation, as opposed to any of the other criteria, but it will be done in the same way that those reviews are conducted now; it is just that the board will look at it with different criteria from what it looks at now when it determines whether a decision needs to be overturned. What is reviewed will be slightly separate matters, because it is about cooperation as opposed to any of the other reasons such as community safety or whatever; it is about the level of cooperation. We do not see it as adding, if you like, a new layer of administrative review. The board is still ultimately reviewing whether this person should be released; it is just that the criteria it is looking at in determining whether a reasonable decision has been made are about the level of cooperation, in the same way that a review now looks at whether the decision that was reached was ultimately correct and whether the person should or should not be released. This is just a different matter that is being looked at to determine the same question: should the decision be overturned to allow this person to be released into the community or not?

Hon MICHAEL MISCHIN: That is a little different from what I understood was being said in the course of the debate, because the way I understood it, and it may be just me, was that unless the board was satisfied that there had been satisfactory cooperation, there was nowhere further for it to go; it did not have to complete the other assessments. There was no point to it.

Hon Sue Ellery: That is correct, member.

Hon MICHAEL MISCHIN: But, if I understand it, the minister is saying that it is one of a number of factors that is included in its report.

Hon Sue Ellery: It is the first one, and if it cannot get past the first one, it can go no further.

Hon MICHAEL MISCHIN: This covers clause 9 specifically and the scheme in proposed sections 66A, 66B and 66C, but it also deals with matters more broadly. The Prisoners Review Board then has to make a number of decisions, or let us say threshold assessments, along the way. Firstly, it has to determine whether it is a relevant prisoner within the meaning of the act, because not everyone serving life is a relevant prisoner. Secondly, it has to decide whether there has been the requisite amount of cooperation on the location of the deceased body or providing information as to the last known location or where the remains are and the like, or whether the police already know. That is going to be based on a police report; correct?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: When the board decides, "No, prisoner X has not satisfied this threshold", does it then also assess all the other material that has been provided to it by the authorities, such as the CEO of the Department of Justice, the psychologist's report, the psychiatrist's report, the rehabilitation supervisor's report, the criminal history and all the other matters? Is all that stuff looked at?

Hon Sue Ellery: It may have looked at all that material to determine whether anything in that material helps it to satisfy itself whether the first threshold around cooperation has been met. It may have a look at that material. Once

it has determined, relying on some or all of that material, that cooperation has not been met, it does not then go back to that material or look at new material to determine whether other criteria have been met.

Hon MICHAEL MISCHIN: The board gets to that stage. It has looked at just enough to get the flavour of whether a person is a relevant prisoner and the like.

Hon Sue Ellery: It would need more than a flavour. It needs to satisfy itself that cooperation has been —

Hon MICHAEL MISCHIN: I understand what the minister is saying. What I was driving at, though, is that the board has to decide at least whether prisoner X falls within the category and that he is not just a lifer for a different reason. It is not because he is a habitual sexual offender or something and that eventually after his fifteenth rape has been sentenced to life imprisonment. It is a question of whether they are murderers or killers within the meaning of the legislation. That is the sort of flavour I am talking about. To start with, the board has to ascertain whether we are talking about people who fall within this category and that it has to look further and get a police report as to cooperation. The board gets this police report and says that it wants a bit more information, or perhaps it does not. What does the board do with this police report once it has got it? Do its members sit down together as a board, go through it and assess whether they are satisfied that there has been satisfactory cooperation, or just cooperation, really? What happens then? Does the board write reasons saying that it does not think this prisoner has cooperated within the meaning of the act, and is that sent up to the Attorney General, or is it just filed away at that point?

Hon SUE ELLERY: If it is a lifer, it is a recommendation further up the chain to the Attorney General and then ultimately to the Governor. If it is a finite term, it is the board's own decision. It makes its own decision to release or not to release. The member asked what would be done with the police report. That is for the board to determine.

Hon MICHAEL MISCHIN: Perhaps I was not clear about the police report. The board has the report; it does not have to prepare its own report. It must decide if it is satisfied, on the basis of the police report, that this is a relevant prisoner, that it is a homicide offence or a homicide-related offence, and whether the prisoner has cooperated in the identification of the location or last known location of the remains of the victim, so it must first decide there is a victim missing, and make that assessment in respect of this prisoner, about whether there has been cooperation, or, notwithstanding that, the police know where the victim is buried. What does the board do then? Does the file just state that the board is not satisfied, or does the board prepare a report and forward it to someone—who? I may have missed it, but there is nothing specifically in the bill that I can see about what would happen with the board's decision. How will it be recorded and what would happen to it?

Hon SUE ELLERY: If it is a lifer, and the board has made a decision not to release —

Hon Michael Mischin: Hang on—it has made a decision not to consider the matter further, because the prisoner has not fulfilled the condition.

Hon SUE ELLERY: It does more than not consider it further; it decides to release or not to release. It may decide that it cannot release, because the board cannot satisfy itself that that threshold first part of the decision criterion—cooperation or non-cooperation—has been met. I am not sure what we are arguing about, because I think I have said this about 100 times. If it is a lifer, the board makes a recommendation to the Attorney General not to release, if it has not been able to satisfy itself that that first part of the criteria—cooperation or not cooperation—has been determined.

Hon MICHAEL MISCHIN: Is the minister saying that there is something in the legislation beyond what is proposed in this bill—that is, somewhere else in the Sentence Administration Act—that requires the Prisoners Review Board, in the case of lifers or indeterminate sentences, to prepare a report nonetheless to the Attorney General with a recommendation? I do not see anything in clause 9. Maybe I have missed it. Perhaps the minister can help me here as to where it is in clause 9 or in this new part of the act, division 1A, that communicates its decision to anyone, given that it is a threshold of whether it will go any further considering this prisoner's case.

Hon SUE ELLERY: The act already provides that the board is required to report at certain incremental levels, and we would see this as forming part of those incremental reports that the board has to provide to the Attorney General. Clause 9 does not specifically address the issue that the member has raised, but provision of those reports to the Attorney General will be captured under the general provision that already provides that the Prisoners Review Board has to provide the Attorney General with timely reports on various decisions.

Hon MICHAEL MISCHIN: Perhaps we can go into that in a little bit more detail later. I would like—not right now necessarily—to have outlined to me how this decision, or this level of satisfaction before it makes a decision to release, forms part of what report that is required, statutorily. It may be that I have not picked it up, but I just want to be satisfied that the threshold decision by the Prisoners Review Board, where it decides it is not satisfied, on the basis of a police report, goes no further. It is not the subject of a review or any reconsideration and ends the case for consideration for parole where the police report may have its defects. I accept that it is not necessarily the

best example, but appendix 2 of the committee's report at pages 100 and 101 discusses the cooperation of certain prisoners in the identification of the location et cetera. It refers to two guys called Zaghet and Southam, and whether they cooperated to assist in the location of a body allegedly disposed of by a Mr Hobby, the victim being one Cotic, presumably Croatian. In short form, it summarises the nature and extent of the prisoners' cooperation. It provides some comment on timeliness, although it does not go into a great deal of detail about how they cooperated. Did they take police to a particular place, and how did they do it? What did they say to the police, and what did they not say to the police? It comes to certain conclusions. It comments on truthfulness. Although both Southam and Zaghet initially provided false statements to police prior to their arrest—it does not go into what sort of false statements they provided or how serious the falsity was—it is believed the assistance they provided to police post their arrest was truthful, complete and reliable.

That may be, but that is sufficient. Is that the sort of thing that the Prisoners Review Board will be relying on to form its assessment? If the police say that they do not think that the cooperation was truthful or as much as it could have been, that ends the story as far as the Prisoners Review Board is concerned and it will present a report, the minister says, to the Attorney General saying, "We don't recommend release because we are not satisfied there has been cooperation within the scheme of the act." I would like to have that teased out a little further, not because I have any particular sympathy to criminals, but it is important that if we are denying criminals who are otherwise entitled to consideration within the scheme of the Sentence Administration Act, it be done in a sensible fashion and one in which they can take issue with it if the police report is not comprehensive enough, does not present the case properly and the like. It seems to me that there has to be something before the Attorney General that the Attorney General can sensibly turn his mind to and decide whether he agrees with the Prisoners Review Board recommendation. That is another thing I would like to know a bit more about. Does the Attorney General then have the power to say that he does not agree that there has not been sufficient cooperation and tell the Prisoners Review Board to go back and do it again, have another look at it or get information on a variety of other things? Perhaps the minister could assist me with that.

Hon SUE ELLERY: I guess the first question that the honourable member raised is how can we be satisfied that the material put before the Prisoners Review Board in police reports is satisfactory or not. It is up to the parole board to receive and consider the police reports. If it decides that it needs more information or that a particular area of the report provided to it is less than satisfactory, it will—I am sure it does it now—request further information from the police if that is what it determines that it needs. That is the first part of the question. The second part of the question I think the member asked is: to what extent does the Attorney General get to test—I think that is what he was suggesting—the material that the parole board relied upon?

Hon Michael Mischin: Not so much test, but be in a position to assess the Prisoners Review Board's reasonableness of its conclusion that there has been no cooperation.

Hon SUE ELLERY: Thank you. The honourable member is correct when he says, if you like, the buck stops if the parole board determines cooperation has not been demonstrated to its satisfaction; that is where it stops. The reports that the Attorney General will receive will be about the number of cases considered et cetera, but the parole board is not obliged to provide to the Attorney General a report that states, "We considered X in respect of prisoner Y and determined that he or she did not meet the threshold in respect to cooperation." The Attorney General will not get that level of reporting; the Attorney General will receive a report about the numbers of matters that were dealt with by the parole board.

Hon MICHAEL MISCHIN: That does raise a matter of some concern. Under the current regime, there are a number of steps in managing the fate of prisoners within the prison system. One of them—although victims do not like it, in the case of lifers—is periodic reviews and reports, partly because they are geared to parole eligibility considerations. But another important feature of it is that people do not get lost in the system. We have had this in other cases, with the usual cliché of falling between the cracks and between two stools and wherever it happens to be, but we have a situation with lifers in which a report is prepared dealing with a criterion under the act that the Prisoners Review Board is obliged to look at in order to determine whether someone is fit to be released. That report goes to the Attorney General, as the first law officer responsible for the administration of the justice system in that regard. The Attorney General can turn his mind to it and he can say, "Look, I have read the prisoners review report. They say release, but I don't think they've covered all the bases in sufficient detail. I want more information before I'm prepared to make that decision and advise the Governor." Or he might look at a report and say, "Well, this is pretty superficial. I don't know enough about this prisoner; I want to know more, because if I refuse to advise the Governor to release them, like the board recommends, someone may be kept in prison longer than they ought to be" or "Prisoners of a comparable level and background in crime et cetera are being kept and that is unfair." Or the Attorney General can simply say, "I don't like the quality of these reports; I want some more detail as to how the prisoner is going so I can assess whether the prison system is working appropriately." In this case,

we do not get any of that. We do not even get advice, as I understand it, about an individual case. What we get is a report somewhere down the track of a whole set of numbers—anonymous figures about totals.

Hon Sue Ellery: I will correct that.

Hon MICHAEL MISCHIN: I hope so. Thank you. That was my understanding of what the minister had said.

Hon Sue Ellery: That is what I said. It turns out I was wrong.

Hon MICHAEL MISCHIN: Perhaps if the minister can take the opportunity—I am sorry—it will stop us from both going off on different tangents.

Hon SUE ELLERY: In section 12A of the act—we are talking about lifers—the proposition that the member put before us that prisoners could fall between the cracks or get lost et cetera is not the case. In fact, the Attorney General will have before him information that identifies the prisoners and that the matters came before the Prisoners Review Board. The notion that no-one will ever know that prisoner X came before the parole board but was rejected for release or not is not accurate or correct. That will not happen. The Attorney General will receive information about prisoners—not just a set of numbers, but about whether specific prisoners have been considered by the board.

Hon MICHAEL MISCHIN: I appreciate that. The report will be on an individual case that has come up for review because either the Attorney General has, presumably, requested the report about that particular prisoner or because their review date has come up and the board has considered it.

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: If the board comes to the view that it is not satisfied about cooperation, what will it report? Let us say that it is just not satisfied that so-and-so has killed someone and the body has not been recovered so it is not satisfied that he has cooperated. Will it go into the circumstances? Will it rely simply on a police report or its own opinions about why? It seems to me that the police report is fairly superficial about the police reasoning about why these two particular prisoners—Zaghet and Southam—cooperated. I might, as Attorney General, if I received that, think that the body still has not been recovered. Cotic's remains are still at large. Police do not know where he is. The police are telling the board that these guys have cooperated satisfactorily, albeit the police also say they lied in their initial discussions with the police but they do not tell me why the police think they are telling the truth now or to what extent they went out and tried to assist this anguished family or next of kin about the whereabouts of their loved one. On the other hand, we might end up with the Prisoners Review Board simply using the same amount of information saying, "We recommend you do not advise the Governor to release X on parole because they have not satisfactorily cooperated with the police to locate the last whereabouts of Mr Cotic." How much information is required? Is it in any report, given that all it is looking at at that stage is not the release considerations generally, because it is not allowed to; it does not go any further than just looking at the cooperation bit? The Attorney General might be the lazy sort and simply say, "Okay. That solves that problem. I do not have to worry about looking at this one", let alone going any further into getting an assessment about what this prisoner really is like by getting a comprehensive report on them, which is the sort of thing I would normally expect every few years, covering all the release information so I can form an assessment about whether he has been treated properly in prison, whether he is rehabilitated and what sort of character he is. I am just told by the Prisoners Review Board that the police say he has not done the right thing. Therefore, end of story—goodbye. Talk to the hand!

Hon SUE ELLERY: We anticipate that the board will provide sufficient information to demonstrate why it has reached the conclusion that it did. In any event, as a former Attorney General, I am sure that the honourable member is aware, and may even have done this himself, that Attorneys can and do ask for further information if they are not satisfied with the information that they have been provided.

Hon MICHAEL MISCHIN: I know that is what I did. Sometimes it took a little bit of time to come to a decision in particular cases because I was after information. I do not know what the current Attorney General does. As he has pointed out in support of this legislation, we do not know what a future Attorney General may or may not do or how seriously a future Attorney General might take a particular case. That was emphasised as being a fatuous proposition by the Attorney General in the other place when he was debating the original form of this bill back in 2016. He pointed out that times change and people might not consider a particular crime seriously enough. I am asking what is in this bill, given that only one consideration is before the Prisoners Review Board—that is, whether there is cooperation—and it does not have to look at anything else before it has checked that out. All it has to do is provide the Attorney General with a report stating, "Don't worry about this guy. He hasn't cooperated as far as we are concerned. Guess what? It saves us having to look at all these other things and get all these other assessments and reports, wasting everyone's time getting a psychiatric report and all the rest of it." He has not cooperated—end of story. Nothing further happens. What is it that the prisoner gets that the prisoner can then say, "I disagree with that conclusion. I have cooperated in a timely, effective fashion. I've done the best I could in the circumstances and I want to have that reconsidered or reviewed"? What is available to the prisoner?

Hon SUE ELLERY: We are back to where we were about an hour ago. I appreciate that the member may not be satisfied with it, but I have already provided an answer to that question about what will be available to the prisoner to review and what will not be, what information will be provided to the prisoner and what will not. I have answered the question about information that will be provided to the Attorney General and indicated that—indeed, it is a power that the member exercised himself—Attorneys can and do request further information from the parole board if they believe that they have not been provided with sufficient information.

Hon MICHAEL MISCHIN: Yes. There are Attorneys General and there are Attorneys General. We currently have one who has told us that he will pass laws to make sure that for certain prisoners whom he does not want to have to deal with, the PRB should not even bother to prepare a report to put on his desk until the next Attorney General takes office in four years' time. That does not seem to me much of a commitment to examining material.

Hon Simon O'Brien: Three years' time!

Hon MICHAEL MISCHIN: Three years' time.

That seems to be getting something off one's desk rather than considering it with any level of commitment, but let us assume that he is prepared to do the job that he is paid for. There are further issues because amendments have been proposed. I will have to give some thought to our position on those.

Finally, could the minister please confirm, and I am sorry if we are going through this again, if the Prisoners Review Board then provides its report to the Attorney General and says, "We do not recommend releasing this prisoner. We have looked at the threshold criteria regarding cooperation and we have concluded that we are not satisfied that he has cooperated sufficiently", that report will go to the Attorney General? What will the Attorney General then do? Will they advise the Governor accordingly?

Hon Sue Ellery: Correct.

Hon MICHAEL MISCHIN: Is it the Attorney General's decision to advise the Governor that it is the subject of potential administrative review by the Supreme Court?

Hon Sue Ellery: Yes.

Hon MICHAEL MISCHIN: Sorry—judicial review by the Supreme Court as an administrative action.

Hon Sue Ellery: To release or not to release?

Hon MICHAEL MISCHIN: To advise yes or to advise no—that is the decision.

I think I have explored clause 1. I cannot wait for clause 2.

Hon ALISON XAMON: I have a general question about clause 1. I note that section 122 of the Sentence Administration Act requires that a minister carry out a review of the operation and effectiveness of the act at five-yearly intervals—this started on 1 July 2007—and then the report must be laid before each house of Parliament. When is the next review due? I understand that there may have been a review last year, but I am not sure. I am trying to get an idea of when these particular provisions are likely to be subject to the regular statutory review.

Hon SUE ELLERY: In the department's planning of its work, the review is due to happen. Still under consideration is whether it holds off conducting that review to enable these provisions to be included once they come in or whether it conducts the review without having had enough time to collect any data that might be available on the new provisions. That decision is still to be made.

Clause put and passed.

Clause 2: Commencement —

Hon NICK GOIRAN: Minister, I raised this issue earlier during the second reading debate. I draw the minister's attention to the report of the Standing Committee on Legislation and in particular to the finding that relates to clause 2, which is finding 4 on page 18. It states —

> **The Committee finds that the reason advanced for leaving the commencement of the Sentence Administration Amendment Bill 2017 to the Executive is now redundant.**

What is the government's position on that finding?

Hon SUE ELLERY: I should have responded to this in my second reading reply. The separation of the dates of when the respective sections of the act commence were included to make sure that the Prisoners Review Board and Western Australia Police Force were ready to go. I am advised that the police are now ready and we therefore anticipate it will be a couple of months' difference while the PRB gets its operations ready to go.

Hon NICK GOIRAN: That is interesting because, as best as I can recall—this is obviously from November last year, when this issue was raised—the committee received evidence to indicate that it was no longer necessary. So the implication of the member's remarks is that it is still necessary.

Hon Sue Ellery: That is what I am advised.

Hon NICK GOIRAN: That is why the government has not moved an amendment to clause 2. I think it is useful for members to note the four paragraphs in the report that lead to this finding. I quote from page 17 of the report, which deals with clauses 1 through to 3. It states —

> 4.4 These contain the usual introductory and administrative provisions. The short title of the new statute would be the *Sentence Administration Amendment Act 2017*, commencement of the substantive provisions would be fixed by proclamation, and the Act would amend the *Sentence Administration Act 2003*.

For the benefit of the minister, I will emphasise paragraph 4.5 of the report —

> 4.5 The Department of Justice advised that the provisions were to be proclaimed, rather than coming into force the day after Royal Assent, so as to allow the police time to prepare reports under the proposed section 66C for any prisoners that may be due for parole consideration shortly after commencement.

The Department of Justice has advised the committee and the committee has then recorded it in this report. The report continues —

> 4.6 The Committee raised this issue with the Police Force. Officers confirmed that the process of preparing these reports, should the Bill be enacted, had already begun. The Committee was told:
>
> > *The Homicide Squad has ready access to all of the relevant material required to prepare the report and their Review Officer (Detective Senior Sergeant) will be tasked to complete it. Officers from the Offender Review Unit represent the Commissioner at the parole hearing and will submit, and or table, the report as required (requests from the Board have already been received and responded to).*

The committee concludes this section by stating —

> 4.7 Commencement of legislation by proclamation is increasingly common, and should be avoided unless absolutely necessary. It is an issue that often confronts the Standing Committee on Uniform Legislation and Statutes Review of the Legislative Council, which pointed out as recently as October 2017 that where commencement by proclamation is provided for in legislation, this leaves the Executive to determine commencement dates, potentially eroding the sovereignty of Parliament. It is conceivable that a proclamation may never be made and the will of the Parliament, in passing the Bill, would be frustrated.

I find it odd that as recently as November, the advice of the government to the committee was that this clause was necessary to allow the police time. The committee checked with the police and the police said that they did not need time and were already implementing it. Apparently, we still need more time. Yes, the police are ready, but the Prisoners Review Board needs a bit more time. I find that incredibly odd and I do not know whether the minister can explain to the house why the Attorney General's department never mentioned this when it provided evidence to the committee and only the police were mentioned.

Hon SUE ELLERY: There is no grand conspiracy. I think that the evidence that was provided to the committee was accurate. The advice that is available to me today is that the department still believes it needs time—not much time, but some time—and is erring on the side of caution to make sure that it has all the provisions it needs in place to operationalise this. Nobody misled the committee, if that is the suggestion of the honourable member. That information was correct at the time. It is correct now to say that police are ready to go. The advice available to me is that the department requires more time to ensure that all its operations are ready to go and it is erring on the side of caution.

Hon NICK GOIRAN: This is unbelievable. This is the same government that told us this is an urgent bill. Apparently, it is disgraceful that the Liberal Party and the National Party would conspire to delay this bill, send it off to a committee and get this and that done; we are consorting and comforting murderers and all the rest of it. Now here we are on 13 March and the evidence we are receiving is, "Oh, look, the world has changed. We need a bit more time. We're not even ready." The police are ready. They have already been sending through these reports, but the government is not ready. The Attorney General wants to pillory anyone associated with the referral of this bill to the committee and the department is not ready. No wonder the bill did not come on during the last

week of sittings in December last year. I now understand why it did not come on during that week. What would have been the point? Fast forward four months and here we are in March and we are still not ready.

Let us be very clear, members, that any delay associated with the enactment of this legislation falls squarely at the feet of the minister and the Department of Justice because they are the ones that are not ready. We are quite ready here. If the government wants to move an amendment to clause 2, I imagine that my friend the shadow Attorney General would be very enthusiastic about such an amendment, but we have no such amendment because the government is not ready.

Hon MICHAEL MISCHIN: I echo Hon Nick Goiran's comments on this. This is quite extraordinary. Since this bill was introduced and since the rising of Parliament last year, we have heard whining from the Attorney General, who said that he had introduced, as an activist Attorney General, something like 15 bills and that because the Labor Party does not have the numbers in this chamber, the bills have not proceeded, but the Attorney General said that he hoped bills like this one would proceed swiftly in the new year. It was not the opposition who organised the first session of this house a month after the Legislative Assembly convened. We lost a month and we are now hearing that the government is not ready to get this important piece of legislation through. The Attorney General has wound people up to say that delaying this legislation is stopping them from receiving comfort and closure in cases in which they are the secondary victims, but the government is not ready. Can the minister please say when the government will be ready to get this scheme underway? What is it waiting for, exactly?

Hon Sue Ellery: I've already answered the question.

Hon MICHAEL MISCHIN: I would like to ask it again: what is the government waiting for and when will it be ready?

Hon Sue Ellery: I've already provided the answer.

Clause put and passed.

Clauses 3 to 8 put and passed.

Clause 9: Part 5 Division 1A inserted —

Hon SUE ELLERY: I move —

> Page 3, after line 23 — To insert —
>
> (aa) manslaughter; or

By way of explanation to the chamber, there are three amendments standing in my name. The first one relates to recommendation 1 of the Standing Committee on Legislation's report. The second two amendments relate to recommendation 2 of the committee's report. If I take members to the committee report, the first amendment on the supplementary notice paper follows recommendation 1, which appears at page 51. If members are looking for an explanation, I think they would best find it in paragraphs 6.67 and 6.69 on page 50 of the committee report. They set out the committee's considerations, which I quote —

> … it is the view of the Committee that the provisions should have the widest possible application and that manslaughter should be included within the definition of '*homicide offence*' in clause 9 of the Bill … for the very reasons given —

The report then refers to an MP in Victoria —

> … to provide the opportunity for closure to the greatest number of victims' friends and families.

Paragraph 6.68 references a particular set of prisoners. Paragraph 6.69 of the report refers to those two prisoners, and I quote —

> At least one of those in custody for manslaughter was charged with murder, but pleaded guilty to manslaughter.

Progress reported and leave granted to sit again, pursuant to standing orders.