SENTENCE ADMINISTRATION AMENDMENT BILL 2017

Committee

Resumed from 14 March. The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 9: Part 5 Division 1A inserted —

Progress was reported on the following amendment moved by Hon Sue Ellery (Leader of the House) —

Page 6, after line 30 — To insert —

(v) to the extent known to the Commissioner of Police, the prisoner's mental capacity to provide relevant information or evidence;

Hon MICHAEL MISCHIN: I go back to the subject we left yesterday. We were dealing with this particular amendment but also, in context, the question of the obligation for either the Prisoners Review Board or Commissioner of Police to ascertain any information regarding the mental capacity of a prisoner. We have been around what the board might do, what it is capable of doing, what information it might obtain and the like, but I still have not had any clarification from the minister of whether there is an obligation for the Commissioner of Police or the Prisoners Review Board to obtain current information on mental capacity. Is the minister able to point me to that obligation, given that the government is not prepared to entertain the amendment that would require the Commissioner of Police to at least gather that information from those suitably qualified to provide it?

Hon SUE ELLERY: We have been over this point several times. I understand that the honourable member is not satisfied with my answer, but it is the answer that I am required to give him; that is, the obligation is on the Prisoners Review Board to satisfy itself that the threshold test has been met for cooperation, and in doing that, it needs to satisfy itself, and gather whatever material it thinks it needs to satisfy itself, that the prisoner is able, because of their mental capacity, to cooperate. I have been over that several times. There is nothing further I can add that I think would give the member the satisfaction he seeks.

Hon MICHAEL MISCHIN: The minister keeps telling me that she has been over it before, and she has, but either I am not making myself specifically clear or there is some difficulty in translation here. Under proposed section 66B, the board cannot do something unless it is satisfied—it has to be satisfied on a particular matter. The only obligation upon the board, under the terms of the bill, is to obtain a written report from the Commissioner of Police. The only other obligation on the board is to have regard to the information available to it. The commissioner has to disclose in his report only the information available to him. Where is the obligation for the board to make any further inquiry to reach that level of satisfaction, rather than simply compiling the material that it has to hand at the relevant time? Where is the active requirement to be found?

Hon SUE ELLERY: I have made this point once before, but I will try one more time. The obligation on the board is to have all the material it would need to report on the release obligations before it considers whether cooperation has been demonstrated. It will have gathered all the material that it needs. That may well be from a variety of organisations, some of which we canvassed earlier in the course of the debate. I am not sure that I can say it in another way. I am not sure that there is anything further I can add. Before the Prisoners Review Board gets to the point of determining that first threshold issue, it will have gathered all the material it believes it needs to rely on to meet its reporting obligations to meet the release obligations. It will then determine whether it can go any further than that first threshold, having considered whether cooperation has been demonstrated and whether cooperation could even have been demonstrated, given the mental capacity of the prisoner it is considering.

Hon ALISON XAMON: As I have indicated previously, the Greens will support this amendment because it at least goes some way towards acknowledging that it is important that we recognise that people sometimes may not have the mental capacity, or may have lost the mental capacity, to meet the new precondition that is now being imposed on people who have been sentenced under these offences. In terms of the way in which this discussion has been rolling out, it really goes to the heart of the difficulty facing people who have become mentally impaired, particularly during the time they have been incarcerated. I note that when we discussed this issue yesterday, Hon Michael Mischin proposed an amendment to remove the words "to the extent known to the Commissioner of Police,". As I understand it, the rationale behind suggesting that amendment was to try to ensure that there was, effectively, a compulsion on the Prisoners Review Board, as part of its information gathering in determining the precondition, to also be satisfied that the prisoner being considered was not mentally impaired. As has been rightly responded, without having further clarification around that, it would not be appropriate to have the Commissioner of Police attempt to make such an assessment, because clearly they are not qualified to do that and should not be attempting to make an assessment of whether somebody has a mental impairment. I suppose this comes back to the crux of the problem that faces mentally impaired accused prisoners, and is one of the concerns around the lack of procedural fairness

in this process; that is, by the very nature of having a mental impairment, a prisoner is less likely to be able to undertake their own advocacy on whether they have a mental impairment. If someone has psychosis, dementia, cognitive impairment, an acquired brain injury or a previously undiagnosed intellectual disability, by the very nature of having that they will not be able to put forward submissions to the Prisoners Review Board on whether they are mentally impaired. At the same time, the Prisoners Review Board is not necessarily going to seek out this information just as a matter of course: "Oh, by the way, should we check to see whether the prisoner also has mental capacity?" Generally, the presumption is that people do have mental capacity, until it is proactively demonstrated otherwise.

Sitting suspended from 1.00 to 2.00 pm

Hon ALISON XAMON: I will continue with the remarks I was making before we were interrupted. We know that prisoners who develop a mental impairment often do not have an adequate advocate even if they have a diagnosis. One of the problems at the moment is that there is effectively only one requirement for the precondition and that is the report coming from the police, who cannot be expected to know whether someone has a mental impairment. The Prisoners Review Board of Western Australia will also not necessarily give a commitment to proactively seek out that information. This really goes to the heart of the problem with the prisoner who is subject to assessment not having an automatic capacity to receive certain documents. I recognise this a problem that is not unique and occurs for all prisoners who have a mental impairment, but I thought it was important to at least put on the record how difficult it can be, particularly for this cohort of prisoners.

Hon MICHAEL MISCHIN: There seems to have been a misunderstanding yesterday as to the obligation being placed on the Commissioner of Police by the amendment that I suggested might be worthy of consideration, but apparently it is not to be entertained at all by the government, let alone analysed and weighed. It was not suggested to get the Commissioner of Police to express any opinions outside his—or her in the future—competence. It was simply about the report needed from the Commissioner of Police that needs to address a variety of things based on input from other sources. The Commissioner of Police has to provide a report on the prisoner's mental capacity to provide the relevant information or evidence of cooperation. That may mean that some investigative work has to be done on behalf of the Commissioner of Police to get advice from a psychologist, psychiatrist, medical practitioner, or whoever it happens to be, to assist the board in its functions. The idea that it is outside the Commissioner of Police's remit and ability to provide that is simply not true. The purpose of it was to require the Commissioner of Police to obtain timely information to assist the board. However, the government seems to take the view that there is nothing to see here, that there is no problem, that it will all be attended to, that no-one is going to be disadvantaged, that the board will do what the minister claims the board will do and that no further clarification is necessary in this comprehensive scheme that has reduced these principles to precise rules. If that is the government's position, so be it, and it can bear the responsibility of anything that goes wrong into the future. I hope it will not, but it ought to be made quite plain that this is the Attorney General's position and he needs to take the responsibility if it turns out that this scheme could have been fixed up a little more with some greater and more careful consideration in the manner that has already been suggested by the committee in respect of other things and to which the government has agreed. But if the Attorney General thinks that the bill, like his original version in 2016, is the perfect article now, then there is no point sitting on this any longer and we will agree to the amendment proposed on that basis.

Amendment put and passed.

Hon MICHAEL MISCHIN: There are a few more general questions regarding the operation of the clause and the three operative provisions—proposed division 1A generally, but also proposed sections 66A, 66B and 66C—and how they work. The operation of this scheme depends on the Prisoners Review Board being satisfied to a certain level of satisfaction. The way it seems to work—if I get this wrong, hopefully the minister can assist me and set me straight—is that the board is positively prohibited from making a certain decision about a relevant prisoner unless it has achieved a certain level of satisfaction on a particular matter. As we have traversed previously, that means that the board then has to identify whether the person coming up for review is one of those captured by the Sentence Administration Act, whether this is a homicide offence or a related offence, and whether the prisoner, when the remains have not been located, has cooperated in the location of those remains. It is a triaging, sifting process. Then the board needs to obtain a written report from the commissioner dealing with a variety of matters, and then it has to form an opinion on whether there has been cooperation in the relevant sense. The board cannot make a decision in favour of the prisoner unless it has achieved that level of satisfaction. Two things come out of it: firstly, to what level of satisfaction is that term used in respect of any other decisions that the Prisoners Review Board presently has to make under the act; and, secondly, to what extent does it take into account mental capacity? At the moment it just says that pursuant to that last amendment, the board has to take it into account. It does not say how it takes it into account. The board might say, "Yes. The guy is not mentally capable of providing assistance, but hasn't cooperated", but how is the board meant to take it into account?

Hon SUE ELLERY: It is worth noting that we are not inventing a new parole board whose members have not already had to decide some fairly complex matters and take into account the existing criteria that they have to apply. In fact, the Prisoners Review Board has been around for a long time and its members have to conduct themselves in accordance with the criteria that are already set out in the act. Members of the board set their own internal working guidelines for how they will work through these things. If the honourable member is looking for some kind of hierarchy or gradation within the act, he knows that is not there because I am sure he would have dutifully read the act. Members of the board are required to satisfy themselves that cooperation has been provided or not and they are required to satisfy themselves of the prisoner's capacity to offer cooperation. They can seek advice and they can seek all sorts of information to assist them to make that decision. For anybody who reads the act, it quite clearly does not state that the board needs to be satisfied by 50 per cent, 70 per cent or 80 per cent. It states that board members need to be satisfied that the prisoner has cooperated and they need to be satisfied that the prisoner has the mental capacity to cooperate. If members of the Prisoners Review Board are unsure whether they can satisfy themselves of that, they have the capacity to—and they do now—seek information from whichever experts or particular people they want to seek advice from to help them satisfy themselves to that extent.

Hon MICHAEL MISCHIN: Perhaps I can help the minister out a little; we are not talking here about a level of satisfaction beyond any doubt, are we?

Hon SUE ELLERY: I am sure that the member knows this; it is satisfaction in the normal use of the word. We are not talking about it in the context of criminal proceedings or civil proceedings. We are talking about it in the normal usage of the word. If members of the board are unsure whether they can be satisfied on the basis of what is presented to them, they can seek further information from all sorts of people.

Hon MICHAEL MISCHIN: I thank the minister. I was trying to clarify that it was not being used in the technical sense of "satisfaction beyond reasonable doubt" or "satisfaction on the balance of probabilities", or the words "more likely than not". I think the "level of comfortable satisfaction" is one of the other standards. We are talking about the ordinary use of the word, whatever that might be, but none of the particular standards that I have mentioned; is that correct?

Hon Sue Ellery: Yes, it is.

Hon MICHAEL MISCHIN: Is the term "mental capacity" used anywhere else in the legislation or in any other connected legislation from which the Prisoners Review Board might be able to draw some guidance on what is embraced by that term? Is it mental capacity in the general sense—for example, as a result of some kind of mental illness or mental impairment? Is it mental capacity whether under the influence of drugs or the like? What sort of mental capacity are we talking about? Has it been drawn from any particular term or other usage of this form of words that the Prisoners Review Board or others can turn to for some guidance?

Hon SUE ELLERY: I am sure that the honourable member has read the Sentence Administration Act and I am sure that he has read the bill, so he knows that there is no technical definition of the words within the bill. It is used in the general sense. It is not tied to a specific technical or medical definition. It is used in the general sense and the parole board, as I have said a number of times now, can seek expert advice to satisfy itself that its obligations have been met under the act.

Hon MICHAEL MISCHIN: I have to say that this is not simply for my benefit. It is for the benefit of other members of this place who may not have thought about these issues or might have some doubts about them but do not know how to articulate them. This is also for the benefit of the future so that those looking back on this debate, should something go wrong with the legislation, should some loophole be revealed or some problem be exposed, can see just what the government had in mind. Likewise, the Prisoners Review Board can see what the government had in mind.

As to the process itself, I note that one of the matters under proposed section 66C(3) that the report from the police must deal with is the question of timeliness as well as other matters. They are all subjective considerations, are they not?

Hon SUE ELLERY: Yes, and again I make the point that the honourable member would be able to see himself that those things that are set out in proposed section 66C(3), including: the nature and extent of the prisoner's cooperation; the timeliness; the truthfulness, completeness and reliability of information; and significance and usefulness, are all in fact subjective terms. They are not subject to the definitions that are set out either previously in section 66 or elsewhere. It is worth reminding the honourable member that the Prisoners Review Board has been doing the job of making difficult decisions about complex matters for a long time. Its members are appointed to that board because of the particular expertise that they bring. Also, they are able to seek advice when they need to.

Hon MICHAEL MISCHIN: Certainly, the appointments to the board under my watch were designed with that in mind but, as the minister's Attorney General has pointed out in the other place, it is fatuous to suggest that what

is current now or has been in the past might be the case in the future. This does introduce certain subjective considerations and the board and how it looks at it will depend very much on the people who are part of that board from time to time. As we have seen in the past from the Prisoners Review Board before we entered government, there seemed to be a very high rate of some prisoners being released on the first occasion of their review rather than having to earn their release. With the change in regime after Honourable Justice Narelle Johnson took chairmanship of the board, the criteria were looked at rather differently, which meant that the number of prisoners being released at the first instance was rather reduced. We also saw changes over the years in how the board would approach breaches and the like. So to say that the Prisoners Review Board is always consistent is simply not the case. It depends very much on who forms the board at the time and how they look at the criteria that they have to deal with. Plainly, the same considerations have been there in the past but, from time to time, because the composition of the board varies, the way that they make their judgements can differ on these matters.

I am after a little bit of guidance on how this is meant to work. These are subjective considerations. Let us take the example of the report on Zaghet and Southam, which is part of the committee report. The information there offers an opinion of the Commissioner of Police and some very basic details of the alleged cooperation, and that appears to be typical of the sort of report that the Prisoners Review Board is meant to have access to. The evidence before the committee, as I recall, was that this was what the police were now doing and that this was the sort of stuff that they intended to proffer to the Prisoners Review Board. Questions of "nature and extent" will depend very much on the judgement of police as to whether they think the extent of cooperation is satisfactory. "Timeliness" is a very subjective thing. If someone starts to reveal their stuff during the course of the police interview and confesses, that is one extreme of timeliness; at the other end of the bell curve are those who never provide any information. With regard to "truthfulness, completeness and reliability of any information or evidence", again, that is a very subjective one because if the police do not know, they are relying very much on the prisoner's account of things and whether, in their assessment, the prisoner is doing their best or could do better. In respect of "significance and usefulness of the prisoner's cooperation", once again, it is very subjective. The additional criterion being introduced—"to the extent known to the Commissioner of Police, the prisoner's mental capacity to provide relevant information or evidence"—is again a subjective assessment. It may very well be that some of these are given greater weight by the Prisoners Review Board than others. The question of timeliness, in particular, raises an interesting point. Let us say that a prisoner has come forward and provided precise details as to where the body can be found. The prisoner takes the police to the location of the body but does so the day before the date of review by the Prisoners Review Board. Is it expected that the Prisoners Review Board will reject that application?

Hon SUE ELLERY: If the prisoner has taken the police to the location of the body and the body is found, the board will then move through the rest of the considerations that are set out before it in respect of how it makes its decisions or acts in releasing or not releasing.

Hon ALISON XAMON: That was part of my question about the issue of timeliness under proposed section 66C(3)(ii)—"timeliness of the prisoner's cooperation". This, of course, is meant to be a retrospective provision. As I understand it, part of the policy behind the bill is to effectively draw out information from those who would otherwise to date have withheld that information. The question I have is: how is it envisaged that we are going to deal with people who have effectively been long-term withholders of this information but who nevertheless suddenly reveal the information that they have held all along?

Hon SUE ELLERY: The purpose of the legislation is, to a certain extent, to evoke the circumstances that the honourable member just set out—that is, with regard to someone who has withheld information for a long time, once these laws change. A number of such cases have received public attention in recent years. We have heard the stories from the families about the sense of closure that they want to achieve. That is the purpose of this legislation—to get people to release the information about where the body is. If the body is found, the provisions we are talking about right now will have served their purpose. With regard to the way in which the Prisoners Review Board makes its considerations, it takes into account all those things, including the timeliness and all the other things that are set out, as it moves beyond the first threshold of determining that cooperation has been provided. It then makes a judgement about all sorts of things, including timeliness, and it will take all those things into account when making its decision or taking the action that it is able to take under the provisions of the legislation.

Hon MICHAEL MISCHIN: This highlights one of the paradoxes in the legislation and the scheme as it is proposed. To get back to the example, let us say Mr Mansell, since that is the name the Attorney General likes to bring up. I think he said that it was 18 years' minimum, which means his first review will come up in about 12 years, and the body of Mr Puddy has not been found. Let us say that in 18 years' time, Mr Mansell is coming up for his review and he is one of those prisoners who has not cooperated and the body has not been found, so he does not meet the threshold test. The Prisoners Review Board cannot go on to recommend his release on parole, no matter how good a prisoner he has been. Fair enough; that is quite right and proper, in accordance with the scheme in the legislation, and it is consistent with the government's policy and what people have been led to expect. But the day before the

Prisoners Review Board sits to consider its decision, a report comes in from the police to say, "Yesterday Mr Mansell revealed to us where Mr Puddy's body has been these last 21 years. He has taken us there and we have recovered Mr Puddy's remains." That threshold question is dealt with. How does the Prisoners Review Board deal with it? It now has a body, or the police know where the body is. It is about to consider it, and he has been a model prisoner in every other respect. He is not a danger to the community anymore, according to all the evidence. Is it likely that he will then get favourable consideration from the Prisoners Review Board, or will it still have discretion to deny him or recommend that he not be released? Will the threshold considerations have been met?

Hon SUE ELLERY: I would have thought that was perfectly clear. If the body has been found and the prisoner cooperated in the finding of the body, the threshold test has been met. The Prisoners Review Board then applies all the criteria that it applies now in determining whether or not that prisoner should be released. Those are the criteria that it works its way through now, so in that sense it has got over the threshold. The body has been found because, in the member's example, of the cooperation of the prisoner. It then applies the rest of the criteria.

Hon MICHAEL MISCHIN: Then how does the timeliness consideration come into play?

Hon SUE ELLERY: I am not sure I can make this any clearer. The Prisoners Review Board takes it into consideration.

Hon Michael Mischin: To do what?

Hon SUE ELLERY: In determining how it makes its decision and what its end decision will be. It will go through all the criteria and make its decision. If the member is looking for a particular set of prescriptions on how it is to assess every single criterion in every single case, he is not going to find it in this legislation. Frankly, given the complexity of the situations that the Prisoners Review Board has to deal with, I am not sure it would be a sensible thing to put in a piece of legislation like this. It will take into account all the criteria that are already set out and make its decision accordingly.

Hon MICHAEL MISCHIN: Okay. This is important, because we, the Standing Committee on Legislation and secondary victims have been told that this legislation is intended to require timely—that is, early—cooperation from a prisoner to locate the remains of their victim in order to give closure to loved ones and to demonstrate remorse and the like. The minister is saying that Mr Mansell, for example, can wait 21 years to provide that cooperation, and there is still no certainty that he will suffer any disadvantage from it. Is that right?

Hon Sue Ellery: Other than 21 years in jail.

Hon MICHAEL MISCHIN: Well, of course 21 years in jail, minister—that is his minimum term! He is not going anywhere before 21 years! The whole point of this, I thought, was that he reveal the whereabouts of his victim earlier than 21 years. Would that not be right?

Hon SUE ELLERY: I said before that timeliness is one of things that the Prisoners Review Board looks at when determining cooperation. I am not sure there is any other way I can explain the criteria set out in the legislation, and indeed examined by the committee. I am not sure there is any other way I can explain it. I am not sure I can add anything more to assist the particular honourable member, other than to say what I have previously and to note that the committee considered all these matters, made two specific recommendations to address the concerns it had, the government accepted those recommendations and I moved, and the chamber accepted, those recommendations. So I am not sure there is much further information I am able to add on this particular point. There is a set of criteria. The Prisoners Review Board will apply those criteria, and when it needs additional information and advice it will seek it and make sure it has it before it. I am not sure there is another way I can explain it to the honourable member.

Hon MICHAEL MISCHIN: That is regrettable, minister, because one of the major planks of this—one of the great features of this that has been spruiked since the idea was first floated back at the end of 2015, early 2016—was that people who have refused to cooperate with the police would be encouraged to give early cooperation, rather than to have the next of kin waiting for potentially decades to find out where their loved one's remains are resting. The minister is now saying it is a criterion and she cannot say how it will actually operate. I will put the example again to try to at least get some help here.

Let us use the example of Mr Mansell, who I think got 21 years' minimum; it does not much matter, but let us say it will be two decades before his earliest consideration for parole. He has already been in custody several years, he has exhausted his rights of appeal, the loved ones are anxious for the whereabouts of Mr Puddy, and Mansell says nothing. Then in 18 years' time, the day before he is due to be considered, the police report requested by the board comes in and the Commissioner of Police says, "Look, he's cooperated now entirely. The day before, if we had signed off the report then, he wouldn't have but today he has." So the threshold is met. The question of timeliness though is one about which the police say, "Well, it wasn't particularly timely because he waited until the last minute." Does that delay guarantee that he will not be released by the Prisoners Review Board?

Hon Sue Ellery: I cannot answer that in any other way than I already have.

Hon MICHAEL MISCHIN: Can I take the answer to be that it does not guarantee that he will not be released?

Hon Sue Ellery: I'm not sure I can answer it in any other way than I already have.

Hon MICHAEL MISCHIN: I think you need to, minister. Is it a guarantee of lack of release or not?

Hon Alannah MacTiernan: She's repeating! You've been asking the same thing over and over again over the last three days.

Hon Sue Ellery: I can't do it another way.

Hon MICHAEL MISCHIN: I have not for three days, Hon Alannah MacTiernan. If you would pay attention you would know that a vast variety of things have been canvassed over the last few days. If you listen, you might actually learn something.

Let me put it another way, minister. Let me help you here. This is what —

Hon Sue Ellery: I'm not the one who needs help, my friend.

Hon MICHAEL MISCHIN: I am not your friend.

Hon Sue Ellery: That's true.

Hon MICHAEL MISCHIN: I will read this. Perhaps you could help your Attorney General —

Hon Sue Ellery: Seriously!

Hon MICHAEL MISCHIN: Yes, this is a serious matter. Expectations have been built up.

Let me read the minister something said by the Attorney General on 18 May 2017. The minister can help us, perhaps, say whether this is correct or not. I quote —

> Murderer Cameron Mansell was sent an ominous message from Attorney-General John Quigley yesterday as he took his promised no-body, no-parole laws to State Parliament.
>
> "They have televisions in the prisons and I have a message for the murderer Mansell," Mr Quigley said.
>
> "These laws will go through the Parliament and, once passed, Mansell will not be eligible for parole unless he promptly reveals the whereabouts of Craig Puddy's remains.

Is there a requirement that he promptly reveal this or, on the scenario I have already outlined, is it possible he will still be released in 18 years' time, minister?

Hon SUE ELLERY: I will try once more. Timeliness is a factor that the Prisoners Review Board takes into account, full stop.

Hon MICHAEL MISCHIN: Thank you, minister. So it takes it into account, but to say, "Once passed, Mansell will not be eligible for parole unless he promptly reveals the whereabouts", is false; correct?

Hon Sue Ellery: I have nothing further to add.

Hon MICHAEL MISCHIN: No, I am not surprised, minister, because the answer is no; it is not correct. Of course the minister cannot answer it, because the Attorney General once again has gone beyond the bounds of what is practical or beyond the bounds of his legislation and liked to grab a headline. I quote again —

> "Without doing so —

That is, promptly revealing the whereabouts of Mr Puddy's remains —

> he will die in prison, most assuredly."

That is not true either, is it, minister? Because timeliness can be taken into account, but the Prisoners Review Board, even if he reveals it the day before his assessment, can still release him; correct? It is possible, is it not?

Hon Sue Ellery: I have nothing further to say on this point —

Hon MICHAEL MISCHIN: No, I am not surprised, minister, because the answer is, yes, he can be released, can he not? That is the answer.

Hon Sue Ellery: Chair, I do not know how else to say that I have nothing further to say on this point.

The CHAIR: Minister, I think you have said that, and it is your prerogative whether you seek the call.

Hon MICHAEL MISCHIN: I quote further —

> Mansell is serving 18 years for murdering Mr Puddy in 2010 and has refused to reveal where he disposed of the body.
>
> Mr Quigley, who announced his no-body, no-parole Bill alongside Mr Puddy's sister Nadine, said the laws would prevent Mansell from being eligible for parole in 12 years.
>
> Unless he revealed the body's location, the legislation would come into play.
>
> "Too late Mansell. You'll have missed the bus," Mr Quigley said. "You'll still die in prison."

Well, that is not the case. He will not necessarily die in prison if he does not promptly reveal the whereabouts of Mr Puddy's remains. In fact, he could wait, could he not, for his second statutory review in 22 or 23 years and reveal it to the Prisoners Review Board, and they take into account timeliness and they still might release him? I know the minister will not respond to that because the answer is, yes, it is entirely possible. That is not what she wants the public to hear. In fact, this legislation does not meet the expectations that have been raised about it. Once again, the Attorney General, having misnamed this as no body, no parole legislation and having spruiked the fact that unless there is an early, timely cooperation, a prisoner will die in prison, has fallen short of those expectations. Still, the minister knows the answer to that and she knows that it is not favourable to the government and to this Sentence Administration Amendment Bill. She knows also that if she opens her mouth she will be incriminating herself and the Attorney General, so there is not much point going any further with it. It is quite plain that this does not meet the expectations and does not give the guarantees that next of kin have been seeking. If the minister wants to refute that, I welcome giving her opportunity to do so.

Hon ALISON XAMON: I move —

> Page 7, after line 3 — To insert —
>
> (4A) Upon receipt of the report the Board must provide a copy of it to the prisoner with a notice that the prisoner may within 28 days make written representations to the Board regarding the content of the report.

I note that the following amendment in my name will lapse if this amendment is not supported.

I have put this on the notice paper as a result of the Standing Committee on Legislation report. I note that it was not a recommendation; it was a finding of the report. But I think it warrants some closer attention and investigation. One of the questions asked by the committee was whether this bill is consistent with the principles of natural justice. For members' information, this is first canvassed on page 57 of the report. It refers to how helpful it would be if, when the Commissioner of Police provides a report as required now under the new precondition, the prisoner can respond directly to that report.

I have been listening with great attention to the debate so far and I am mindful of the comments around the way the Prisoners Review Board operates and that, ordinarily, the rules of procedural fairness, or natural justice as the report refers to it, are not necessarily adhered to. However, I am also aware that the purpose of this legislation is to introduce an entirely new precondition to create an entirely new hurdle to be jumped before the Prisoners Review Board can undertake its normal deliberations. As has been discussed, when the Prisoners Review Board undertakes its normal deliberations around parole it seeks information from a range of bodies to inform itself as it sees fit so that it can be satisfied that it has all the information it feels it needs.

One of the things I am particularly concerned about is that a prisoner having not fulfilled this precondition will not necessarily have any information available to them in a timely manner to enable them to ascertain what has been said about them in the report provided by the police commissioner. It has already been determined that, unlike other information that may be provided in the normal course of events through the Prisoners Review Board, this document is able to be FOI-ed, so a prisoner is entitled to get this document. The trouble is there is no obligation to provide this to the prisoner in a timely way. Even though a prisoner may put in their own submission, and, as we have previously discussed, may have put in a submission around the status of their mental impairment, the reality is that they will never be able to fully respond to what has been put forward to the Prisoners Review Board so they can comprehensively respond to what is said about them.

I want to say, as the committee was at pains to point out, that the Sentence Administration Amendment Bill does not relate to consideration of parole. I think there is quite a difference in whether it is inconsistent or otherwise with how parole is considered, because it is about establishing that new precondition before parole can be considered. It is important that members remember that when we sacrifice procedural fairness temporarily—sometimes we do that for good reason, for example interim injunctions on interim restraining orders; an example I think is justified—usually it is because we are very clear there has to be a good reason to do that. I am not satisfied with the response to date that the entire policy of the Prisoners Review Board is one of denying procedural fairness;

therefore, we will simply continue to extend those provisions. Perhaps it is timely to start looking at how the process can become more procedurally fair.

I am proposing this amendment, which will enable the prisoner to automatically receive a copy of this document within a set time, bearing in mind the Commissioner of Police is not required to provide it within a set time, simply have it done within a reasonable time frame, but once it has been produced, it be made available within 28 days to the prisoner to respond to it. It seems that it would be a step towards ensuring that the Prisoners Review Board can have more complete information available to it rather than a prisoner simply trying to put in a submission, effectively in the dark, without knowing the allegations being levelled at them or what is being said about them. They may, for example, have a very different idea of their level of cooperation or, indeed, once they see what the police are saying about them, it may be an eye-opener about their level of cooperation. If, indeed, through the policy of this bill, people are trying to achieve an outcome in which people are being more cooperative, perhaps this is a way that outcome could be achieved.

That is one of the reasons I have put this amendment forward. Perhaps it will be beneficial to the Prisoners Review Board as well as to the prisoner and the entire process to ensure that more information is made available.

Hon SUE ELLERY: I remind the honourable member that we had quite a lengthy discussion about these issues under clause 1.

Hon Alison Xamon interjected.

Hon SUE ELLERY: I know; I am happy to give the member a formal response and I will do that now, but I remind members that we canvassed these issues under clause 1. The government is not able to support the honourable member's amendment. We note her arguments and how the matters were canvassed in the committee report. The bill retains consistency in the way materials and reports from other agencies are dealt with throughout the Sentence Administration Act and the government is not of a view to change those despite the honourable member's arguments about the way she sees this regime as being slightly different. Currently, the bill contains no express requirement that a copy of the police report on cooperation be provided to a prisoner. The Prisoners Review Board does not provide prisoners with copies of materials and reports submitted to it by external agencies. It is an exempt agency under the Freedom of Information Act. However, the agencies from which the reports originate are not, so it remains open for a prisoner to access those materials directly from those agencies through FOI, subject to any statutory exemptions. The board is obliged to provide information about its decisions to prisoners. Section 107B of the Sentence Administration Act deals with the board's obligations to provide a prisoner with notice of a decision that affects them. This includes a requirement that a notice include reasons for a decision. The nature and extent of those reasons has been canvassed in a range of judicial decisions, for instance—I have a reference if it is of interest to the member—in the case of Seiffert v The Prisoners Review Board [2011]. Essentially the government is not of a view to change the arrangements for this section, in what will become the act, so that two different regimes apply to the release of information to a prisoner. I appreciate the arguments put by the member but the government will not accept the amendment.

Hon AARON STONEHOUSE: I rise to indicate my support for the amendments. As we are putting in place a new precondition that will act as a gateway, it seems to me that, wherever possible, increasing transparency would be desirable and that to inform prisoners that their level of cooperation has been satisfactory would only further increase their incentive to cooperate on disclosing the location of a victim's remains, in my view. I echo many of the same sentiments as Hon Alison Xamon in the interests of procedural fairness. I am very sceptical of the efficacy and need for the changes in this bill; therefore, increasing transparency wherever possible is my goal and my aim. I will be supporting the amendments and look forward to voting on the matter.

Hon SUE ELLERY: I thank the member for his comments and I appreciate his consistent stand on transparency in these matters and in many others. We do not want to set up a two-tiered regime for the release of information, and if we were of a view that that was the right policy decision to take, we would not want to do it on the run by accepting this amendment; we would want to give consideration to the whole regime that might be put in place. I understand the member's argument, but the government is not of a view of accepting this amendment.

Hon MICHAEL MISCHIN: I would like to clarify a few things. Firstly, I understand the government's reluctance to introduce significant changes for accessing materials. If that is to be done, it is quite proper that it be done as part of a holistic appraisal of what sort of information as a matter of routine ought to be provided to prisoners as part of the parole regime. Having said that, I also see merit in Hon Alison Xamon's proposal for two reasons: firstly, a second tier, or second category, of prisoners is already being established under this legislation. We are looking at people who are a subset of those coming up for parole review whereby additional considerations are being tacked onto even whether their parole ought to be assessed—from my understanding of the comments over the last two days—let alone whether any recommendation can be made in respect of them. As

we have heard, the police have to address particular subjective criteria and the Prisoners Review Board is reliant on the police's assessment of all that. We have already set up a second tier, or category, of prisoners.

The second point insofar as disclosure is that it may be right that it is not routine to disclose these things; however, as has also been explained when we went some length through the process on Tuesday, although certain documentation and reports are not provided as a matter of course, they are FOI-able from the agencies that have generated them. That includes police reports, albeit that what is provided may be redacted to a greater or lesser degree if it contains sensitive information. The fact that there is a threshold question before a prisoner's assessment can be properly conducted to make a proper recommendation for release and that there is a police report upon which that is based, amongst other things, tends to argue that there ought to be some ability for the prisoner to know what is being said about him or her and their level of cooperation so that they can contradict that, especially if we are looking at things like timeliness. If the police say that there has not been timely cooperation, the prisoner may think that the closest they could have disclosed any of this was immediately after their appeal—nature and extent: "I cooperated to the best of my ability because my mental health isn't all the best and I've got memory loss and a variety of things, such as post-traumatic stress disorder, which has impeded my ability to recall things." All sorts of possibilities could be raised. Since a question of a recommendation for parole turns on this, there is a very good argument that there ought to be some further disclosure.

I would like to hear the minister's comments regarding the second tier of prisoners, or the second types of prisoners, and why what is being set up here is not already a second set of categories to eliminate that argument. Also, I would like to hear whether specific recommendations the police need to report on might not benefit from a prisoner having some input and putting an alternative point of view.

Hon SUE ELLERY: I want to make a couple of points. I am not sure that the amendment as it stands gives the member everything that she would want, because it specifically refers to the police report when a large part of our discussion has been that, in fact, the Prisoners Review Board may seek other information. In any event, the honourable member asks why we would not set up provisions for only this group of prisoners. I thought I had answered that when we canvassed these ideas in debate on clause 1. On the release of information, we do not want to have two tiers of arrangements put in place. If changes to the regime for releasing information were to be considered for any group or to be considered across the board, we would do that in a considered, methodical fashion. We are not prepared to set up a separate regime in the absence of considering whether we need to do something more broadly, or for other categories as well.

Hon MICHAEL MISCHIN: Once again, I understand that point of view, but the police report is rather different from much of the other material that may be provided to the Prisoners Review Board or to which the Prisoners Review Board might have access, because there is now a specific requirement for this subset of prisoners who are different from all the other prisoners. For this second category of prisoners, if you like, there is a requirement that a police report be specifically sought on specific matters, and that puts them apart from the general run of prisoners. That report will form much of the essential evidence and information that the Prisoners Review Board will require to come to its level of satisfaction, which is not the case with the other materials that are routinely gathered by the Prisoners Review Board for the purposes of exercising its function. The government has already set up a separate category of prisoners requiring some specific information from a specific source of a specifically subjective nature. Has any thought been given to providing that sort of material in some form or other to a prisoner so that they are able to say in advance of the Prisoners Review Board's consideration whether they ought to be considered as having crossed the threshold?

Hon SUE ELLERY: No; it has not been considered.

Hon MICHAEL MISCHIN: Is the government prepared to consider it now? It has had these proposed amendments since the beginning of the week. Why has consideration not been given to this?

Hon SUE ELLERY: We canvassed this in the debate on clause 1. I have already explained that the government is not of a view to accept the amendment because we do not want a second regime for the release of information. If we were to consider the release of information, it would be across the board. That is not under active consideration by the government. No further information is available to me about why, or whether it might be in the future, but I have been advised that it is not under active consideration.

Hon MICHAEL MISCHIN: In a nutshell: it has been raised by the Greens and has not been considered, but it has been rejected.

Hon SUE ELLERY: We considered it for the purpose of determining whether to accept or reject it, and we rejected it.

Hon MICHAEL MISCHIN: Did the government consider it for the purpose of weighing its merits and did it have any consultation with Hon Alison Xamon about whether there was a good argument for such an amendment?

Alternatively, was it done simply by reading the amendment and saying, "No, we don't want to do that because it sets up a second tier of consideration for some prisoners and we just don't want to do it"?

Hon Sue Ellery: You're asking me what conversations I had with Hon Alison Xamon.

Hon MICHAEL MISCHIN: Whether anyone on behalf of the government —

Hon Sue Ellery: Seriously.

Hon MICHAEL MISCHIN: What is unusual about that, minister? The government had an amendment before it —

Hon Sue Ellery: It is unusual that you would want to know that and that something would turn on that for you.

Hon MICHAEL MISCHIN: I am curious about what consideration has been given to this legislation in its metes and bounds. The minister has already declined to comment on how timeliness will work. I pointed out a potential problem. The minister seems to think that it is risible and maybe it is, but I pointed out something that Hon Alison Xamon put forward with some arguments about why it has merit. I am asking about the level of consideration given. Has there been any discussion to ask why the Greens want to do this? I see some merit in it.

No answer, came the stern reply. Okay. I think there is merit in what Hon Alison Xamon has proposed. I think that there is an arguable issue there. It is a shame that this government, with all the time and resources available to it, has not given it some more respectful consideration. If the government considers that there is no problem to be seen here and that no-one will be unfairly advantaged or disadvantaged as a result of it, for the sake of the expeditious disposal of the legislation to the extent that it will offer any comfort at all to people, the government will not support Hon Alison Xamon's amendment and I will take the government at its word.

Hon ALISON XAMON: I will make some further comments. One of the things in the report that particularly interested me was that the police said that the prisoner being able to have access to the report would be helpful. The actual quote is —

> Officers believed that providing the prisoner with a copy of the police report for the PRB would be beneficial.

I also note that the committee went on to state that providing the report to the prisoner "would be in the interests of justice overall".

I do not believe that there is any public interest in the contents of the report being kept confidential from the prisoner, bearing in mind that we are talking about an entirely new process that has created a precondition, and we have already started to prescribe the documentation required as part of that precondition. Any parts that should be kept confidential—if parts are indeed deemed to need to be kept confidential—can easily be redacted, like we do now with any normal freedom of information process. By its reference to the availability of the FOI process, the government seems to have already acknowledged this aspect.

I put on the record that I think it would be useful and in the interests of justice as a whole if, at some point, the government undertook to look at the availability of documentation for the Prisoners Review Board as a whole. It would also be interesting to see whether any issues with this new precondition emerge and perhaps whether there are any concerns about whether justice has been served. I am a big fan of having this sort of information made available in annual reports so that we are not only reporting but also monitoring in the first place. But I am not holding out much hope. I thought that I should make those few comments, noting that it is unlikely that the amendment will be passed. Nevertheless, it is really important that these concerns are placed on the record.

Amendment put and negatived.

The CHAIR: We now return to the substantive motion that clause 9, as amended, be agreed to. From looking at the notice paper, I think that the further amendment will lapse, of course, so I do not intend to invite that to be moved. However, if any member wishes to address the central question, they can now do so.

Hon MICHAEL MISCHIN: Picking up on the philosophy of the bill and some of the earlier discussions on this question of timeliness, although the minister was reticent about it, I think that the philosophy as expressed by the Attorney General—I think even in the second reading speech—was that timely cooperation is being sought here, rather than mentioning it as a factor to be taken into account in some vague fashion. Would the minister agree that the earlier cooperation is provided, the more in tune it is with the policy of the bill?

Hon SUE ELLERY: We have canvassed this issue already and the honourable member has asked in a variety of different ways whether there is a hierarchy or a degree of gradation within each of those criteria—there is not. Timeliness is a factor that the board needs to take into account.

Hon MICHAEL MISCHIN: Perhaps I have not made myself clear. In terms of timeliness, I am saying that the more timely the cooperation, the greater the credit to the prisoner, and the later the cooperation, the less the credit

to the prisoner. Is that correct? We are trying, are we not, to encourage cooperation as early as possible rather than as late as possible—correct?

Hon SUE ELLERY: We have canvassed this a number of times now. I am not sure that there is another way that I can put it. Timeliness is a factor that the board needs to take into account. We have quite deliberately not prescribed the extent to which it needs to do that. I am not sure that I can help the member in any other way.

Hon MICHAEL MISCHIN: Can I put it this way: would the government prefer a prisoner to cooperate sooner or later, or is it just there at large?

Hon Sue Ellery: I cannot add anything.

Hon MICHAEL MISCHIN: Does the government want prisoners to cooperate sooner or later? It is not hard.

Hon Sue Ellery: I cannot help the member. I have canvassed the issue of timeliness. I have lost count of the number of times I have addressed it.

Hon MICHAEL MISCHIN: I know, but the minister has not actually addressed the question I am asking.

Hon Sue Ellery: I know it is not to the honourable member's satisfaction, but he is just going to have to live with the fact that on this issue he will be unsatisfied.

Hon MICHAEL MISCHIN: So the government cannot say whether it would prefer early or late cooperation. Is that what the Leader of the House is trying to say, or is she not going to say anything at all? Would she prefer early cooperation or late cooperation?

Hon Sue Ellery: I cannot add anything to what I have already said. I know the member wants me to say something in particular, because I can follow his line of thinking, but on this issue I am not going to give the member what he wants me to give him.

Hon MICHAEL MISCHIN: I think I can say that the opposition would prefer early cooperation. To that objective, would the government be prepared to entertain an amendment that requires early cooperation?

Hon SUE ELLERY: The short answer to the member is no. We have deliberately structured the legislation before us to send a clear message that timeliness matters, but we will leave it to the board as to how it applies that test. I cannot say it another way.

Hon MICHAEL MISCHIN: I will develop that a little further. Does late cooperation not bar a prisoner from being released on parole under these provisions?

Hon Sue Ellery: I have nothing further to say.

Clause, as amended, put and passed.

Clause 10: Section 112 amended —

Hon ALISON XAMON: I move —

> Page 7, after line 19 — To insert —
>
> (ec) the timeliness of the provision of reports pursuant to section 66C, particularly in relation to prisoners transferred from interstate, during the previous financial year;

The purpose of this amendment should be fairly straightforward. It arises from the committee report as a finding, not a recommendation. The finding in the report 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 am mindful that no mechanism by which this information will be collected has been articulated or prescribed. My first question to the minister is: is there an intention to gather that information and how will that be gathered? The second question is: if that information is being gathered—I certainly hope it will be and that people will act upon that recommendation—will that process be transparent and what are the reporting mechanisms? This amendment seeks to simply install some transparency around the collection of that data, which is one reason for supporting this amendment.

Hon SUE ELLERY: Section 112 deals with the information that must be contained in the board's annual report to the Attorney General. The amendment before us would include the timeliness of the provision of reports pursuant to proposed section 66C, particularly for prisoners transferred from interstate during the previous financial year. Timeliness in this regard relates to the period from when a report was requested by the board to the date that the police provided their report. The police report will always be available to the board before it is in

a position to make a decision under these new provisions. In fact, the board might request the police report at different times. That might then end up with the board giving various periods of time for timely provision of the report; therefore, timeliness is not necessarily going to be a useful inclusion in the annual report because the police report might be requested at different times.

Section 17 of the Sentence Administration Act deals with reports from the chief executive officer of corrections regarding a prisoner serving a parole term. The report must be provided in a reasonable time prior to the board considering someone for their earliest eligibility date. There is also no corresponding requirement in section 112 that the board provides reports on the timeliness of the CEO's reports. The government has accepted the two recommendations made by the committee. The committee did not choose to make a recommendation in this respect, and for the reasons that I have just outlined, we will not accept the honourable member's amendment.

Hon ALISON XAMON: I have just a few further questions about this point. If the board does not receive information from the Commissioner of Police about the prisoner's cooperation as envisaged by the provisions in proposed section 66C, how does the government propose that the board make a decision whether the precondition is met because there is no process by which the prisoner can provide that information instead? Effectively, I am asking whether the board's consideration of the precondition and therefore parole would have to be delayed for this reason.

Hon SUE ELLERY: I had difficulty hearing the very last bit, but I think the honourable member asked me how the situation would be dealt with if a report was not provided.

Hon Alison Xamon: That's correct.

Hon SUE ELLERY: If it was not provided full stop, as opposed to not provided in a timely fashion—is that what the member asked?

Hon ALISON XAMON: If I can clarify, it is really either. What would the board do if either the report was not provided because, particularly in this instance, interstate police were tardy or a bit hopeless or whatever, or if the report was not supplied in a timely manner? They are potentially two different scenarios but what would happen in either of them?

Hon SUE ELLERY: The board has to have the report in order to make its decision. In the worst-case scenario, it would become an issue between the respective ministers to sort out to ensure that the board did have the report that it needed to take into account when making its decision.

Hon MICHAEL MISCHIN: I have listened with interest to Hon Alison Xamon's reasons for advancing this proposed amendment and to the government's response. We can see, again, some merit in what is being proposed—albeit that I think it needs to be refined a little more. In the circumstances, we will leave it to the government and its assurance that this amendment is unnecessary, so we do not agree to the amendment proposed by the member.

Hon ALISON XAMON: I would like to clarify one more point. I want to be very clear because, certainly, the minister has identified that if the information is not provided, that creates a problem between the respective ministers. I want to be clear that if for any reason the Commissioner of Police does not or cannot provide the necessary information about the precondition, does that effectively mean the prisoner involved will never be able to be considered for parole?

Hon SUE ELLERY: I am told that the answer is no. If it is impossible, the board will consider and will seek information from other bodies, but it will not have the effect that the member has outlined.

Amendment put and negatived.

Clause put and passed.

Title put and passed.

Report

Bill reported, with amendments, and, by leave, the report adopted.

As to Third Reading — Standing Orders Suspension — Motion

On motion without notice by **Hon Sue Ellery (Leader of the House)**, resolved with an absolute majority —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

Third Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.26 pm]: I move —

That the bill be now read a third time.

HON NICK GOIRAN (South Metropolitan) [3.27 pm]: The Sentence Administration Amendment Bill 2017 that is before the house at the moment is, of course, different from the bill that was second read in this place. I think it is very important for members to be aware that there are three reasons that this amendment to the legislation is not yet the law. The first reason is that the government, headed by Hon Sue Ellery, the Leader of the Government in this place, made the conscious decision in the last sitting week of 2017 to bury this bill.

Hon Alannah MacTiernan: This one?

Hon NICK GOIRAN: Yes, Hon Alannah MacTiernan, the bill that we are on. To assist the minister, it is the Sentence Administration Amendment Bill 2017.

Members opposite and their cabinet colleagues, led by their illustrious leader Hon Sue Ellery, made the conscious decision in 2017 to bury this bill. Indeed, in the words of their friend the Attorney General, it was to give comfort to murderers. Instead of dealing with this bill as its top priority in the last sitting week of 2017, the government, headed by Hon Sue Ellery in this place, instead made the top priority the passing of legislation to freeze the salaries of MPs that were already frozen by the Salaries and Allowances Tribunal in its latest determination. That was this government's top priority. This government, led in this place by Hon Sue Ellery, made the conscious decision at the end of 2017 to bury this bill. It could have been brought on in the last week of last year but government members decided not to; it preferred to give comfort to murderers, according to their friend the Attorney General. That is what the government did last year. That is the first reason that this bill is not yet law—the friends of murderers.

The second reason is the government's complete inability to understand the Victorian legislation. We know that the government read the Victorian legislation; the Leader of the House told us it did. It read the Victorian legislation, but between all its cabinet ministers and the resources of government, it was completely unable to understand it. It read it, it looked at it, it did not understand it, and it incompetently left manslaughter out of the Sentence Administration Amendment Bill 2017. Again, to borrow the language of the Attorney General of this state, that would have given comfort to those convicted of manslaughter. That is what the administration led by Premier Mark McGowan did, and is the second reason why this legislation is not yet law. In fact, it is this government's lazy and incompetent handling of this legislation that has now seen the Leader of the House move a motion to suspend standing orders—"Blow the standing orders out of the way; don't worry about them. We're going to make sure this goes down to the Legislative Assembly." Why does it need to go down there? Why did the Leader of the House need to suspend standing orders? It was because this bill is different from the one that was second read. Why was that? It was because the government moved amendments to its own legislation. The government had to request changes to its own incompetent legislation. These were the government's amendments. It decided to move them, and now the legislation has to go back to the other place.

Of course, it will go back to the other place if this bill is read a third time, which I support, and I recommend all members support. This bill will go back to the other place, which was sitting last month. This could have been dealt with last month, but no, it was not, because the government was too busy shielding the Minister for Education and Training from any scrutiny in this place. It was still on Christmas vacation and preparing for the big festival at the Perth Convention and Exhibition Centre. That was the government's priority last month—to prepare for the big festival at the Convention Centre instead of making sure that the house sat to deal with this legislation as its top priority.

Hon Sue Ellery: You agreed to the sitting dates months and months ago.

Hon NICK GOIRAN: The government is the one that sets and prepares them. Is it our job to run the chamber? That is what the government gets paid the big bucks for; they might be frozen, but they are the government's big bucks.

Several members interjected.

The ACTING PRESIDENT: Members!

Hon NICK GOIRAN: I know it is uncomfortable for the Leader of the House. The handling of this legislation by her and her colleague in the other place has been inept.

Hon Alannah MacTiernan: It wasn't. We brought it in at the first resumption of sitting.

Hon NICK GOIRAN: It is truly unbelievable that the Minister for Regional Development—who is in the place and not away on urgent parliamentary business—has two ears and can hear and still does not understand that the government could have brought this legislation on in the final sitting week of last year. It decided it did not want to do that. Instead, its priority was to freeze the remuneration of members of Parliament. I know that is not a big deal for the minister, because she is on that luxurious pension scheme, the big pension scheme, busy double dipping.

Several members interjected.

The ACTING PRESIDENT (Hon Dr Steve Thomas): Hon Nick Goiran! Minister! We will not have conversations at that level across the chamber, please.

Hon NICK GOIRAN: The reason this legislation was not dealt with last year was because Hon Alannah MacTiernan got together with her mate Hon Sue Ellery and said, "No, let's bury this bill. Instead we're going to make sure that the freezing of salaries that are already frozen will be our top priority." That is what happened, and if Hon Alannah MacTiernan is not aware of that, I encourage her to go back and read *Hansard* from December last year.

The third reason this important piece of legislation is not yet law is because the government is not yet even ready to proclaim it.

Hon Alannah MacTiernan: You're time wasting. That's what you're doing, and that's what you did last year.

Hon NICK GOIRAN: Let me get this straight: the supposedly intelligent interjection by the Minister for Regional Development is that we are time wasting, when in actual fact what has happened here is that we have a government that could not read Victorian legislation and could not understand it, so it forgot about the manslaughter aspect. That is what has, in the end, caused it to have to be amended by the government, thanks to the motion moved by Hon Aaron Stonehouse, yet we are the ones time wasting! If the minister and her mates had actually read the Victorian legislation and understood it and made sure that the legislation we had before us included the provision for manslaughter, there would not have been a need for all this. The fault lies squarely at the government's feet. In fact, the minister is a very experienced minister. Does the minister not have some legal qualifications? I have something in the back of my mind that she might have some initials after her name, possibly LLB?

Hon Alannah MacTiernan: Why is that relevant?

Hon NICK GOIRAN: Because I would have expected the minister to show some leadership with her colleagues, pick up the Victorian legislation and get them to understand it, and say to them, "Hey, see this word 'manslaughter'? That's going to be important. We're going to be very embarrassed next year." But the minister did not do that. What was she doing? I do not know what she was doing. She is very comfortable with her pension scheme and so forth; everyone else's is frozen. That was her big priority.

Hon Alannah MacTiernan: You obviously don't know much about how the system works, do you?

Hon NICK GOIRAN: I do not know about the pension scheme, sorry. I defer to the minister's greater experience with all things to do with the entitlements of members of Parliament.

Hon Alannah MacTiernan: So you would know that I don't get the pension while I'm in Parliament, right? You would know that.

Hon NICK GOIRAN: I agree that the minister is the expert when it comes to those things.

The ACTING PRESIDENT: Honourable members, I think we have diverged a fair degree from the bill before the house. This is a third reading contribution and should be directed to highlighting and summing up of the bill. I do not want to hear further interjections across the floor. If Hon Nick Goiran would address the Chair, we might be able to progress in a more seemly matter.

Hon NICK GOIRAN: As I have mentioned previously, this bill is different from the one that was second read in this place, for the reason that the Leader of the House decided that she wanted to move amendments to her incompetent bill. The government finally realised that it would be inappropriate for it to continue to give comfort to those convicted of manslaughter, it has finally been exposed for that, and now it has had to move amendments. That is what has delayed the passage of this bill, the only thing that has delayed its passage.

Hon Alannah MacTiernan might get all upset about that and make these wild allegations that somehow we are the ones wasting time, which is absolutely outrageous, but guess what? The bill still has to go back to the other place and be dealt with there. In addition, the government is still not ready to proclaim the legislation; we found that out earlier this week. For all the huff and puff and blow-your-house-down style of the WA Labor Party, it is not even ready. It could have brought this on in December, but it did not. It decided to bring it on now, in March, which gave it another four months to get itself ready and be ready to proclaim it—and that is still not the case. Let us be under no doubt whatsoever: the only reason this legislation is not yet law is because of the lazy incompetence of this government—a government that decided that it was far more pressing to push forward with legislation to freeze salaries that were already frozen. That was the government's big priority. Boy, it must have felt great going into Christmas last year knowing that it had achieved that, meanwhile continuing to give comfort to murderers and those convicted of manslaughter. It must have felt fantastic. If it did not feel fantastic about that at Christmas time, it certainly would have when it was living it up big-time at the Perth Convention Centre.

This episode is a disgrace to this government, and I hope it is the first and last time we see legislation dealt with in this shambolic fashion. Secondly, I hope that members in this place, particularly Liberal and National members, never again have to put up with nonsense from the Attorney General and the outrageous remarks he made about me and my colleagues.

The ACTING PRESIDENT (Hon Dr Steve Thomas): I am just going to catch up on this, members; I apologise. I have received from the Chair of Committees a certificate in writing that is a true copy of the bill as agreed to in the Committee of the Whole House and reported.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [3.40 pm]: I will not take up much time on this. Firstly, I will say what this bill is not. It is not a no body, no parole bill; it is a no cooperation, no parole bill. It has not been delayed by the Liberal Party, either with or without the complicity of the National Party. It is a bill that was quite properly the subject of committee scrutiny; something initiated at the motion of Hon Aaron Stonehouse because, as he explained at the time, there were elements of it that he did not fully understand even following any briefing given by the government, that he was not legally trained and that he would benefit from having a report of this house. That is quite proper, whatever the Attorney General or his colleagues in the other place might think. They seem to think that we should be rubberstamping any piece of nonsense they manage to barge through with their numbers in the Legislative Assembly.

This is not a perfect bill, or at least it was not a perfect bill. I do not think it is a perfect bill now, but it is certainly a vast improvement on the one brought into this chamber last year. Two elements of it have been improved. One is the addition of the homicide offence of manslaughter—something that had not been part of the original legislation, although other homicide-related offences with finite terms potentially attached to them had been. The other element that needed to be looked at, and was and has now been dealt with in some fashion, is that of the mental capacity of an offender being taken into consideration—another element that had not been considered in the original legislation or by the geniuses on the government benches down in the other place who seemed to think that the bill was in a fit state to come here and simply receive our imprimatur.

So the bill was not perfect, and neither was the bill that the Attorney General, when he was a shadow of his current self, put forward in the Assembly as a private member's bill in 2016, and which he castigated the government for not giving outright support to. That was a very, very, very different bill from what we see now—a vastly inadequate one. A first-year law student could have told the Attorney General what was wrong with that bill, yet he put it forward and demanded that it be passed in that form. Did he put forward that bill this time? No. Having got sensible advice on it—having actually turned his attention to it, rather than looking for a headline—he put forward this legislation; a significant improvement and vastly better than the half-baked nonsense he served up in the other place. However much he might whine about delays, it is certainly the case that he was not ready to introduce this bill in the first few weeks of his government last year. It took some time to craft, was rushed through the other place, and then came here and received proper, careful, mature and reasoned consideration by members of a bipartisan standing committee. So none of the legislation put forward by the government or Attorney General when he was shadow was perfect, or indeed met the necessary requirements.

What else will this bill not do? What is it not? It will not guarantee cooperation on the part of an offender if a body has not been recovered. It will not even guarantee early cooperation on the part of a prisoner. Indeed, what was particularly disappointing was that the minister was not even prepared to say that the government would prefer early rather than late cooperation. I find that astonishing. The bill does not ensure that if there is no body, people will die in jail, or that they will never be released. For a start, in the case of finite terms, the maximum that parole can be delayed is two years. In any case, as has been revealed, although the timeliness of cooperation is a factor that the Prisoners Review Board will take into account with a whole raft of other factors, there is no guidance as to whether that is a positive or negative consideration. One would assume a timely disclosure and cooperation will be positive, but the bill does not say so and the government indicated a little while ago that it is not even prepared to entertain an amendment geared to providing credit for early cooperation or liability for late or non-cooperation.

What this bill does not do is ensure that someone who waits until the last minute—in 20 years' time potentially—will not be released on parole, and nor at any other statutory review period. After 20 years, for example, if that is the minimum, there are still statutory review periods at intervals into the future. What was revealed is that a prisoner might choose to not disclose at the first time or the second time or the third review, but when he finally does, the question of timeliness will be weighed up but is no bar to being released on parole. This bill will not live up to the expectations raised by the government, the Leader of the House and the Attorney General. Expectations have been raised with secondary victims who have relied on the slogan of "no body, no parole" as being some panacea for their grief; some solution. What is being proposed is hedged around with all sorts of technical rules, thresholds and considerations, but it is really, in the end, no better than what is currently in place. It reduces some

of the flexibility around a regime that has operated satisfactorily in the past and has never seen a murderer released who has not cooperated with the authorities.

What other things is this bill not? There is no suggestion of responsibility on the part of the government for its late passage. This could have been, as Hon Nick Goiran pointed out, one of the urgent bills that the government and this side of the chamber agreed ought to be passed before Parliament rose at the end of last year. There were about half a dozen bills that the government thought were sufficiently important to the community—sufficiently in the public interest—that ought to be prioritised and passed. Hon Alannah MacTiernan might rave away about this, but there was no impediment to those being passed. They were passed in accordance with the agreement. Every piece of legislation that this government wanted passed was passed, and passed no later than the period of time the government was prepared to ask for it before we rose. This could have been one of them; the amendments were not that difficult. The report was there in November. The Leader of the House could have come to the Leader of the Opposition and the other parties and said, "With this half a dozen really important bills that we would like passed, can we stick in the no body, no parole one as well? Can you guarantee us that after due debate and consideration, it will be passed before we rise because people are depending on it?" That could have been done but it was not; other legislation took priority. The failure to pass the Sentence Administration Amendment Bill before 15 March 2018 falls entirely on the government. It could have been passed even earlier than that had we recommenced sitting in February 2018. It is not the opposition that sets the legislative agenda. If the government wanted to sit for two days of the year, so be it. It would not get much legislation through, but it should not complain to us that it does not have enough time. Another thing this bill is not is a signal example of the government being able to manage its legislative agenda properly—quite the contrary.

The other thing this bill will not do is guarantee a similar regime to what is currently in place and with the safety nets hedged around it. For example, it will not mean that the Supreme Court will not be able to examine by way of judicial review of administrative decisions various elements of the parole system relating to these prisoners that would not otherwise have been the subject of scrutiny. That leads to another thing that this bill will not do. It will not guarantee any greater comfort, greater certainty or greater amelioration of pain or expectation on the part of secondary victims. In fact, it will create potential problems that down the track might cause greater anguish to secondary victims than what was in place beforehand. I think I have already mentioned that it is not a bill under which offenders who do not cooperate will stay in jail indefinitely. Manslaughter is an example. Accessory after the fact and a variety of other homicide-related offences might only delay, but not prevent, the release of prisoners. So it will not involve the uncooperative being in jail indefinitely.

This bill will not achieve the expectations that have been trumpeted for it politically by the Attorney General or this government. This bill reflects a few things; one of them is the political element. It is one of the only pieces of so-called law and order legislation that are part of this government's platform. It will pick a very niche group of offenders and do something in respect of them that will receive the support of secondary victims in the community because it will be hard on those offenders, and so be it. But will it make the slightest difference to community concerns about the level of crime in the community? I think not. Fortunately, the vast majority of people in the community do not have to worry about whether one of their loved ones will be killed and their body recovered. Most of them worry about burglaries, assaults, dangerous driving and a variety of other things. Will this bill be a great achievement in dropping the crime rate in this community? Will it drop drug use in this community? No. Is this bill necessary? The opposition contends that it is not. Mechanisms have been in place that have worked flexibly and effectively in this jurisdiction for as long as anyone can remember. Will it materially change the processes in place or the effective means of dealing with prisoners who do not disclose information about the remains of a deceased? No, it will not. Will it potentially give rise to problems into the future, whether it be by way of technicalities that will be tested in courts or argued about by offenders and their legal representatives, the subject of examination by the courts or other problems? Potentially, yes.

The government has put this bill forward; the opposition has indicated its support for it. It has indicated its support for the philosophy behind it and for the legislation. We think there are potential problems but they will be exposed in due course and the government will have to take responsibility for them.

I hesitate to think that anyone who is hoping to benefit from this legislation will wake up in the morning after it receives royal assent at some stage in the future and all of it is proclaimed, perhaps weeks or months after it gets royal assent, and get much comfort from it. They will not, I suspect, wake up in the morning after this bill has been proclaimed and think, "Well, that's fixed the problem; I'm now comforted that there's no body, no parole legislation in place", and be sitting around waiting at the phone to find out whether their deceased loved one has been located. I doubt that will happen. I hope some positive good will come from this, rather than simply the headlines, but we will wait and see. I doubt it. Otherwise, I bid the bill farewell and good luck, because I do not think it will do much, but it will allow the Attorney General to strut around and say, "Look what I've done."

HON AARON STONEHOUSE (South Metropolitan) [3.56 pm]: It is indeed a very different Sentence Administration Amendment Bill that we have before us now from the one that was first introduced. I would like to quickly quote something brought to my attention by Hon Nick Goiran from *Hansard* of 16 August 2017 during question time. The Attorney General, Hon John Quigley, said, and I quote —

> 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.

What an asinine, foolish, flippant and inane comment. I would expect a comment like that from a child, not from the Attorney General of Western Australia. To attribute motive in such a way, to imply that legislators who have concerns about the efficacy of the so-called no body, no parole bill somehow not only do not care about the secondary victims of murder, but are in there to bat for the murderers themselves, is a very disgusting, very lazy argument for the Attorney General to make. Maybe Hon John Quigley was a little confused. It was not the Liberals or the Nationals that referred the bill to the Standing Committee on Legislation; it was me, so I assume that those comments were intended for me and not the Liberals or the Nationals, despite the theatre that goes on in the other place. Given that, I look forward to receiving the Attorney General's apology. I am sure it is in the mail!

I referred this bill to the legislation committee because I had serious concerns about unintended consequences, and, as I mentioned earlier, other members of this place had concerns about its efficacy. Thank God I did. What a feeling to be vindicated in such a way. The system works; the Legislative Council is operating as a house of review, carrying out its lawful role. When there are concerns about a bill before it, it is willing to use the committee process to ensure that no rock is left unturned. The report that the Standing Committee on Legislation put forward goes some way in assuaging my concerns mostly, but, as has been pointed out by Hon Michael Mischin, this bill was not perfect and I dare say it is still not perfect. Both Victoria and Queensland's no body, no parole laws include manslaughter, so I find it very, very confusing that no-one in the Attorney General's office took the effort to look into the Victorian or Queensland legislation to make sure that those provisions were included, and that it took this place to send the bill to a committee before that was discovered and recommendations were made. Despite the abuse we received in the other place during question time, we carried out our lawful duty. We have acted responsibly and we have ensured that included in the bill is not only manslaughter but also consideration of the mental capacity of a prisoner to answer questions and to cooperate with police. Despite that one amendment not being included, we also made other recommendations about reports being made available to prisoners.

However, I remain unconvinced that we need those provisions. The committee report states that the provisions in the bill are desirable, but in my view it does not go far enough in proving that they are desirable. The arguments about the bill acting as an incentive are rather vague. Not enough evidence has been provided to convince me of that. Indeed, it seems that after hundreds and hundreds of years of having parole under our common law–based Criminal Code, parole has functioned seemingly well enough—I am sure we can find exceptions—without the need for no body, no parole provisions. Why is it that there has been a requirement for this in only the last couple of years? In fact, other jurisdictions that have no body, no parole laws only got them in 2016, according to the committee's report. The UK is considering them but has not implemented them. Why is it that the jurisdictions that have parole have not seen the need to include a no body, no parole provision until now? The provisions have not been in place long enough to know whether they are efficient or whether they achieve their stated goal. Again, I am very sceptical. In fact, towards the end of paragraph 8.1, in chapter 8 of the committee's report, it states —

> It will not guarantee a prisoner's cooperation—there is nothing that the Parliament could do to ensure that. Nor will it necessarily lead to the discovery of the remains of any victim.

I am still not convinced that we need these provisions and I will not be supporting the bill in its current form.

Question put and passed.

Bill read a third time and returned to the Assembly with amendments.