SENTENCE ADMINISTRATION AMENDMENT (MULTIPLE MURDERERS) BILL 2018

Second Reading

Resumed from 7 November.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [1.15 pm]: I rise as the Liberal opposition spokesperson to indicate our support for the Sentence Administration Amendment (Multiple Murderers) Bill. Having said that, I think it is important that I raise a number of issues about what is proposed in the legislation and suggest some improvements in light of the public policy that it purports to give effect to.

I will start with what the bill proposes to do with reference to the second reading speech, before moving on to compare it with current practice, the public policy considerations that underlie the current practice and the implications of this bill, if passed, upon matters of public interest more generally. I will also outline some of the potential problems with the bill—what it will achieve and what it will not achieve.

What does the bill propose to do? The second reading speech delivered here and in the other place announced that these are —

> … very important reforms to the Sentence Administration Act 2003 so that an Attorney General … may direct that mass murderers and serial killers must not be considered for parole or a resocialisation program.

That is true, to a degree. As we will find, the legislation does not necessarily say that they must not be considered for parole, but that they must not be considered for parole for a short period of three years. It is a long period for a prisoner, I suspect, but a short period for a secondary victim of that person's crimes—I will come to that in a moment. The second reading speech points out that from time to time Attorneys General have made announcements that certain prisoners, who these Attorneys General would be responsible for overseeing by way of their office, when the Prisoners Review Board prepared reports on them, would never be released. I will say a little bit more about that, too, and the risks that those sorts of announcements may have created. They may have been politically palatable announcements and grabbed a headline, but there were potential legal consequences—as has recently been acknowledged by the current Attorney General, who himself is not reticent in making an announcement from time to time when it has suited his purpose, certain people for whom he would have the responsibility of making a decision would never be released from custody. The second reading speech goes on to say —

> The proposed reforms are intended to go some way to address the trauma and emotional toll experienced by the family and friends of murder victims—also referred to as "secondary victims"—and others impacted by the crimes, including surviving victims of serial killers and mass murderers. The parole planning process can be a source of significant stress.

I am not sure what that means because there is not a parole planning process; a process is set out under the Sentence Administration Act. Is the minister referring to the process required under the act rather than the planning process? The speech continues —

> This is due to the anticipation that these offenders may return to the community, the re-traumatisation from being periodically asked to share one's views about the potential release of the offender, and the heightened and often unwanted media and public attention associated with these cases. By allowing an Attorney General to direct that a mass murderer or serial killer must not be considered for parole or a resocialisation program for a period of up to six years, it is hoped that this bill will moderate one driver of stress for secondary victims and survivors.

I will make a couple of points at this stage. The first is that that process was established by statute, with a view to doing what it had been understood victims wanted—that is, have some say in the parole process. In fact, over the last term of our government, a variety of amendments were made in not only the dangerous sexual offenders legislation, but also other spheres to give greater recognition to the interest of victims in the fate of prisoners, and to give victims a greater role by providing them with a voice—a say. It would not be a determining say; nevertheless, it would be an opportunity in a formal sense for the views of victims to be listened to and have weight placed upon them. However, the paradox is that when we provide victims with a voice, some people will consider that an imposition and additional trauma.

There is, of course, no compulsion for victims to respond. Under the processes of the Prisoners Review Board, it is open for secondary victims who do not wish to be reminded of the crime that had been committed against a loved one to say, "I do not want to be contacted. These are my views for the future." Some people do that, and others do not. Some secondary victims—not all, but undoubtedly a significant proportion—are reminded periodically of the crime that has been committed against a family member or friend. That is a feature of any parole system under which a prisoner has not been sentenced by a court on the basis of "never to be released". One of the great

conundrums of giving the court discretion to determine not only the maximum penalty according to law, but also the minimum period of non-parole, is that there will come a time when the progress of the prisoner will be reported upon and measured. The independent board established for that purpose will gather the relevant material and make a recommendation to the relevant minister of the day, whether that be the Attorney General or the Minister for Justice, about whether the prisoner ought to be released on parole; and, if so, under what conditions.

The dilemma that is faced by this government is balancing that system against the interests of secondary victims. I should add that unlike other jurisdictions, in this state the independent body does not make the final decision but leaves the Attorney General of the day to take responsibility for that decision. If the sentence imposed by the court does not provide for custody for the term of the person's natural life, it is almost inevitable that there will be a mechanism for review and an order for parole and that that will place additional stress on secondary victims. In some cases, commonsense would tell us that a bit of faith in the system would mean that those people would never be released, or certainly not released without at least an approach to the secondary victims with a view to explaining to them the basis for that decision.

That is one of the more traumatic tasks and certainly one of the more anxious periods for an Attorney General. It certainly was for me. I used to read the reports from the Prisoners Review Board with care, and sometimes I would seek additional information from the board to assist me in my decision about whether to accept its recommendation. I am not talking here about mass murderers and the like; I am talking generally about people who are serving a term of life imprisonment of one form or another, or indefinite imprisonment. I was always conscious that my acceptance of a recommendation could cause hurt, and perhaps dismay and distress, to secondary victims. I was always conscious that I was occupying an executive position and was the last representative of government and that I needed to have regard to the law and the principles of fairness and make rational decisions that I could justify. I could not simply say, "This person is a monster." I needed to rationalise the decision-making process. I was also conscious that I was working second-hand on material that had been provided by an independent body charged with the responsibility of marshalling the necessary evidence and making those recommendations, and I was, therefore, the last resort. If what was being done by the board was unreasonable, I was the only one who could pick it up, unless a prisoner chose to challenge the final decision. It became apparent as time went on that if I recommended against a recommendation of the Prisoners Review Board, I had to provide to the Governor rational reasons upon which the Governor could place some reliance. It was not a process of simply labelling people as monsters and ticking it off and sending it away. Some might think that is all that is necessary, but others do not regard it as simply a mechanical process but take their responsibilities to heart. I certainly felt that I did that.

We also know that some prisoners are unlikely ever to be released, unless their circumstances have changed dramatically, and that, based on previous reports, they are unlikely to do so. I think that most of the people we are dealing with here would fall into that category. In that sense, even though secondary victims face the anxiety every three years of wondering what the decision of the Attorney General of the day will be in a particular case, the result is pretty predictable. I would be surprised if a ruthless killer of a number of victims, such as Birnie, would ever be released by anyone. Another example is the butchery that was performed by Mitchell in Greenough. That case not only deeply upset the prosecutor and the judge who dealt with it, but also still resonates as one of the worst examples of killing in Western Australian history. Based on previous experience, it is highly unlikely that he would ever be released, yet those are the cases that are being focused on in this legislation. I will come to the implications of that in a moment. The second reading speech goes on to say that under this proposed reform —

> The minister is empowered to make a direction following the receipt of a designated prisoner's relevant report, which is defined to be the first statutory report for parole consideration. This has been necessary to avoid any potential interference with the minimum non-parole period set by a sentencing court and therefore minimises the risk of constitutional challenge to the making of a direction.

That, in itself, is a concern—that there has to be a limitation on the rhetoric that has been announced as the justification and rationalisation for this legislation, as there is a constitutional risk involved that needs to be carefully worked around. That is true; sometimes legislation has to be crafted to ensure that it does not infringe on matters that might render the legislation invalid, either because of the operation of the commonwealth Constitution or otherwise. But it is concerning that there are other implications. This legislation is narrowly focused on prisoners who, for the most part, have no expectation of ever being released and so will not challenge it, leaving aside other cases which one might think were equally notorious, for other reasons, but which do not fall within the scope of this discretion that the Attorney General is getting so that he can take something off his desk for up to six years and leave it to someone else to worry about. The second reading speech goes on to say —

> Ministerial directions are not compulsory, nor are they automated.

Whatever that might mean! I was not aware that we had got to the point of replacing the Attorney General with a clock or a machine, but perhaps that is just funky new language. It continues —

> The minister has absolute discretion about whether to make a direction about a designated prisoner.

That, too, is important in light of the limitations that are being placed on the operation of this act and on those who will receive a benefit from it. The second reading speech then goes into the mechanics of it. I do not think those need too much explanation, because they have become apparent. But it then goes on to say —

> The amendments introduced by this bill are targeted at the very worst mass murderers and serial killers …

So not all mass murderers or serial killers, apparently—just the very worst. In fact, it does not discriminate in that way at all. What it does focus on is two killings on different days or three killings at any time. Apparently, killing two people on the one day is not good enough, but before and after midnight is of significance—that, apparently, is the definition of the very worst mass murderers and serial killers. The second reading speech goes on to say —

> In these cases, there is no entitlement to parole or any early release —

That is absolutely true and the way the law stands at the moment —

> and the prisoner is liable to remain in custody for … their natural life.

Yes, as they currently are. It continues —

> The amendments introduced by this bill will elevate the interests of secondary victims, survivors and the community above that of offenders. Allowing for the suspension of parole consideration for mass murderers and serial killers is primarily —

So, not exclusively —

> intended to address the re-traumatisation experienced by the secondary victims and survivors of these notorious crimes.

I would be interested to know from the minister what the other considerations are. If these are just the primary ones, what were the others? That gives rise to several public policy considerations, which I will come to shortly.

There has been a great deal of publicity around this bill. It is said that it is the fulfilment of an election commitment, but I note that, at least from my research, the manifesto on law and order issued by the then McGowan opposition prior to the election made no mention of this legislation. The earliest mention I could find was on 16 February 2017, when it was said that Labor had pledged to reform WA's parole laws to ensure that serial killers or mass murderers would not be considered for parole. It mentions a campaign by one Kate Moir, the lady who was lucky enough to escape the clutches of the Birnies, and her campaign to change the law so that Catherine Birnie would never be released. The then shadow Attorney General, John Quigley, told *The West Australian* —

> … if elected, a Labor government would amend existing laws that allowed even the worst killers to be considered for release every three years.

I contend that it will still do that even after the amendments—it will still allow the worst killers to be released after three years because of the narrow focus of this bill. The article continues —

> Under the changes, an attorney-general could tell the Prisoners Review Board not to consider parole in cases of serial killing. That would be defined as two or more murders on different days or, in the case of mass killing, two or more murders on the same day.

This might be the other consideration—the one that is said to be not a primary one but a significant one. The article goes on to say —

> The parole consideration ban would last for the term of that government.

Now that, of course, is what would happen. The current Attorney General, if he has this power, would be able to say, "Don't even make a report to me; I'm not even interested in this particular prisoner. Put it off for three years." What happens in three years' time? The then Attorney General will have to either deal with it or make a similar direction. The idea, one would think, is that as well as relieving the trauma on secondary victims and the anxiety they experience and the level of uncertainty that some would experience, it will get something off his desk for three years so that there is no political consideration of whether he is going to release the prisoner before he actually receives a report. What he will do is say, "I don't even want a report. I don't want to know about it. I have made up my mind based on the first report three years ago." That is a precondition to any of these directions. Or the previous Attorney General may have made up his or her mind three years before, on their first eligibility date. The Attorney General will say, "The public don't like this. I don't want to have the political problem of making a rational decision. I don't want a problem of having to think about it. What I want to do is get it off my desk for three years and give it to someone else." To me, that seems to be an abrogation of responsibility. If the intention of this legislation is really to relieve trauma for certain victims—I say "certain", because not all of them fall within the scope of what is proposed—the government should do it. If it is going to interfere with the sentencing of the court, it should do it, but it should not use a stratagem that appears to require some careful framing and very precise

definition to avoid being set aside as unconstitutional. It may very well be that if the Attorney General does take a broader look at this and include others, he might have the luxury of not having to do very much at all during his term as Attorney General—he can just give all the decisions to someone else. Nevertheless, the ban would last for that term of government.

During debate in the other place, the Attorney General, as he often does—he tends to attack reputation and use personal abuse and the like—showed a lot of derision over an explanation I had given at the time that this was first floated. I had said that I did not regard the legislation as being in the public interest, and he considered that to be an absurdity. In a moment I will explain how the public interest might be affected if the Sentence Administration Amendment (Multiple Murderers) Bill 2018 operates the way the government plans. There was further discussion and public announcements, and on 24 February 2017 the now Attorney General, then in opposition, said —

> WA Labor is pleased to take a new policy to this election. Labor's policy is to amend the Sentencing Administration Act which governs parole and provide that an AG during their time of service can issue a notice to the Prisoners Review Board ordering them not to conduct a parole hearing for a mass murderer or a serial killer.
>
> As there is no intention of ever releasing these people to parole—because for these prisoners life should mean life—as a Labor AG I would have no hesitation in directing the Prisoners Review Board not to consider Catherine Birnie in 2019 and thereby save Kate Moir from the trauma of having to relive the whole experience.

He went on to say —

> For mass murderers, those who murder two or more people on the same day or serial killers, —

This legislation does not cover that. Someone who murders two people on the same day is not one of the "worst and most notorious killers" in the state. It has to be two on different days—before and after midnight—so he is wrong there, for a start, or he has not encapsulated that commitment into the legislation. The then shadow Attorney General further said —

> There should be a hard and fast rule LIFE MEANS LIFE and under a WA Labor Government that will be the rule.

Well, life does mean life, but these people were sentenced by the courts of the day under then then parole regime. The courts never made recommendations in these cases of "never to be released" or "life means life" or any of the other rhetoric; nevertheless, he announced his then intention. That is fine. I will shortly get to the implications of that.

Much the same was said on 5 June 2017, after the election. The article reads —

> John Quigley has declared serial killer Catherine Birnie has no hope of ever being considered for parole while he is Attorney-General.
>
> "I won't be giving her parole. I know that I won't be considering Catherine Birnie for parole," the new Attorney-General said. "I can't imagine the circumstances that I would grant Catherine Birnie parole."
>
> The McGowan Government promised during the election campaign that it would introduce laws to stop serial killers and mass murderers having the right to be considered for parole every three years.
>
> It came after a campaign waged by the only surviving victim of Catherine and David Birnie's evil killing spree, who pleaded for parole laws to be toughened because the existing system forced victims to regularly relive their trauma.
>
> …
>
> Under proposed changes, the attorney-general of the day will be able to order the Prisoners Review Board not to consider parole for the worst category of killers during their tenure.
>
> "An attorney-general will be able to say I won't give (that person) parole so don't even consider it while I'm sitting in the chair," Mr Quigley said, …

The focus is again very narrow. It is not for murderers generally, and it is not a qualitative examination of the circumstances in which the killing happened; it is a numbers game. If there are enough victims, the murderer falls within the category of the worst of the worst; for others, on the other hand, if they happen to torture and murder a child, kill someone in protracted circumstances of family violence or kill two people on the same day, apparently the trauma and anxiety of the secondary victims of those crimes every three years is of no account. I would like to hear from the government why that is so.

That was one of the significant policy complications and public interest issues that the Attorney General wanted to ignore or deride in the other place. But he is setting up two classes of victims. The answer, I suspect, will be as

reasoned and rational as this: "Why are you setting up two classes of victims?", "Well, because one class of victim was an election commitment, and the other was not." I shall seek to address that in due course. I hope the government can explain why the trauma and anxiety experienced every three years by the parents, the siblings and extended family of the victim of Dante Arthurs deserves less consideration by this government than does that experienced by Catherine Birnie's secondary victims, Mitchell's secondary victims or Mason's secondary victims, or all the other secondary victims who fall within this legislation. "One was an election commitment and one wasn't" is not a rational basis for public policy.

That article continues —

> But he told *The Sunday Times* he was in no rush to introduce the legislation as the first prisoner on his list was Birnie, who wasn't due for parole consideration again until 2019.
>
> Birnie's parole bid was rejected for the fourth time last year.

That would have been 2016.

Apparently there is now a rush. For some reason this legislation has to get through before we rise. I suspect the reason is this: the Attorney General, having made some very large and loud announcements about how he will and will not release certain prisoners ever, notwithstanding what the report might say, and in advance of any report from the Prisoners Review Board, has realised that there could be a little bit of a fix for him if someone were to challenge that. I refer to the answer that he gave to a question without notice on 20 November this year. My question on the prisoner Dante Arthurs, the murderer of Sofia Rodriguez-Urrutia Shu, was —

> (1) When is Arthurs eligible for release on parole?

The answer was that his first statutory review date had been calculated to be 26 June 2019, next year—in six months. The answer continued —

> This date is also his Earliest Eligibility Date for release on parole.

For those not aware of the circumstances—I am sure everyone has an outline of what he did—essentially, he lured this girl into a toilet —

Hon Alison Xamon: He did not lure her; he was waiting there for her.

Hon MICHAEL MISCHIN: He was waiting for her. In any event, he killed her in the toilet to silence her after an assault. The case received quite some publicity, and I think notoriety, and he is a risk. Nevertheless, he has not yet had his first report. The second part of the question was —

> Has the Attorney General received any representations or petitions urging him to refuse any recommendation for Arthurs' release on parole?

Members will recall that petitions have been lodged in respect of the Birnies and others, and a lot of weight has been put on the number of names on a petition. The answer was yes. The third part of the question read —

> If yes to (2), how many such representations have been made and from whom?

The answer was —

> From searches carried out within the time available, the Attorney General has received six emails from members of the public opposing parole for Mr Arthurs. The Attorney General is also aware of a change.org petition opposing parole.

People are concerned about and have a memory of this case, and are worried about it and agitating about it. Indeed, I have received an email, in quite vehement terms, referring to an email to Mr Quigley, which stated —

> Dear John
>
> **I am disgusted, appalled and completely shocked to hear that the evil monster, DANTE ARTHURS** —

Members will recall that the Attorney General uses appellations like that for the prisoners that he has said he will not be releasing —

> **is being released on parole in the near future.**
>
> It is crime to release him EVER. He should ideally be put down. As this, is unfortunately not possible in our pro-offender justice system, —

Members will recall that, in all the media releases and all the rhetoric around this bill, we are told about how this is putting victims first and foremost. The trauma to victims, presumably, is all as one, but some are more important than others. The email continues —

> HE MUST BE INCARCERATED FOR THE REST OF HIS LIVING LIFE.

> I am a mother of two young children, and like any other mother, having our children hurt or killed is our worst nightmare.

I entirely agree —

> **HOW CAN OUR JUSTICE SYSTEM HAVE NO REGARD FOR OUR INNOCENT CHILDREN???!!!**
>
> **DANTE IS STILL THE SAME MAN. IF ANYTHING, PRISON HAS PROBABLY MADE HIM THIRSTY FOR MORE HORRIFIC CRIMES.**
>
> **THIS MONSTER WILL UNDOUBTEDLY STRIKE AGAIN AND OUR SOFT, USELESS LEGAL SYSTEM IS ALLOWING IT.**
>
> **THE JUDGE NEEDS LOCKING UP FOR MAKING SUCH AN IGNORANT, BY-THE-BOOK DECISION.**
>
> **Sofia *Rodriquez* died a horrific death because Dante was not jailed sooner. He has stalked 12 girls and nothing was done!!**

I do not know whether that is right —

> **Our public schools are fence free. How can I ever feel that my child is safe?!**
>
> Please, do not reply with rule-book replies. Please do not let us parent's down. Please.
>
> If that were my child dead, I would be going after this monster and dealing with him as he should be dealt with.
>
> OUR LIVE EXPORT CATTLE GET TREATED WORSE THAN DANTE ARTHURS!
>
> Animals are skinned alive, burned alive, butchered alive every day in China, the Middle East and other countries. These are innocent creatures doing no one any harm. YET AN EVIL MONSTER, BECAUSE HE IS 'HUMAN' IS ALLOWED TO WALK THE STREETS AND RUIN INNOCENT PEOPLE'S LIVES?? WE ARE THICK HUMANS. WE MAY BE CLEVER BUT CERTAINLY NOT FULLY INTELLIGENT.
>
> **I BEG YOU TO DO YOUR UTMOST TO KEEP THIS VIOLENT KILLER LOCKED UP UNTIL HE DIES.**

There is a plea to me and others along the same lines. Why has the Attorney General not come out and given comfort to these people by saying, "I will never release Dante Arthurs. I have said it before about others, and I will say about this man too"—and a few others, by the way? Why has he not done that? When I asked —

> Given that the Attorney General, both when in opposition and since, has given assurances to the public that certain notorious killers will not be released, has he done so in this case; and, if not, why not?

His response was —

> Under case law and established procedures and protocols, the Attorney General must give reasons for decisions in relation to accepting or rejecting recommendations of the Prisoners Review Board.

At least we agree on something, although it did not seem to stop him when he was in opposition. It did not stop Jim McGinty when he was Attorney General. The answer continues —

> Making a decision in advance of the formal PRB process, particularly as it relates to the first Statutory Review Date, risks opening any decision up to legal challenge on the basis that it had been prejudged.

That is why the Attorney General is now in a hurry to get this through—in case someone challenges one of his intemperate announcements. That is why he is trying to cover himself. As it happens, my understanding is that Catherine Birnie did not want to be released, and had no expectations of it. She is probably not likely to lodge a challenge, as is the case with a number of other prisoners. He wants to get this through, I suggest, because he knows that he has exposed himself to potential challenge, should someone choose to do so. My last question on that point was —

> Given that the Attorney General has introduced legislation to enable him to defer reporting by the Prisoners Review Board of Western Australia in the case of certain killers, allegedly to relieve the burden on secondary victims, does he consider it also to be in the public interest to do so in the case of crimes like those of Arthurs; and, if not, why not?

I mentioned the risky nature of this. The Attorney General's response was —

> Extending the legislation to apply to all child murderers would capture some offenders whose periodic review is warranted, for example young offenders or others with reduced culpability like distressed mothers.

That may be right, but remember we are not talking here about an automated process, but a discretionary one, triggered after the first review date. Can he not look at these sorts of cases in the future and say, "That was a terrible child killer case. I haven't released that person; I'll put it off for another three years so as to relieve parents of the trauma of knowing that this person might come up again." Why can he not do that? The answer continues —

> It would also increase the risk of the legislation being challenged through the courts, which would further traumatise the very survivors and secondary victims that this legislation is working to protect.

He has made a popular decision, and now he is struggling to keep it within some bounds that will stop it from being challenged. It still begs the question as to why this legislation does not work to protect other secondary victims and survivors of notorious killers who do not fall into the category of killing someone before and after midnight, and someone after midnight, or three people at any time. The answer continues —

> The proposed laws are designed to reduce the trauma suffered by survivors and secondary victims of mass and serial murder.

That is right, but that is the criterion that the government has chosen, and I am looking forward to knowing why it is limited to only those sorts of cases. Why does it not extend to other notorious cases, such as that of Arthurs, or Greer? I am sorry; I forgot. Arthur Greer murdered a child, but our Attorney General released him. I saw him on television the other night giving an interview and talking about how his criminal history is a little misleading. It is not as bad as it looks—three counts of attempted murder and sexual assault of one of his daughters. There are explanations for that; he is not a child molester, apparently, but our Attorney General saw fit to send him on his way. Plainly, child murderers are not serious or notorious enough, or maybe it is because poor Sharon Mason's parents are no longer around to agitate on her behalf. The answer continues —

> The McGowan Government went to the election seeking a specific mandate for serial killers and mass murderers and we were elected overwhelmingly on that mandate.

That was the big issue, apparently. That is why people voted; not anything else. Sure, the government has a mandate for this, and we will not oppose this legislation. However, it is part of my job to caution the implications of it, and know why the government is favouring one class of victim over another, setting up a specific class of victims that will receive the benefit of this legislation, while ignoring the others. What is the rational public policy? Is there one or is it just a tick-all-the-boxes, rash election commitment that was not thought through in its entirety, and the government does not want to extend it because it may very well attract the attention of the courts and be set aside? The answer continues —

> In framing this extreme measure, we confined it to mass murderers and serial killers.

Yes, we know that, but the government has not explained why. However, it does highlight why a person must be careful when they are in a position of responsibility, and why, during the opportunity exercised by the current Attorney General when in opposition, when he made make some very large promises to the public regarding specific prisoners, I was obliged to be more restrained and not make blanket, "I will never release X" statements in advance of receiving a statutory report that I was required to consider. That was a difficult position to be in, wherever one's sympathies might lie, and one that I attempted from time to time to explain to people. Of course, it may be considered to be just legal sophistry. That is the unfortunate thing about it.

I mentioned that there were a number of public policy considerations, although that position has been derided. I am not suggesting for a moment that that in any way is a comfort for those who have suffered loss in this fashion. But, of course, our parole system is structured so that it is the Attorney General, at present—until he gets rid of the job and passes it on to someone else so that he can clear his desk—who ultimately gets to see the reports on these prisoners and who can stop them from "falling between the cracks" and, as the popular parlance puts it, "being lost in the system". The three-year reviews, whereby a body needs to look at these prisoners, means that they do not just get lost in the system and no-one has regard to the way that they are dealt with by the system. At present the Attorney General, as the relevant executive officer, being paid for that responsibility under our system, has the duty, responsibility and function to consider those reports, inquire further as necessary and make decisions that he or she can justify rationally.

I note that the current Attorney General is not prepared to go so far as to change the system and its fundamentals, but simply wants to get certain cases off his desk for three more years and to give them to someone else to worry about. The reality, of course, of that stratagem is that it is an easy way out for any Attorney General of the day to politicise the system and to continue to put the problem off, because he has built into the system a renewal opportunity. It does not just get off his desk for his term and the term of that government; the next government might think, "Well, why not? I don't want to have to worry about this. Let's get it off our desk and justify it by way of relieving the trauma on victims." So what we have, apparently, is a system that treats all prisoners equally and has safeguards, and I want to stress, in case he chooses to twist my words' meaning and purpose, that this is

not a sympathy for prisoners; this is not a sympathy or, rather, an animosity towards victims. I know he will go out there and say that I hate victims of crime and that I am protecting murderers, just as he has said on other occasions that Liberals protect child molesters and sex offenders—another sort of grotesque substitute for proper argument and rational thought. But the reality is that there is a system in which we deal with prisoners, and if it needs to be rethought, it should be rethought. But that is not being done here. He is making an exception to the system in the case of some prisoners on the basis of their notoriety and the like, whereby he has taken it out of the hands of the court and he has put in a pretend system which treats them equally but which is in fact intended to achieve a totally different end. He is putting it off for three years, by making it six years between reviews, knowing full well that the next Attorney General will find it even more difficult to say, "Well, I've got to look at a report first just to find out what has been going on." The easy answer is to put it off for another three years and another three years, and so convert what was the court sentence into not just an indefinite one, but a facade of consideration under a system. He is actually putting off forever the hard day to make a decision, and that is cowardly. That is the Attorney General not doing his job rather than doing it. He can dress it up as being to help victims as much as he likes, but at the end of the day he is setting up two classes of prisoners and he is doing so not on the basis of any rationality other than numbers, and he is doing so by justifying it as being in the interests of victims, secondary victims and any survivors of their crimes.

He is also, and perhaps more importantly in the public interest, setting up two classes of victims, and that is a serious problem in this legislation. It appears as though he is refusing to extend it, but he is quite happy to set up two classes of victims in our community. He has done so by carefully limiting it to those who will not challenge it or who may not be successful in a challenge, but still distorting the public interest in that regard. I am anxious to hear why we will have two classes of victims in the future. There is the potential constitutional problem, as I have mentioned. The challenge, no doubt, will be that in reality the Attorney General will have created a never-to-be-released category of prisoners not by way of changing their sentence, not by way of any statutory intervention, not by way of a rational approach whereby there is an ability to know which will fall within and which will fall without on the basis of the gravity of their crime on an objective basis, but by way of a subterfuge—a putting off for three years that ultimately may result in a change to the sentence. I am concerned about that and, quite apart from the potential challenge to it, which will only cause additional problems, about the distortion of the system and putting it into the hands of the Attorney General of the day when there need not be any reason given and there would not be a consideration of a parole recommendation but simply on whim and in respect of political pressure—"Am I going to get a bad headline? I will put it off. I won't make a decision. Don't even bother to tell me what the report says. I don't want a report. I'm more worried about the headline." If that is how our criminal justice system is going to work in the future, I think we ought to know about it.

Some would say that these people are so basically evil that we should not have regard to that anyway. Who cares? I have a lot of sympathy for that. I think that they are odious folk, but, again, we have to be careful about what is being introduced here. If we start doing things on the basis of popularity polls, like the one that was recently in the newspaper about euthanasia, and frame questions such as, "Do you think notorious killers, killers that kill children or mass murderers, ought to be put to death?", I reckon we could end up with a pretty high result in favour of that. But, as legislators, we have shied away from that. Indeed, some years ago, one of our research psephologists in Parliament opined to me that if there was a poll about bringing back the death penalty in notorious cases, there would be overwhelming support for it. That might win a few votes down the track, but that is not the way we have chosen to go; yet what we are doing in this case is leaving it to a discretionary system without, as I understand it, any clear rationale for why the line has been drawn in one place over another, other than that there is an election commitment in one case and not in others. Perhaps we can fix some of that.

What I have in mind is to fix that problem in this legislation. If the relevant minister, the Leader of the House, cannot explain why the line has to be drawn in the manner it has, we could provide this discretion to the Attorney General in other cases of notoriety so that the Attorney General of the day can in due course look at people like Dante Arthurs; Arthur Greer; the two women who tortured and killed that young man some time ago; the two women who tortured and killed their female friend and dumped her in a wheelie bin; or some hit man murderer who has only one victim whom we have managed to identify—all those cases in which there is trauma, anxiety and re-traumatisation for secondary victims and survivors, to give them the same comfort that the Attorney General is proposing for these secondary victims. It is not absolute; it will not be forever. It will just be for up to six years, similar to what the Attorney General is proposing here. I have in mind, and I have on the supplementary notice paper, three amendments, but one is an alternative to the other. I will give an outline so that perhaps the Leader of the House can address that situation.

The first will be to amend the short title of the bill. I should stress that there is no change to the scope of the legislation through its long title. The long title of the bill simply reads—I am pleased that the Attorney General has left it so generous —

An Act to amend the *Sentence Administration Act 2003.*

The short title, though, needs a bit of tweaking to reflect the argument that I propose for it. What I propose in my first amendment is to remove the reference to "multiple murderers" and insert something that is perhaps rather more reflective of what is proposed for the legislation as it stands, which is to replace the term "multiple murderers" with "deferring parole for murderers". It is broad enough to embrace not only what the current policy is, but also any changes that the house might feel moved to make.

The second amendment that I propose will reframe the definition of "designated prisoner" to mean any schedule 3 prisoner who is serving a sentence for a relevant offence, being a murder or a wilful murder. That will extend the legislation to one-off cases and cases in which a killer has killed two people in the one day. It will actually deal with multiple murderers because "multiple" means more than one, I would have thought. It should not matter, I would have thought, whether it is two on two different days or two on the one day. Hopefully, that anomaly can be corrected for the benefit of victims and to provide a little more certainty and flexibility to the Attorney General should he receive a report or agitation on behalf of victims in respect of a case about which he will have to throw up his hands and say, "I can't deal with Dante Arthurs or any of these other horrible things because my legislation is too limited to allow me to do that".

However, if that is thought to be going a bridge too far, I have an alternative, and that is to replace the proposed definition of "designated prisoner" of two victims on separate days or three victims at any time to that of a schedule 3 prisoner who, firstly, is serving a sentence for a relevant offence—murder or wilful murder—and has been convicted of another relevant offence. "Multiple" means more than one; there are two killings, whenever they are done. That seems fair and consistent with the policy of the bill and more satisfactorily meets the policy objective of dealing with multiple murderers. The second form of "designated prisoner" is one who is serving a sentence for a relevant offence of which the primary victim was a child—"primary" being the victim rather than a secondary victim, who is next of kin and the like—and will include child killers such as Greer, Arthurs and the ones who murdered that young boy down Rockingham way, from memory, after torturing him, or any others of that ilk. We could deal with all those. The Attorney General can relieve the trauma, the re-traumatisation and the anxiety of wondering whether these people will ever be released by putting them off for six years. And I will include also those serving a sentence for a relevant offence relating to family violence, as defined in the Restraining Orders Act 1997. We have heard a lot over the last week or so about how important it is to punish, deter and hold perpetrators to account for family violence. Here is an opportunity for this Parliament to signify how seriously it regards family violence, especially, as we have heard, that many of the perpetrators of family violence are recidivists. If it results in death and if the circumstances are considered bad enough, the Attorney General can also put off consideration of them. I think that would send a salutary message, too, if in fact this is all about the relief of re-traumatisation, anxiety and stress for secondary victims. It is a coherent policy in the public interest, because it seems to me that if one is going to go down this path, one should do so on a rational basis and treat all victims equally, or at least be able to discriminate on the basis of quality rather than arbitrary numbers. I will be moving those amendments in due course. I have been informed by the Deputy Clerk that it is arguable that the scope of the bill is being expanded. Notwithstanding that, what I am proposing falls comfortably within the long title, but because of the manner in which the bill is framed in the short title, there is an argument that my amendments go beyond the bounds of the bill, in which case I will move at the conclusion of my contribution a motion to instruct the Committee of the Whole, which will have to convene anyway, that it have the power to consider the amendments I propose, which are contained in the supplementary notice paper.

I reinforce that there needs to be some consideration of the amendments, for this reason: the Attorney General's most recent media release on this matter highlights the problems to which I have alluded. It is from 18 October and it has the Premier and the Attorney General proudly smiling up at us. It refers to how the bill will be introduced into Parliament. This is dated 18 October 2018, which is fairly late in the piece. It was less than a month and a half before Parliament rises and even though the government did not think that it was particularly urgent or important until then, it suddenly became important and had to be rushed through Parliament. It states —

- Attorney General during their term of appointment will be able to direct that mass murderers and serial killers must not be considered for parole or a re-socialisation program
- Key election commitment intended to limit trauma to survivors, family and friends of murder victims

It is not only murder victims of these particular types of multiple murderers and the like, but also "survivors, families and friends of murder victims". It is very broad. Apparently, that is the policy intent. The detail of the media release states —

> New laws enabling the Attorney General to issue a direction to suspend the Prisoners Review Board's statutory reporting functions in respect of prisoners serving terms for serial killings or mass murders will be introduced into State Parliament today.

It then acknowledges the problem, raised before, of speaking a little too loudly and rashly without regard to one's legal responsibilities and consequences, when it says —

> Attorneys General of successive governments have consistently made public declarations that certain prisoners will not be released during that Attorney's term of appointment.
>
> However, these public declarations have had no impact as the Prisoners Review Board is required under legislation to consider whether the prisoner should be released.

I do not know why the Attorney General does not simply change that and extend it from three-year reporting to six, if that is what he really wants, instead of this stratagem. At least that would be up-front and the government would be being open about what it is doing, rather than leaving a discretion. I should add that notwithstanding that he may direct that there be no report for three years, he retains the power under the Sentence Administration Act to request a report from the Prisoners Review Board at any time. The Attorney General is promising one thing for the comfort of others, but it may not necessarily work that way if the Attorney General of the day decides to disregard that. If the Attorney General is really serious about this, he should do it properly. The media release continues —

> The proposed legislation will provide the Attorney General with the ability to give legal effect to those public declarations in respect to mass murderers and serial killers, being those who commit three or more murders on the same day or two or more murders on separate days, respectively.

I have already said my bit about the irrationality of drawing the line there. From information provided at the briefing from the Department of Justice, I understand that that definition has been picked up from legislation overseas. That may be right, but it does not mean that he has to limit it to that for the purposes of this legislation, given its policy intent as declared. The media release quotes the Premier as saying —

> "Prior to the March 2017 State election, WA Labor pledged to reform WA's parole laws to ensure that serial killers and mass murderers would not be considered for parole.

That may be right as far as it goes, but it is not closing off consideration of parole entirely. It is putting it off to the future and leaving it to discretion. The Premier continues —

> "The aim of this policy is to limit trauma to family and friends of murder victims and others impacted by the crimes, including surviving victims of serial killers and mass murderers, by suspending the consideration for parole or a re-socialisation program.

That is getting closer to the truth. The Premier says —

> "This is about putting victims and their families first, ahead of murderers.

I entirely support that sentiment and that is why I will move to extend putting victims and their families first to secondary victims of other killers who may not have accumulated the same number of victims, but have committed horrible crimes that have resulted in the death of their target. Attorney General Quigley says —

> "Survivors and secondary victims are re-traumatised every time these prisoners come up for consideration for a re-socialisation program or parole, as is required under existing parole legislation.
>
> "They are forced to relive the most horrific events of their lives all over again.
>
> "The secondary victims and survivors of these horrendous crimes have already suffered enough, they should not be put through this process every three years."

Plainly, some can and the government thinks they should be, but if the government is so minded and that is really what it is aiming at doing, rather than just creating a headline, I hope that it will support my proposed amendments to extend it to the potential for dealing with all killers in this fashion. I should add that it is a discretion so it does not mean it will necessarily capture the people who the Attorney General is worried about, such as distressed mothers who have murdered their children, or juveniles. It is up to him. But it will give that opportunity for traumatised secondary victims and survivors to have their suffering relieved. If the net is too wide by capturing all murderers, we should limit it to multiple killers in the strict sense of two victims, those who have killed children, and perpetrators of family violence. If the government thinks that is too wide, I am happy to abandon one or more of those elements.

I look forward to the minister being able to explain the public policy. As I said, the idea of saying that one is an election commitment and the other one is not is not a basis for a public policy or for identifying where the public interest lies. I would like to hear more about how in advance of a report the Attorney General is going to decide that certain cases are ones that he will never consider. Is it on the basis of newspaper headlines? Is it on the basis of a political assessment of whether the government will get good or bad press? Is it on the number of names on petitions or the number of letters, or will it be on the basis of a three-year-old report? How is the Attorney General

of the day expected to deal with these? I think it is important also for determining whether a rational public interest or public policy is involved in this or whether it is, once again, opportunism.

On that note, I look forward to the explanation to be given by the Leader of the House and I propose to move my amendments in due course.

Instruction to the Committee of the Whole — Motion

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [2.28 pm] — without notice: I move —

> That upon the second reading of the Sentence Administration Amendment (Multiple Murderers) Bill 2018, it be an instruction to the Committee of the Whole House that it have the power to consider the amendments contained in supplementary notice paper 101, issue 1.

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.29 pm]: For members who have not seen this kind of technique before, amendments are normally moved and considered in the Committee of the Whole House stage. However, as Hon Michael Mischin has identified, if I am not paraphrasing him too much, when he sought drafting advice, it was drawn to his attention—I think by the Deputy Clerk—that it was at least arguable that the proposed amendments were out of scope of the Sentence Administration Amendment (Multiple Murderers) Bill 2018. That is also the advice that I have received, so if this motion had not been moved now, it was my intention to ask for a ruling during the committee stage about whether the amendments were in scope.

Irrespective of that advice, the honourable member has asked the house to decide whether it accepts that these amendments are in scope. My view is that they are out of scope and that we should not support the motion that has been put. The reasons I would argue that the amendments are out of scope follow.

Schedule 3 of the standing orders defines the subject matter of a bill to mean —

> … the provisions of the Bill as printed, read a second time and committed to the Committee of the Whole House, (also referred to as 'scope of the bill').

The starting point is the title of the bill. The proposed amendment clearly departs from the subject matter as reflected in the title, the Sentence Administration Amendment (Multiple Murderers) Bill 2018. The proposed amendment would extend the scheme to defer parole for all murderers or a defined subset of single murderers. In the honourable member's contribution to the second reading debate, he put essentially one main argument; that is, the scope of this bill is narrow. His concern about the narrowness of the scope was that, in his argument, it would create two classes of victim—that is, primary victims and secondary victims.

Hon Michael Mischin: No, sorry. It's two classes of secondary victims—one within and one out. The ones that get the benefit and the ones that do not.

Hon SUE ELLERY: Two classes—essentially.

In his contribution, he argued that the bill was narrow. That is my point! Indeed, it is narrow and it is narrow quite deliberately. Members may not agree with the argument that we made a specific election commitment about just these confines of narrowness. They may not agree that that is a suitable reason to support the bill. Clearly, the honourable member takes issue with us relying on the fact that we are doing what we said we would do. Members may not agree that that is a satisfactory argument but, nevertheless, his argument is that this is a narrow bill. That is the point I am making. The first change in the amendment he seeks to make would make the bill much broader. That is outside the scope of the bill. His intention is quite deliberate. His whole argument has been that the bill is too narrow, so his amendments seek to expand it. I say that, by any reading or practice of what is within or out of scope, that is clearly outside the scope of the bill.

The scope and the purpose of a bill are also determined by its clauses. If the purpose of a bill is restricted, as is the case with the multiple murderers bill, the extent to which it may be amended is accordingly restricted. The second reading speech and explanatory memorandum assist in explaining a bill's purpose. They demonstrate with clear intent that the proposed scheme is, indeed, restricted to apply to multiple murderers—more specifically, mass murderers and serial killers. Those concepts have been defined within the bill and do not encompass offenders convicted of a single murder. Clause 6 of the bill introduces the concept of a designated prisoner for the purpose of prescribing the class of prisoner for whom a ministerial direction may be made. It clearly contemplates only serial killers and mass murderers. The explanatory memorandum states that ministerial directions can be made regarding only a mass murderer, being someone who has killed three or more people, and a serial killer, being someone who has killed two or more people on different days. Further, the second reading speech clearly expresses that the amendments introduced by the bill are targeted at the very worst mass murderers and serial killers who are serving life sentences and indefinite terms in Western Australian prisons. The suspension of parole consideration for mass murderers and serial killers is primarily intended to address the re-traumatisation experienced by

secondary victims and survivors of those notorious crimes. Thus, the amendment proposed by the member does not fall within the deliberately narrow scope of the bill. That is the question that the house is being asked to determine. It is not whether members agree, as a policy, that it is the right or wrong thing to do, but whether it fits within the scope of the bill. Clearly, on any reading, the argument that the member put in his second reading contribution was that he thinks the bill is too narrow, so he seeking that the house make a decision—this is something we do not do in this manner in this house very often—and agree that, in fact, the amendments are not about expanding the scope of the bill. However, they very clearly and deliberately are. The question members are being asked to consider is not whether they agree that narrow is good or bad; it is about acknowledging that the bill is narrow. If the house is going to follow the standing orders, it cannot agree that these amendments are within the scope of the bill. The bill has already been very clearly identified by the mover of the amendments as being narrow and he seeks to expand it. If the house were to grant permission to do that, it would be taking a fairly extraordinary step in determining that something that has been quite clearly explained to us as being about broadening the scope is, in fact, a legitimate thing to do when our standing orders very clearly state that it is not what we should be doing.

The way to tackle this, if the house or the member is of a view to do so, is with another bill—not this one. This is, very specifically, a very narrow proposition. If members listened carefully to what the honourable member said, he knows that. That was his whole argument; that is, the bill is too narrow. However, he is trying to expand it and to get the house to determine that in doing so it would not be breaching the longstanding practice, the content of the standing orders and the intent of the standing orders, which are quite clear. I ask members to think carefully. This is not about the bill's policy. By saying that these amendments do not breach the standing orders, we would effectively be saying that it is okay to consider something that quite deliberately seeks to expand the scope of the bill. It is completely against what our standing orders intend.

HON AARON STONEHOUSE (South Metropolitan) [2.38 pm]: I have listened to the arguments put forward by the Leader of the House and Hon Michael Mischin. I think this is a very important motion. I hope that other members will contemplate this seriously and perhaps even rise to share their thoughts on it. Potentially, the Legislative Council will be setting a precedent about how it does business. As I understand it, Hon Michael Mischin has raised the concern that his proposed amendments on the supplementary notice paper may sit on the fringes of the scope of the Sentence Administration Amendment (Multiple Murderers) Bill 2018 and there is an argument about whether they would be within the policy of the bill.

In general, I am not particularly in favour of his amendments. I understand the intent behind them but I do not suppose I will support them in the end. I am sympathetic to the idea that perhaps even if I do not support the proposed amendments, it might be worth having an opportunity to debate them on their merits as opposed to shooting them down now or having them shot down through a point of order or ruling by the Chair of Committees. However, again, there is the idea of setting a precedent going forward. The scope and policy of the Sentence Administration Amendment (Multiple Murderers) Bill has already been established in the title of the bill. It has come to us from the other place. Should we be setting a precedent here now of giving instruction to the Committee of the Whole House to consider items outside the scope that has already been agreed to? It has not been done before in this Legislative Council that I am aware of.

Hon Sue Ellery: Not in my time, and that is 17 years.

Hon AARON STONEHOUSE: Yes. There may be times in the future when we want to do this. I think, ultimately, the decision to support this motion comes down to whether we think it is appropriate to expand the scope of these amendments. I am inclined not to support these amendments in the end. The point raised by the Leader of the House is that if members wish to pursue matters outside the scope of the bill, that is an opportunity for another bill at another time perhaps. I am inclined to agree with that assessment. If members do not like the content of this bill and they think it does not go far enough, they have an opportunity to vote it down and send it back to the government with the message that it can go back to the drawing board and produce a bill that a majority of the house will agree on, rather than try to use rather obscure mechanisms such as an instruction to the Committee of the Whole House to stretch the bounds of what is acceptable in the Committee of the Whole House to pursue a different political goal.

My advice would be to send this bill back, vote it down and not proceed through a second and third reading. Let the government instead go back to the drawing board and follow that process, rather than set a precedent now that would be rather unnecessary to discuss any manner of amendments in the future that will just frustrate the legislative process unnecessarily when we can vote it down and start from scratch. I will not support this motion to give an instruction to the Committee of the Whole House.

HON MARTIN ALDRIDGE (Agricultural) [2.42 pm]: I rise to indicate that the National Party will support this motion. I have not had a lot of time to give detailed consideration to the motion before the house but I agree with aspects of what Hon Aaron Stonehouse has said, which is to let the argument on the merits of these amendments rise and fall on the policy and grounding of those amendments in the Committee of the Whole. I draw members' attention to Hon Michael Mischin's motion. They will note that he does not intend to suspend standing orders; he

is intending to use the existing standing orders through this motion without notice to give a direction to the Committee of the Whole. I am not sure I subscribe to the theory presented by the Leader of the House that this is a matter that has never been done in her time in the Legislative Council. In fact, the brief advice I received is that on multiple occasions, although not recently, certainly through the 2000s, it has been used as an implement to expand consideration of a bill in the Committee of the Whole. Similarly, it was interesting to hear in the Leader of the House's contribution that she is concerned that we should stick by our standing orders. Our standing orders say that we should be dealing with motions on notice at about this time and with consideration of committee reports after that. Last week, the Leader of the House moved a motion without notice to suspend standing orders, which the National Party opposed, but the house obviously resolved a different outcome. I am not quite sure that I accept her argument to any degree when she herself seeks to suspend standing orders whenever it suits her. However, Hon Michael Mischin does not seek to suspend standing orders but, indeed, is seeking to use the existing standing orders to send a message to the Committee of the Whole to consider the merits of his amendments to the bill before us. I think the case has not been very strong by the government in opposing this motion and the National Party will support the motion before the house.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [2.44 pm] — in reply: I assume that no-one else wishes to speak on this. I appreciate the comments made by and contributions from members. The Leader of the House was half right. As I expressed it, the advice I received was that it was arguable that the amendments went beyond the scope of the Sentence Administration Amendment (Multiple Murderers) Bill, if one looks at not only the long title, which is very broad, but also the manner in which the bill is framed, which certainly has regard to the short title. It is quite right that I wanted, as a matter of caution really, there to be an opportunity to consider the amendments. As Hon Martin Aldridge has pointed out, we are dealing with a direction, if you like, of the merits of the amendments, particularly in light of the public policy that has been professed for this bill—that it is to relieve anxiety, trauma and upset for secondary victims and the point that there are now two classes of secondary victims potentially being established—and the opportunity to consider whether the operation of the bill, having regard to that policy, is too constrained. For example, it may be thought proper that the definition of a "designated prisoner" be amended to include multiple murderers that are two on the same day rather be two on separate days. That would not be outside the scope of the bill. It is part of what the amendment proposes to agitate. I put the argument. It would be useful to be able to agitate the issues and see why the government has drawn the line the way it has for these things, and perhaps improve the legislation. Ultimately, it will be up to the will of the house. The Leader of the House is partly right, but not entirely. I think Hon Martin Aldridge has got close to the point and Hon Aaron Stonehouse, quite apart from the standing order issue, has also picked up on why there may be some merit in discussing these matters more freely rather than being told, "Our election is our merit; therefore, we don't need to explain it. Just rubberstamp the bill." I do not want to go down the path of rejecting it entirely. My objective is not to frustrate the government's decision to put forward this legislation. My objective is to improve its operation so that it works even-handedly for all victims, or, at least others who are not included within the legislation.

Question put and negatived.

Second Reading Resumed

HON CHARLES SMITH (East Metropolitan) [2.48 pm]: I rise to make a few brief comments on this Sentence Administration Amendment (Multiple Murderers) Bill. As members may know, I have spoken in this house time and again on law and order issues. I am sure members are well aware of my views on the subject. The McGowan government has said it will be tough on crime. The house is still waiting for the McGowan government to be tough on crime. What it is good at is virtue signalling. Let us remind ourselves about the meth trafficking bill to increase the maximum sentence, which, arguably, is having little effect. The no body, no parole bill affects five or six people in the state. This multiple murderers bill will affect two or three people in the state. We still have the fake 24-hour police stations, which has taken police off the streets so they are unable to respond to calls. Although I certainly do not object to murderers not being granted parole, I ask why little else has been done regarding the Sentencing Act, the Sentence Administration Act and the Bail Act in particular. Time and again, dangerous and violent criminals are given bail to continue their sociopathic behaviour. Although the Sentence Administration Amendment (Multiple Murderers) Bill 2018 may be a small step in the right direction, it is the smallest of small steps. Members may recall my speech earlier in the year about the so-called no body, no parole bill in which I suggested, amongst other things, the removal of parole in its entirety. Western Australia has the misfortune of having one of the highest rates of incarceration in the country and we are embarrassingly known as the meth capital of Australia. But what saddens me is that some people and politicians believe that if the incarceration rates are high, the system needs changing. The government appears to be trying to find ways to not put criminals in prison, which is both frivolous and dangerous to the community. In an attempt to improve statistics, lawmakers need to be mindful that oftentimes they may wind up making the problem worse.

In 2011, the Auditor General published a report titled "The Management of Offenders on Parole". Despite his best efforts to put a positive spin on the situation, he did have to concede a number of damning points. For example, the report noted that community corrections officers —

> … rely on parolees to provide them with information and to 'self-report' activities that could result in breach action. However, the stricter enforcement of parole conditions reduces the incentive for parolees to report issues that could result in cancellation of their parole. In the absence of other methods for detecting breaches of some conditions, parolees may be breaching conditions without DCS knowing.

Why have parole when it is not even policed properly? When conditions are reported as "not breached" by staff because it is too hard, why have parole at all? The report also concedes the difficulties in monitoring those on parole, the violations that assessors will let slip, and the community outcry; and the failure to collect data on offenders.

The Prisoners Review Board of Western Australia notes that in 2016–17, there was a 14 per cent increase in the types of early-release orders that were granted. Supervised short-term parole increased 20 per cent in the previous period. In total, 1 409 prisoners were released under an early-release order. In 2016–17, 30 per cent of parole orders were cancelled and 5.6 per cent were suspended. The Prisoners Review Board policy manual states that parole may be suspended when a breach of parole has occurred. Regarding suspensions, the policy manual states —

> The Board should not suspend parole for a fixed term to simply punish the prisoner for the behaviour resulting in the breach of parole.

Apparently, there is no consequence for breaching parole conditions. The act does not create an offence for breaching parole, so why even have it? We wonder why many people have no respect for our law. It is very weak in many instances and entirely without consequence. Take the example of the police officer who was assaulted in Geraldton and kicked in the face while he was on the ground. This was reported in the media just a few weeks ago. The offender was given a suspended sentence and walked away. What a joke!

With regard to parole cancellations, the Prisoners Review Board policy manual states —

> The Board can suspend or cancel a Parole Order whenever it considers it appropriate to do so. Generally, this will occur when the Board becomes aware that the prisoner's behaviour has demonstrated an increase in his or her risk to the safety of the community, the prisoner has re-offended or breached a condition of parole.

This shows that the 30 per cent of those granted parole either committed new offences while on parole or behaved in such a way that demonstrated they are a danger to the community.

I would like to make members aware that sometimes parole includes such conditions as the parolee not having contact with females under 16 years of age.

The Auditor General reported that that requirement was too hard to monitor. This the crux of the problem: criminals already have concessions made for them. They have two, or more, chances of being granted bail and an early plea can reduce their sentence, as can expressing remorse. In criminal trials, judges will almost never hand down the maximum sentence. If criminals behave themselves during their custodial term, we may let them go free—including murderers. As the Prisoners Review Board's statistics show, just under 1 500 parole applications were granted. Almost one-third of applications were then cancelled and almost six per cent were suspended. That is just in cases when it is clear that the person has breached a condition or shown their true colours. As the Auditor General's report notes, it is impossible to monitor everything.

Earlier this year, when Parliament was debating the no body, no parole bill, I suggested removing the option of parole. It seems that the Labor Party has taken some of that idea, but in true Labor fashion has watered it down and made it as soft as possible. We should be debating a review of the Sentence Administration Act and the Bail Act. Bail needs to be much harder to get and parole needs to be scrapped entirely. Thomas Sowell said that parole is just another way of deceiving the public. In this case, it is lies about the time that convicted criminals will spend behind bars. Suspended sentences are another form of pretend punishment to trick the public. Sadly, this is exactly how the Labor Party operates on law and order issues, from its fake 24-hour police stations to its weak amendments to parole. This bill, to quote William Shakespeare —

> … is a tale
>
> Told by an idiot, full of sound and fury,
> Signifying nothing.

HON ALISON XAMON (North Metropolitan) [2.57 pm]: I rise as the lead speaker for the Greens on the Sentence Administration Amendment (Multiple Murderers) Bill.

I note that currently section 12 of the Sentence Administration Act 2003 requires the Prisoners Review Board to give the Attorney General a written report that deals with release considerations for a prisoner whenever the

Attorney General makes a written request for a report or the board considers it necessary to do so. Schedule 3 of that act sets out the minimum frequency for reports for certain prisoners. The due date for the first report for schedule 3 prisoners varies considerably, depending on the nature of their sentence. After that, the frequency of subsequent reports is generally one every three years. A couple of exceptions require an annual report. This bill applies to two subcategories of schedule 3 prisoners, specifically those who have been convicted of two murders on different days, who are colloquially referred to as serial killers, and those who have been convicted of three or more murders whether or not at the same time, who are colloquially referred to as mass murderers or serial killers. I note that under this bill, those prisoners would still receive the first statutory report, but the bill proposes that any time after that, the minister can fire a direction to suspend any further statutory reports or assessments for resocialisation programs, and that that direction can last for up to six years and an unlimited number of consecutive directions can be made. Upon the expiry of those directions—if that ever happened—statutory reporting under schedule 3 would resume, with the due date of the next report calculated as if the direction had not existed. The board will have up to seven months after the direction ceases to prepare the first report if needed. The advice given to me in the briefing on this bill was that it generally takes seven months to prepare a report.

This bill will give the minister absolute discretion to make a direction. The bill does not specify what matters the minister must, or, indeed, must not, take into account, not even the content of the most recent report. The bill contains no requirement that the prisoner be given an opportunity to be heard before a decision is made. This is despite the fact that a long-term prisoner may be so institutionalised that they do not want to be released, or recognises that they will not be released and therefore may be willing to consent to a direction in order to avoid ongoing drama for them.

The bill does not provide for review. The only exception is judicial review on the ground of jurisdictional error, which the explanatory memorandum states cannot constitutionally be excluded. I understand from the briefing that "jurisdictional error" means that the person does not meet the bill's criteria. The bill also does not provide for a direction to be varied or revoked. That leaves only one option. A direction relates to statutory reports required under schedule 3 of the Sentence Administration Act. A direction does not relate to reports under section 12. Therefore, under section 12, the minister can still at any time make a written request to the Prisoners Review Board for a report, and the board can, at any time it considers necessary, unilaterally give the minister a written report about release considerations relating to the prisoner. However, it is highly unlikely that this would happen. Indeed, the explanatory memorandum envisages that this would happen only in exceptional cases. The minister is certainly unlikely to request a report in any but exceptional cases, particularly if it is the same minister as the one who made the original direction. Some of the circumstances under which the minister might request a section 12 report are if there is a change of minister and the new minister holds a different view from the previous minister and requests a report; there is support from the public, or, indeed, from the secondary victims, particularly in the case of a family crime; the prisoner develops a condition such as a terminal illness or dementia and prison is no longer an appropriate place for them to remain; and there is the receipt of new evidence—that is, unless a forthcoming bill is passed that would enable an appeal to the court to be made on this ground instead.

I refer now to the most recent report of the Prisoners Review Board, which states repeatedly in the "Chairperson's Overview" that the board's workload is challenging. It notes also that there was a 12.6 per cent increase in the number of cases considered by the board in the last year alone. Therefore, it seems unlikely that the board would do anything to add to its workload, unless the circumstances were particularly compelling. Another reason that it is unlikely the board would unilaterally prepare a report is that when recommending release on parole or for approval to participate in a resocialisation program, the board has power only to make a recommendation to the Attorney General and the Governor in Executive Council. If the board knows that its report would definitely not be welcomed by an Attorney General who would strongly like to reject a recommendation for a prisoner's release to parole, it would probably be a disincentive for the board to prepare a report in the first place.

This is a difficult bill and it raises a number of issues and concerns. I need to acknowledge from the outset that the instigators of this bill were victims and secondary victims who have lobbied very hard for this. This came to our attention in a very significant way in 2016 when Kate Moir, who survived the Birnies, called for a reform to parole laws with an online petition. That online petition went on to receive 41 000 signatures. I note that the link to the petition is now closed, but that page remains. The page indicates the opposition to mandatory parole hearings, which stems from a much deeper concern of Ms Moir that the Birnies' original sentence for abducting and twice raping her was horrendously inadequate. It has been pointed out that it has been extraordinarily painful for her to go through the process every three years to have input into the release of Catherine Birnie—of course, David Birnie has died. I note that the last time parole was considered, it coincided with Ms Moir's birthday. She talked about spending her birthday on the phone with the parole board. I know that Ms Moir approached the government of the day at that point to try to get support for changes in these laws. I recently heard an interview on the ABC with

Evalyn Clow, whose sister and her sister's three children were murdered in Greenough in 1993. It made for really harrowing listening. She talked about the trauma she goes through every time she has to revisit the murders through the parole hearings, bearing in mind that her family members died in one of the most horrendous cases I can recall. I cannot take away from the very real trauma that not just secondary victims but also, as in the case of Ms Moir, direct victims of the class of prisoner to whom we are referring go through when they deal with the issue of parole. This is one reason this is a very complex issue to try to navigate, because we also need to make sure that we maintain the integrity of our parole system. We have to remind ourselves of the purpose of parole.

I want to make some other comments about concerns I have around some of the changes in this bill. I am concerned that this bill applies to children as much as it does to adults. I recognise that no children are currently captured by the provisions of this legislation. I also recognise that for a child to be subject to the provisions of this legislation, they would have to be convicted of some absolutely horrific crimes. But I also think about the circumstances through which a child might find themselves in that situation. I think about the number of children who are detained at Banksia Hill Detention Centre who were born with no chance at all—kids who were born into profound disadvantage and who have foetal alcohol spectrum disorder, for example. I consider a scenario in which a child who has experienced severe disadvantage and severe abuse, has ongoing mental health issues and may also live with cognitive impairment may kill their entire family in one hit for any range of reasons, in which case they would potentially fall within the purview of this legislation. Of course, we are talking in the hypothetical here, but I have to think about how this bill might impact people in the future; it is not enough for me to simply reflect on the people whom it will currently impact. I consider children in detention who have absolutely no-one to advocate on their behalf. There are several children in that situation. I am concerned that all that stands between such a child and direction after direction is effectively one politician with a biro and unfettered discretion. I am concerned that without the possibility of mandatory review times for parole, children could become lost in the system, noting that the matters in sections 5A and 5B of the Sentence Administration Act 2003 will never be re-examined as they grow and develop, all but for one politician with the next election to win. At the very least, I would have preferred that Parliament knew the views of the Commissioner for Children and Young People before debating the Sentence Administration Amendment (Multiple Murderers) Bill 2018. That is probably my principal concern.

I have concerns about the procedure the government proposes to adopt. The bill has not come out of a broad inquiry into parole. It is about time we had one of those. It is very important to start looking at the role of parole around issues of punishment and rehabilitation as a whole. We need to look at issues around merit, whether it needs to be extinguished in certain cases, and the processes that should apply to decisions about it. Instead, Parliament is today being asked to legislate to allow the Attorney General of the day to, effectively, thwart Parliament's will as expressed in schedule 3 and section 12A, and to duck the responsibilities those provisions impose. The current process does not allow the Attorney General to prejudge their decision on a statutory report from the Prisoners Review Board; this bill will allow the Attorney General to instead suspend the statutory responsibility of the Prisoners Review Board to provide a report. So no prejudging, but the Attorney General will still get to predetermine the outcome for as long as he or she wishes. Section 12 will be maintained, but the Attorney General will have absolute unfettered discretion to simply never use the report. It will come down to whether the Prisoners Review Board will unilaterally use section 12 to present a report it knows will be unwelcomed by the Attorney General. I have already said that will constitute extra work on top of the board's already challenging workload. It seems highly unlikely to me that that will occur.

The procedure that will be adopted through this bill will be a farce. That, together with the lack of consultation with important stakeholders, is problematic for Parliament in deciding whether certain crimes need to be singled out to ensure that parole needs to be considered less frequently or not at all, and, importantly, the processes that will apply around that. I would much have preferred this to be considered as part of an overall comprehensive consultative review of the way we deal with parole in this state that looked at the necessary reforms holistically, rather than simply trying to single this out. I recognise that it came from an election commitment, but, more importantly, I recognise that it has been driven by secondary victims who find the current process deeply traumatic. At the same time, I am concerned about looking at reform in such a piecemeal way, and I hope that this government undertakes to take a holistic approach to reviewing the way we deal with parole in this state.

HON MARTIN ALDRIDGE (Agricultural) [3.14 pm]: I rise to make a contribution to debate on the Sentence Administration Amendment (Multiple Murderers) Bill 2018, and I indicate that I am the lead speaker for the National Party. I want to talk initially about the briefing I received. This bill is much more recent than some of the bills we have been dealing with in this house over the past few weeks in that it was only introduced into the other place, if I am not mistaken, around mid-October. My briefing on this bill was therefore a bit more recent. I was aware that this bill was born out of an election commitment made by the government. At the briefing I asked for a copy of the election commitment, and I was directed to an article in *The West Australian* as the source of the government's election commitment. I was not directed to any written commitment, media statement, discussion paper or policy statement from the then Labor opposition on the matter that is before the house now. It appears that

the sole piece of information that we rely upon for the basis of the Labor Party's election commitment, only a few weeks out from the 2017 election, is this article in *The West Australian*, an exclusive by Tim Clarke, legal affairs editor, on Thursday, 16 February, 2017, titled "Labor pledge on parole ban for serial killers". I find it interesting that not only was the timing so close to the election, but also the sole piece of information that the Labor Party relies on, and indeed that we rely upon now in considering the bill before us, is this article in *The West Australian*.

It is well established in the second reading speech that the focus of the bill is to avoid the re-traumatisation of secondary victims from engaging in the parole process. A number of questions need to be considered, hopefully in the minister's second reading reply, or during the Committee of the Whole House, on the formation of the policy behind this bill, and the amendments before the house when we enter the committee stage. It is unfortunate that the house resolved earlier today not to consider, during the Committee of the Whole House, the amendments listed on issue 1 of the supplementary notice paper. It concerns me that the government has hidden behind a procedural argument rather than arguing the merits of, or defending the policy that certain classes of secondary victims should not be afforded the same rights that the government intends to provide to the secondary victims outlined in the bill before us. Nevertheless, I am sure that that will be well canvassed in the committee stage.

Obviously, the primary focus of this bill is to deal with the re-traumatisation of secondary victims. I want to quote from the article I referenced earlier in *The West Australian* of Thursday, 16 February 2017. A couple of paragraphs in particular relate specifically to the Labor Party's election commitment. It reads —

> In a move made in the light of a campaign by Birnie survivor Kate Moir, shadow attorney-general John Quigley told The West Australian that if elected, a Labor government would amend existing laws that allowed even the worst killers to be considered for release every three years.
>
> Under the changes, an attorney-general could tell the Prisoners Review Board not to consider parole in cases of serial killing. That would be defined as two or more murders on different days or, in the case of mass killing, two or more murders on the same day.
>
> The parole consideration ban would last for the term of that government.
>
> Mr Quigley said that if he became attorney-general, Catherine Birnie would be the first person he would make subject to an order.
>
> "She might well never be released but she is still considered every three years, which is traumatic for victims and relatives of victims," Mr Quigley said.

We do not have a lot of information from the Labor Party to work on, when it releases significant election commitments such as this only a few weeks out from polling day through an exclusive in *The West Australian* rather than through some other means that we could scrutinise. Perhaps that was the government's intention.

I would like the minister to consider some of the concerns and questions I have about the re-traumatisation of secondary victims. I understand that we are talking about cases of murder, so the victims are obviously dead, but we are talking about the victims' family and friends being the secondary victims. This bill assumes that all secondary victims want the same thing—that is, to avoid the re-traumatisation of engaging in a parole review process.

In considering the policy of this bill, I can anticipate three—maybe there are more—potential scenarios that could apply to secondary victims. Obviously, there is the class of secondary victim the government intends to protect through this bill—that is, those who do not want to engage in a parole review process every three years because it will re-traumatise them if they engage in that process. The second class of potential secondary victims is those who want to exercise their right every three years to actively participate in a parole review process to ensure that a person remains in prison. The third class of secondary victims that I can anticipate—when we look at reports on these things, not necessarily from Western Australia but in other jurisdictions, I think they would be relatively uncommon—is those who, potentially, after a significant passage of time, may well forgive the perpetrator of the crime and make a submission to a parole review board hearing or process about their forgiveness of the person who has committed whatever heinous crime they have committed against their family member or friend. Of course, that would be relatively uncommon, but I do not think that it is impossible. The bill treats all secondary victims the same, in that none of them want to engage in a parole review process, nor do they want their voices heard in that process, because doing so will re-traumatise them. I respect and understand that some secondary victims may have that view, but I also understand that others may not.

It is interesting to read in the second reading speech—indeed, this was reinforced during my briefing—that the first statutory report will continue. The second reading speech states —

> The minister is empowered to make a direction following the receipt of a designated prisoner's relevant report, which is defined to be the first statutory report for parole consideration. This has been necessary

> to avoid any potential interference with the minimum non-parole period set by a sentencing court and therefore minimises the risk of constitutional challenge to the making of a direction.

I understand that in making that first statutory report, there is engagement with secondary victims. However, what I want to understand better is that if the policy and intent of the bill is to avoid the re-traumatisation of secondary victims, to what extent will that be successful when the first statutory report will be required prior to a minister—the Attorney General—making a direction? If that is the primary purpose of this bill, to what extent will that reduce the impact on the secondary victims from engaging in that first part of the process?

It was also made clear to me in the briefing that although secondary victims are invited to participate in the parole review process, they are not compelled to participate. I understand that there will be a notification process whereby secondary victims will be contacted and made aware of the processes of the review and their rights to participate in those processes, but beyond that there is no compulsion. I will be interested to understand more fully and specifically how that will affect secondary victims when they are basically invited, but not compelled, to participate.

One of the other points that has been made—I will make it again in my contribution—relates to how the Attorney General will form a view in exercising his right under this legislation, when it passes, to give a direction. Is it the intention of the Attorney General—or indeed is there any compulsion on the Attorney General—to consult and who will he consult with? Will he consult with secondary victims to understand their view and determine whether they want a review? Indeed, if some secondary victims have different views, how will he weigh the differing views of secondary victims in the balance and determine whether a process should be allowed to continue? Is it the case that the Attorney General will not consult with secondary victims at all because, at the end of the day, the policy and focus of the bill is to avoid the re-traumatisation of secondary victims? It appears that the way to do that, through the second reading speech, is by having limited to no contact with the secondary victims.

The other matter I want to raise about this bill is the definition of a "designated prisoner". I note from the sole media article that I rely on to establish the Labor Party's election commitments in opposition that there is a difference between what the Labor Party committed to in an article of 16 February 2017 and what is before us in the house. Had it been canvassed in the second reading speech, it would have established why there is a difference between the Labor Party's election commitment and the bill before us. Nevertheless, maybe the minister can consider that in her reply. I think the best way to put on the record how the bill defines a "designated prisoner" is the second reading speech, which says —

> … ministerial directions can only be made regarding mass murderers, being someone who has killed three or more people on one day; and serial killers, being someone who has killed two or more people on different days.

Obviously, if we compare that with the Labor Party's election commitment, there is a change because in the election commitment, the definition was two or more murders on different days or, in the case of mass killings, two or more murders on the same day. The definition of "mass murders" in the election commitment was two or more murders whereas the definition that the government is now using for mass murders is three or more. The government needs to explain why it established that threshold in its election commitment and, furthermore, why it has changed the threshold in the bill before us today. I find it rather unusual that we have a situation—if I understand these provisions correctly—in which a person could murder two people on the same day and not be subject to the bill before us but if they were to murder somebody at five minutes to midnight and somebody else at five minutes past midnight, they would be subject to the provisions of the bill. I am happy for somebody to stand and tell me that that is wrong, but that is how I read the bill. Maybe there is a commonsense reason for that being the case. I would have thought that the easier way to define a "mass murder" and a "serial murder" would be to say that it relates to somebody who murders more than one person. Nevertheless, this is where the government has landed. Indeed, I think that the Labor Party needs to explain to us how, when in opposition, it developed the policy of its election commitment, which was released through a sole media article in *The West Australian* of 16 February 2017. That is the entire basis of the bill before us. Indeed, it needs to explain what has changed. Those matters need to be addressed in the second reading reply of the minister. It is unfortunate that when we enter the Committee of the Whole, we will not be able to consider the amendments of Hon Michael Mischin, if it is indeed correct that they will be ruled out, which went to —

Hon Sue Ellery: Do not reflect on a decision of the house.

Hon MARTIN ALDRIDGE: Sorry?

Hon Sue Ellery: I am saying you should not reflect on a decision of the house.

Hon Peter Collier interjected.

Hon MARTIN ALDRIDGE: He has withdrawn them.

Hon Peter Collier: No.

Hon MARTIN ALDRIDGE: Sorry; I am confused. I am aware of supplementary notice paper issue 1. I have just been handed issue 2. It is unfortunate that we will not be able to consider the amendments on supplementary notice paper issue 1, because there were some key amendments that the government needed to consider, given that we are on —

Hon Sue Ellery: That is reflecting on a decision of the house and you are not supposed to do that.

Hon MARTIN ALDRIDGE: We are in the second reading debate of the bill. We have not yet settled the policy of the bill. I am saying that it is unfortunate that the house will not be able to consider some of the important positions that have been put about why certain classes of murderers are in and certain classes of murderers are out. Indeed, the question remains that if the primary concern of the government is to avoid the re-traumatisation of secondary victims, why should this not apply to every murder? Why is the re-traumatisation of victims solely in the cases of multiple murders—in the language of the government, serial murders or mass murders—of concern when a greater cohort of secondary victims would exist with single murders? From the information that has been provided to me by the advisers in my briefing, I understand that the current definition before the house would apply to only six people. As a Parliament we are saying that yes, we are concerned about the re-traumatisation of secondary victims, but we are concerned only about the secondary victims that relate to six murderers. The government is not worried about the rest. The government has put that principle in its election commitment and in the bill before the house, which I find difficult to reconcile if we accept its argument.

I find it difficult to reconcile that the re-traumatisation of victims will occur only in cases as defined by the government of serial or mass murder. A serial murderer may well murder unrelated victims, so therefore the secondary victims would be unrelated. Why do we have concern for those secondary victims' re-traumatisation, but not for the secondary victims of someone who has murdered one person? The government needs to respond adequately to that important question in the second reading reply, noting that the policy of the bill has not yet been settled. We are in the second reading debate; the house has not yet passed the second reading of this bill. Therefore, the house is free to canvass all types of policy matters with the proposal that the government has put to the house in the Sentence Administration Amendment (Multiple Murderers) Bill 2018.

As I said, while I have been on my feet, I have been handed supplementary notice paper issue 2 for this bill and I have not yet been able to consider fully the amendment that has been circulated to the house in the name of Hon Michael Mischin. We rely upon such brief information from the government about its election commitments and it is still unclear. I was unable to identify in the minister's second reading speech how we have arrived at a different position from before the election. That really needs to be explained, because the election commitment was certainly broader or would potentially capture more murderers than the bill before us does. Perhaps there is some reasonable explanation. In the second reading speech and the briefing I received it was mentioned that there were some constitutional challenges the government needed to navigate in drafting this bill. That may perhaps explain why there has been a shift in policy between what the government took to the election and what it has now brought to this house.

In some of my earlier remarks I referred to the process leading up to the Attorney General making a direction. The Attorney General receives the first statutory report. The people who have spoken before me are clearly much more engaged in these processes than I am, but I would be interested to understand the extent to which secondary victims are involved in the preparation of that first statutory report, which the government argues in the second reading speech has to be retained. It would appear from the wording in the second reading speech that even removing the first statutory report for parole consideration was looked at, but, clearly, constitutional concerns were met. If we accept the principle that secondary victims will be re-traumatised by engaging in a parole review process every three years, but we have to retain the first statutory report to the Attorney General before he or she is able to make a direction in accordance with this bill, I would be interested to know to what extent these things occur and how they differ from the process that ordinarily occurs once we pass beyond the first statutory report. I do not believe we will be fully removing secondary victims from engagement in the parole review process, notwithstanding the fact that, as I understand it, there is no compulsion for secondary victims to engage in it. From my perspective, those matters need to be more fully considered, hopefully in the minister's reply to the second reading debate, but if not, then through the Committee of the Whole process. It concerns me that we were told this was an election commitment of the Labor Party, but this is not; there are material differences. It concerns me also that we are accepting a principle of needing to adequately protect some secondary victims but not others. I want to understand the policy rationale for the government's decision that some secondary victims ought to be protected in this way versus those involved in single murders or, as I outlined, in serial murders—according to the government's own definition—if those two murders were to occur on the same day. I find it highly unusual that the bill has been

drafted in that way, but, nevertheless, I look forward to hearing about these matters in the minister's reply to the second reading debate.

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.39 pm] — in reply: I thank members for their contributions to the second reading debate. Two members asked questions and expressed a view about the narrowness of the scope of the Sentence Administration Amendment (Multiple Murderers) Bill 2018. I made some comments about this earlier when dealing with the matter before the house. It is deliberately cast in a narrow view. Hon Michael Mischin said that he would not accept the answer that that is what we took to the electorate. We see this legislation as the most effective way of giving effect to that. He said that that would not be acceptable to him, but that is exactly what happened.

The reason for the legislation is to address the re-traumatisation experienced by secondary victims and survivors. The proposed reforms were triggered by the public debate that was happening around the time that Ms Kate Moir petitioned for reformation of parole laws in Australia. People have referred to her during the debate already. She is a survivor of some of the serious violent crimes, including four murders, committed by prisoners David Birnie, who is now deceased, and Catherine Birnie. Her online petition and her commentary received pretty overwhelming community support. As a consequence, the then shadow Attorney General made a public commitment at that time that we would give effect to changing the laws to address that.

The reason for limiting the scope to serial killers and mass murderers was raised. The scheme has been targeted at serial killers and mass murderers because there is little to no realistic expectation of their release. Other members have referred to the kind of popular demand to deal more harshly with prisoners when considering parole. I think this is probably reflected in Hon Charles Smith's comments. Governments of both persuasions are often approached by members of the public to intervene and to prevent parole for a range of prisoners, including these ones. Attorneys General of successive governments have sought to address these concerns by making public declarations that prisoners such as Catherine Birnie would not be released. Parole consideration for mass murderers and serial killers often attracts significant media attention. That can often frustrate the secondary victims and survivors who may be contacted by the media around the time of parole review.

Ms Moir has spoken publicly on this issue. By preventing parole planning and extending the period for when a prisoner's eligibility for parole consideration will be reviewed, with the possibility of preventing early release consideration for the rest of the prisoner's natural life, it is hoped to reduce the regularity and intensity of that media and public attention. The Attorney General recognises the trauma that victims of all crime suffer, which is magnified in a number of horrendous crimes. The government made a commitment during the election campaign that we would seek a specific mandate for serial killers and mass murderers. As such, the bill is confined to this group of murders.

The issue was touched on in the earlier debate that this legislation is unashamedly narrowly cast. That is not to say that this house might not consider other categories of offenders in the future. Nothing will stop anyone else bringing a bill before the house to deal with it. This bill is narrowly cast to give effect to the commitment we made at the time.

The offence characteristics for mass murder, which require three or more murder convictions, have been modelled on the definition of "mass killing" in section 455(d)(2)(A) of the United States Code relating to the investigation of certain violent acts, shootings and mass killings. The definition refers to three or more killings in a single incident. The definition of "serial killing" has been developed with regard to the common features of this type of offending as agreed by the Federal Bureau of Investigation at the 2005 Serial Murder Symposium. Serial killing is generally understood to involve the killing of two or more victims by the same offenders in separate events involving a cooling-off period between the incidents. The bill applies a "different day" rule to distinguish that offences are serial killings that have occurred in separate events. The latter concept, separate events, was too difficult to define in statute as it is open to interpretation. That would have presented a greater risk of challenge in the making of a direction. It is easier to ascertain that offences occurred on different days.

It was proposed that this bill is about putting the problem on the next Attorney General's desk. The section 12A statutory review process is undertaken on a case-by-case basis, with the Prisoners Review Board being required to prepare a section 12 report on a prisoner dealing with the release considerations under sections 5A and 5B of the Sentence Administration Act. Although it may be rare, particularly for a serial killer or mass murderer, it is possible that prisoners serving life or indefinite sentences and Governor's pleasure detainees—the schedule 3 prisoners—may be recommended for parole on the first occasion if the executive supports release. The proposed scheme of ministerial directions to be applied to designated prisoners will maintain discretion for the minister of the day to make a direction or to renew a direction. The minister will be under no obligation to follow the decision of a former minister. Based on public response to the proposed reforms, it is true that the making of a ministerial direction may create a public expectation that a designated prisoner will be subject to subsequent directions. However, it is also conceivable that public attitudes may change at some future time to be receptive to these types of prisoners being eligible for parole consideration. The proposed scheme will ensure that when a direction is made about

a designated prisoner, the minister will have the opportunity to reconsider the making of a further direction. The minister of the day will not be constrained when making those decisions.

It was also raised that the proposed scheme of ministerial direction not interfere with the sentence of the court, take matters out of the court or convert the court sentence. High Court cases have consistently demonstrated a clear distinction between the judicial function of fixing a minimum term and executive arrangements that permit early release of offenders subject to sentences of life and indefinite imprisonment and Governor's pleasure detainees. The High Court cases demonstrate that the sentencing judge's determination of a minimum-term non-parole period does not create an entitlement or right to parole, only that the offender should be eligible to be considered for parole at a set point in time. A sentencing court is not entitled to base its decision on assumptions about the current or future statutory arrangements for early release.

A question was asked about how the Attorney General would make a decision to issue a direction. The Attorney General of the day would have absolute discretion to make a direction about a designated prisoner and discretion to decide the period of the direction, being no more than six years. In practice, the Attorney General intends to seek relevant information from the Prisoners Review Board, the victim mediation unit and other sources available prior to determining whether to issue a direction.

Some of the issues raised by Hon Alison Xamon went in particular to children effectively being captured by the Sentence Administration Amendment (Multiple Murderers) Bill. The bill currently affords an absolute discretion, as I have just said. The policy basis for introducing these reforms is to minimise the potential traumatisation of secondary victims through the parole planning process. In the case of a Governor's pleasure detainee, and using the theoretical example of a child sentenced for multiple murders, the issue of traumatisation of secondary victims is acute due to the regularity of the periodic reports because, of course, the child is young when convicted and there is the proximity of the first report to the incident and sentencing. For this reason, it is proposed to maintain capacity, as in the current bill, for the minister to issue a direction that suspends reporting for a period that may be longer than two years, particularly when an Attorney General would not support release. Additionally, a child convicted of a second offence for murder is highly unlikely to be sentenced as a Governor's pleasure detainee. It is more likely that this child would be sentenced to life imprisonment, which is subject to a minimum non-parole period and three-yearly review.

Some of the issues raised by Hon Martin Aldridge were around the protocols for considering the victim's views about a discretion. As I have said, under the bill, the Attorney General of the day will have complete discretion in making a decision. It was determined not to legislate for the manner in which the Attorney General is to come to that decision on a direction. The legislation has been drafted in a way that minimises the ability of legal challenge by an affected prisoner, which would negate the policy of avoiding re-traumatisation of secondary victims and survivors. It is also evident that these cases involve multiple secondary victims who could have different views. The honourable member outlined three categories of those views. It is therefore the government's view that consideration of secondary victims' submissions, if any, should take place under an AG's decision-making protocol and not in legislation. These procedures can be implemented without requiring legislative change. The following procedures will be followed for secondary victims. The Attorney General will consider the views of victims as provided through the most recent statutory report. After commencement of the legislation, when a prisoner is a designated prisoner as defined in the bill and is yet to have the first statutory report, the board will indicate the views of any victims regarding a proposed direction in a statutory report. When a direction is in effect—suspending the statutory reporting functions and an Attorney General is considering a further direction—the Attorney General will seek the victims' views directly via the Department of Justice's victim services, in particular the victim mediation unit. If a victim has advised that they do not wish to be contacted under any circumstances, victim services respects those wishes and does not engage with the victim. Victims are not compelled to make a submission to the board. Although the likelihood of release is low for these very serious offenders, victims are not necessarily aware and see each appearance as a chance that the offender will be released. A victim may feel personally compelled to express their views to feel sure that the prisoner will not be released. In the case of serial killers and mass murderers, there is significant media attention, particularly at the time of parole consideration. This is also a source of re-victimisation and stress.

I think I have addressed the major issues that were raised. I note that there is a new supplementary notice paper, so we will need to go into Committee of the Whole House so I can happily answer any questions about other elements of the bill that I might have missed. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon MICHAEL MISCHIN: I want to follow up on some of the issues raised during the course of the second reading debate. I note that the Leader of the House has given a number of responses to the questions that were raised, but I share Hon Martin Aldridge's interest in the scope of the Sentence Administration Amendment (Multiple Murderers) Bill 2018. The answer that it is deliberately cast narrowly tells us nothing other than that it is deliberately cast narrowly, which is what we have seen with the bill. But I am curious about the reason that it has been deliberately cast narrowly. The reason is not merely that it was an election commitment to do this and therefore it has been cast as narrowly as possible to get away with satisfying that election commitment; is there another reason for it? After having agitated for this in opposition, why has the government not taken the opportunity to provide the benefit of this reform to a wider range of victims?

Hon SUE ELLERY: The member has made the point on several occasions now that it is not satisfactory to him that the government relies on the fact that we made a very specific commitment during the election campaign to legislate to give effect to this. I know that that answer is not satisfactory to him—he has made that clear—but that is the reason why the government has cast the bill so narrowly. We made a very specific commitment in the very specific context of the public debate that was happening at the time about the re-traumatisation of secondary victims, and this legislation gives effect to that.

Hon MICHAEL MISCHIN: Yes, but the Leader of the House when she was in opposition and the then shadow Attorney General said—the Premier and the Attorney General have since also said—that, generally, this is all about preventing the re-traumatisation of secondary victims. Is the Leader of the House saying that the government is interested in the protection from re-traumatisation of only secondary victims of mass murderers, and not other victims?

Hon SUE ELLERY: No, I am not saying that.

Hon MICHAEL MISCHIN: Thank you. In that case, why has the government not drawn the bill a little wider to prevent the re-traumatisation and re-victimisation and the stress and the anguish for other secondary victims, since it is prepared to go this far?

The CHAIR: I am contemplating the debate in the context of clause 1. As the chamber is well aware, that does not involve a furtherance of the debate on the second reading of the bill, which has already been determined. When we talk about a narrow scope of debate, I feel that I can commit to engaging only in reference to an amendment on the supplementary notice paper, which tends to expand the scope of a provision under clause 6, and that is why I will now countenance giving the call to the minister, if she wishes to respond. The bill and its policy is what it is, and that is not up for debate in clause 1.

Hon SUE ELLERY: Thanks, Chair. That is why in my reply to the second reading speech, before the house voted to enshrine the policy of the bill, I made the point that this is a deliberately cast, narrow piece of legislation to deal with a very specific election commitment. I really cannot add any more than that.

Hon MICHAEL MISCHIN: In debates on other legislation in the other place the Attorney General said, "You're protecting murderers, child sex offender and paedophiles" when we have queried his legislation. So, channelling the standards of the McGowan Labor government, why is it protecting child killers?

Hon Sue Ellery: Chair, I am not going to respond to that.

Hon MICHAEL MISCHIN: Why is the government protecting domestic violence murderers? I am disappointed that the McGowan government's standards do not extend that far. Moving on, how many victims are we talking about in each of the six cases that we have been told are pending?

Hon SUE ELLERY: There are 19 victims of people who will be captured by this legislation. If the member's next question is going to be about the number of secondary victims, we are not a position to give him a number for that because, of course, it entirely depends on the particular family and friendship arrangements of those victims. I cannot give the member a number for the secondary victims.

Hon MICHAEL MISCHIN: Is it fair to say that the basis for the policy that the government has relied on and has reacted to is a campaign run before the election by a certain number of people, but the Leader of the House is not able to say how many of these secondary victims in each of these cases have contacted the Prisoners Review Board and made their views known that they are being re-traumatised whenever a parole report comes up every three years? Is the Leader of the House able to say anything on that?

Hon SUE ELLERY: The best information I have available to me at the table is that there have been several people who have contacted the board—I cannot give the member a specific number—during the course of the public debate on the legislation and one person who has contacted the Attorney General's office. I cannot be more specific than that.

Hon MICHAEL MISCHIN: So this legislation is meant to benefit only a very small number of secondary victims of murderers in Western Australia.

Hon Sue Ellery: That is your conclusion. I do not think we could say that.

Hon MICHAEL MISCHIN: How many murderers and wilful murderers are currently in the prison system?

Hon SUE ELLERY: As at 23 October 2018, a census of the WA prison population identified 285 prisoners for whom the most serious offence was murder.

Hon MICHAEL MISCHIN: I think it is a fair inference, notwithstanding the minister's previous observation, that there are likely to be a lot more secondary victims of 285 murderers, or let us say 279 murderers, as opposed to the six we are talking about here.

Hon SUE ELLERY: I understand the point that the honourable member is making. He is making the point that an even larger number of criminals who it could be argued have committed particularly heinous crimes against their victims are not captured by this provision of the legislation that is before us now. However, I do not step away from the fact that this election commitment was made for a very specific set of circumstances. It was clearly made about a narrow class of prisoners.

Hon MICHAEL MISCHIN: What was that set of circumstances? We know a bit about the narrow class of prisoners. What were the circumstances that persuaded the government that these are the most important ones to deal with and legislate for?

Hon SUE ELLERY: Chair, I have already responded to this. It was an election commitment made at the time that Kate Moir in particular was drawing attention to her particular circumstances. She generated a large degree of community support for the issues that she was raising. The Labor Party in opposition, and in the middle of an election campaign, responded to that. Those were the circumstances, as I said in my second reading reply, that led to this particular piece of legislation before us now.

Hon MICHAEL MISCHIN: To summarise, it was an opportunistic decision to support a public campaign and take advantage of the publicity at the time; otherwise, no further thought had been given to how it would operate in respect of other secondary victims. Would that be fair enough?

Hon SUE ELLERY: No, that certainly would not be fair enough. It is a fairly gratuitous swipe, I suppose. The honourable member is entitled to reach that conclusion himself. That is not the conclusion that the government draws. We made a commitment, in responding to a genuinely felt sentiment by Ms Moir herself and by others in the community at the time. We stand by our decision to do that, and we think that this legislation is the best way to give effect to that.

Hon MICHAEL MISCHIN: The minister mentioned that it was a public commitment because of public support and a campaign. Presumably, thought has been given to the acceptable parameters that should be drawn in this legislation. We have heard from Hon Martin Aldridge that part of the commitment seemed to be that a multiple murderer would be one who had more than one primary victim. However, the minister has limited it to a formula that requires two victims on separate days, or three or more victims.

Hon SUE ELLERY: As I outlined in my second reading reply, the commitment we made was about serial killers and mass murderers. Once we won the election, when considering how to give best effect to that and how to define these things, how to —

Hon Michael Mischin: Encapsulate.

Hon SUE ELLERY: Yes, that is the word, but it is too late in the parliamentary year for me to do that elegantly. In how to define that, we looked at the work being done in the US by the FBI and we balanced that against how to best give effect to the intention of the election commitment. As I said in my second reading reply, that is where those definitions came from. It was based on the work done internationally around how to describe and capture serial killers and mass murderers.

The CHAIR: Members, I want to draw your attention to the fact that we are debating clause 1, the short title; we are not debating the matters that were decided by the house at the time the second reading vote was taken. There is some scope to get into this detail under a specific clause, being clause 6. Indeed, I see there is an amendment on the supplementary notice paper. However, this is starting to stray well beyond a short title debate, in which we canvass matters that may come up for consideration in detail; it does not mean that we just go on and on indefinitely on matters that have properly been covered in the second reading. I hope that is of assistance to members as they frame their remarks on the question that clause 1 do stand as printed.

Hon MICHAEL MISCHIN: Apart from trying to frame the legislation so that it meets the expectation that has been raised as an election commitment, I want to explore whether there is a reason that it has had to be framed this

narrowly. Is there a constitutional or legal problem that the government is attempting to avoid? We have heard some hints that that might be the case. What are those potential problems?

Hon SUE ELLERY: The honourable member made the point in his contribution to the second reading debate that, when drafting legislation like this, we always have to take into account the need to balance our policy objective against the danger, I suppose, that the legislation might be rendered constitutionally invalid. He made that point himself during his contribution to the second reading debate. Indeed, the government seeks to get that balance right with every piece of legislation. That is why this legislation is crafted in the way it is.

Hon MICHAEL MISCHIN: What are the risks that the government has been attempting to avoid?

Hon SUE ELLERY: I am reminded that I did respond to this question in my second reading reply, when I talked about wanting to ensure that we did not interfere with the sentence already given by the court. I gave a specific response to this particular issue.

Hon MICHAEL MISCHIN: Was interfering with the sentence the only consideration that the government took to be a risk to the validity of this legislation?

Hon SUE ELLERY: The drafters sought advice on whether there would be any constitutional issues when they were doing the work around how to describe serial killers and mass murderers. The advice they received was that there was a need to be careful to not impinge on or interfere with the sentence given by the court.

Debate interrupted, pursuant to standing orders.

[Continued on page 9161.]

Sitting suspended from 4.15 to 4.30 pm