SENTENCE ADMINISTRATION AMENDMENT (MULTIPLE MURDERERS) BILL 2018

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [6.29 pm]: I move —

That the bill be now read a second time.

This bill introduces very important reforms to the Sentence Administration Act 2003 so that an Attorney General, who is described as the "minister" in the bill, may direct that mass murderers and serial killers must not be considered for parole or a resocialisation program. Honourable members may recall that in 2007, Hon Jim McGinty, MLA, publicly declared that during his term as Attorney General, prisoner Catherine Birnie would never be released. This and subsequent public declarations have had no legal effect, with the Prisoners Review Board of Western Australia and the chief executive officer of the corrective services division of the Department of Justice still being required to comply with statutory reporting obligations under section 12A of the Sentence Administration Act 2003. Prisoner Birnie and other prisoners who are regarded as Australia's worst mass murderers and serial killers have continued to have their parole reviewed on a periodic basis.

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. 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.

The bill introduces the concepts of "designated prisoner" and "relevant offence" for the purpose of prescribing the mass murderers and serial killers to whom a ministerial direction may apply. These definitions cover prisoners who are serving life or indefinite imprisonment or who are Governor's pleasure detainees as listed under schedule 3 of the Sentence Administration Act 2003. The prisoner must be serving a sentence for at least one conviction for a relevant offence, which is defined to include the Western Australian offence of murder, the former offence of wilful murder, as well as similar offences when committed elsewhere, including any place outside Australia. In addition, such a prisoner must have been convicted of two or more other relevant offences that were committed at any time, or have been convicted of another relevant offence, and that offence must have been committed on a different day from the first relevant offence. As such, 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. The issue of consideration for a resocialisation program and periodic parole review arises only in relation to schedule 3 prisoners. It is thus not necessary to extend the scheme to other classes of prisoners.

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. Ministerial directions are not compulsory, nor are they automated. The minister has absolute discretion about whether to make a direction about a designated prisoner. Consistent with the current operation of the Sentence Administration Act 2003, the decision is not subject to natural justice or any requirements for procedural fairness. The amendments also provide that a direction cannot be challenged, appealed or reviewed in any court, except on the basis of jurisdictional error. A direction must be in writing and must specify start and end dates of no more than six years apart. Copies of the direction must be provided to the board, the chief executive officer of the Department of Corrective Services and the prisoner concerned. During the period that the direction is in effect, the board and the CEO of corrections will be prevented from undertaking any assessment, consideration or reporting functions of parole or a resocialisation program for the designated prisoner. A direction may be renewed three months prior to when it is due to expire. There is no limit to the number of successive directions that can be made. The legislation will maintain the minister's capacity to request a report about a designated prisoner or for the board to provide a report under section 12 of the Sentence Administration Act 2003. Although the intent is that the section 12 reporting mechanism will not be used during the period of a direction, the retention of this ability negates the need to include special provisions for the

revocation of a direction. It allows for any exceptional cases in which parole may need to be considered or when a new minister comes in and has a different view about an already issued direction.

If a further direction is not made at the expiry of a direction, the statutory reporting functions under section 12A resume and due dates for future reports are calculated as if all previous reports had been completed at the times prescribed by the legislation. The amendments include the capacity for a report to be deferred past the due date, provided it is given to the minister as soon as practicable; and, in any event, within seven months. This will ensure that the board has sufficient time to prepare and comply with the statutory reporting requirements. The suspension on the consideration for a resocialisation program is also lifted at the expiry of the direction.

The amendments introduced by this bill are targeted at the very worst mass murderers and serial killers serving life and indefinite terms in Western Australian prisons. In these cases, there is no entitlement to parole or any early release and the prisoner is liable to remain in custody for the term of their natural life. 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 intended to address the re-traumatisation experienced by the secondary victims and survivors of these notorious crimes.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 2161.]

Debate adjourned, pursuant to standing orders.