SENTENCING LEGISLATION AMENDMENT (PERSONS LINKED TO TERRORISM) BILL 2021

Second Reading

Resumed from 23 March.

HON NICK GOIRAN (South Metropolitan) [5.09 pm]: It is indeed interesting that we should be debating the Sentencing Legislation Amendment (Persons Linked to Terrorism) Bill 2021, which is the eighth order of the day and deals with persons linked to terrorism. It is a truly, truly heinous type of offence that might be occurring in Western Australia and, indeed, in our nation. As members might recall, the history of this bill has its genesis in a Council of Australian Governments agreement of some years ago.

It is interesting that this bill should be brought on by the McGowan Labor government this week, because one of the things that this bill does is look at circumstances in which a person can have early release from imprisonment. It looks at circumstances in which a person might be able to be released from prison under a parole order or a re-entry release order. Interestingly, the government is—incidentally, with the support of the opposition—looking to enshrine a presumption against granting early release for these types of people who have been convicted of terrorism offences. Once this bill passes, there will be a presumption against them being released early from incarceration.

Why would the McGowan Labor government bring this bill on today, 10 May, when we have just learnt that the Attorney General, with the support of the Premier of this state, the member for Rockingham, is releasing into the community a person who has killed their grandmother in the vilest of circumstances? This individual tried to decapitate his grandmother—unsuccessfully, I might add—only then to disembowel her and, ultimately, murder her. He was sentenced to life imprisonment by a Western Australian judge but under the McGowan Labor government life does not mean life for a killer of a grandmother in the vilest of circumstances. The Attorney General has been mucking around in different courts around the nation, assisting the Premier with his ego games with billionaires. This first law officer has brought a bill such as this into Parliament, and it is a very serious bill. The government is asking for the support of members here to agree that there should be a presumption against early release for someone who commits a so-called terrorism offence, yet this same first law officer has agreed to release this person from jail.

What are we to make of this? What is the Western Australian public to make of this? Is this some kind of message from the McGowan Labor government that it is tough on terrorists but soft on murderers? Is that the message that is being pushed to the community this week, the McGowan Labor government's budget week? Mr McGowan and Mr Quigley do not want to talk about this—least of all Mr McGowan. He just wants to talk about his budget on Thursday. No doubt the shadow Treasurer will have plenty to say about that in the fullness of time. In the meantime, what is happening with keeping our communities safe, something that Mr McGowan loves to talk about? The case here exposes just how paper-thin that commitment really is.

Here we are again considering the Sentencing Legislation Amendment (Persons Linked to Terrorism) Bill 2021. It might interest members to note that this bill was introduced into the other place in August last year. It managed to be third read in that government-dominated chamber on 20 October last year, and six days later made its way into our chamber and was introduced for the first time. Since 26 October last year, the government has decided on only one occasion prior to today to bring this bill on for debate. This bill looks at creating a presumption against early release for those who have committed terrorism offences. It was on only one occasion, on 23 March. According to my records, it was brought on for a mere 12 minutes. I say that lest we have any kind of nonsense from the Minister for Police, as we had earlier this week—as quite successfully prosecuted by my colleague, Hon Peter Collier, the shadow Minister for Police—that somehow these bills are getting held up in the Legislative Council. How remarkable it was to hear the Minister for Police suggest that he had been trying to pass a bill for six weeks when the government controls the times when we sit. It decided that we would not be sitting for the last four weeks. We have had ministers jetting around the place for the last four weeks and then the Minister for Police came along and criticised the opposition because he could not get a bill through in the last six weeks apparently. For four of those weeks we were not even sitting. Evidently, the minister has ruled himself out from becoming a Treasurer of this state because he is having trouble counting to six.

This is another serious bill. We do not want any nonsense from the first law officer or any of his colleagues suggesting that somehow this bill has been held up when it has been brought on once in the Legislative Council—once in the last year—for 12 minutes. Today is day 2. The government can rest assured that we will fulfil our duty in this place as honourable members and consider this important bill in detail, including in Committee of the Whole House, to make sure that we get this right. The last thing we want is for this bill, which creates a presumption against the early release of very serious offenders, to be rubberstamped by the Legislative Council. The government has a tendency—in fact, there is a pattern of behaviour of this government—to release offenders early. We will make sure that we get this right over the course of the remainder of today.

On 23 March this year, when this bill came on for a mere 12 minutes, I indicated that the bill's genesis can be found in a 2017 COAG agreement. This is effectively phase 2 of the reforms. Phase 1 was addressed by the Bail Amendment

(Persons Linked to Terrorism) Act 2019, so we have dealt with the situation of bail for terrorists. Phase 2 is parole and early release for terrorists, and that is what we are dealing with in the bill before us.

The Sentence Administration Act 2003 is one of four statutes in our state that will be amended as a result of this bill. This bill seeks to create a new tiered system for categorising prisoners, namely category 1 and category 2. Category 2 prisoners will be captured by this scheme if they are the subject of what is referred to in the legislation as a Commissioner of Police report. I want to take a few moments to consider this new concept of a COP report. It is introduced by way of proposed section 66H. That refers to a written report that deals with additional release considerations. In particular, it may refer to terrorist intelligence information. A Commissioner of Police report will be required when the parole board is making a release decision for a category 1 prisoner. The Commissioner of Police will also have discretion to provide a report to the board on any other prisoner. It would be of interest to know, possibly in the parliamentary secretary's reply, but otherwise as we dive into Committee of the Whole House, in what circumstances it is intended that the Commissioner of Police would exercise the discretion to provide a report to the board on any other prisoner. Will some guidance be provided to the Commissioner of Police? Obviously the government is busy at the moment recruiting a new Commissioner of Police as we farewell the current commissioner into his soon to be assumed duties. In the meantime, whoever will be the new Commissioner of Police will be given this discretion. What will guide the exercise of that discretion, and in what circumstances does the government consider it will be appropriate for the commissioner to exercise that discretion?

The bill includes a detailed definition of "terrorism offence". That definition cross-references a range of offences under the commonwealth Criminal Code and other legislation. It seems appropriate that our sentencing laws are updated to incorporate specific references to terrorism offences to acknowledge the unique sentencing considerations that should apply to terrorism-related offences.

Section 4 of the Sentence Administration Act provides in part —

> ***early release order*** means —
>
> (a) a parole order; or
>
> (b) a re-entry release order;
>
> …
>
> ***parole order*** means an order made under Part 3 that a prisoner be released on parole and includes a parole order made for the purposes of section 72 or 73;

I understand that the board may parole a prisoner who is eligible to be released on parole under the Sentencing Act 1995 if the board considers it appropriate to do so having consideration for various factors set out in the legislation. In comparison with a parole order, a re-entry release order made under part 4 includes a re-entry release order made for the purposes of section 72. This will allow certain prisoners to apply to the board to be released up to six months before they would otherwise be eligible for release. The core amendment to the sentencing of prisoners is contained in proposed division 1B, which will introduce additional release considerations. Members will find that that commences at clause 16 of the bill. Proposed section 66G in division 1B introduces a presumption against the making of an early release order for a prisoner with links to terrorism unless there are exceptional reasons why the prisoner should be released.

I turn now to clauses 9 and 10 of the bill. These clauses introduce restrictions in proposed sections 13 and 14 that the board cannot endorse a resocialisation program for a prisoner with links to terrorism who is subject to a Commissioner of Police report unless it is satisfied that the prisoner is suitable for inclusion in the program. This seems to be focused on preventing prisoners from radicalising others. However, it is not clear whether the government has necessarily considered what I might describe as concrete ways in which to address radicalisation. It is interesting for us to pause and consider the notion of a resocialisation program. I say that because, if I am not mistaken, the recent decision by the Attorney General to release the grandmother-killer offender was on the basis that he had done a resocialisation program. I simply give notice that we will have some further questions on that program and how it will work in the instance of an offender who is the subject of one or more terrorism offences. There are various other additions in the bill, such as provisions relating to confidentiality of information, and automatic cancellation of a supervised order in certain circumstances.

The bill also seeks to amend the Young Offenders Act. It appears at first glance that the proposed amendments to the Young Offenders Act are very similar to the proposed changes to the Sentence Administration Act, albeit there appears to be at least one notable difference. Of course it is a well-recognised sentencing principle that additional considerations should be taken into account when sentencing young offenders. The Young Offenders Act specifically includes the general principles of juvenile justice, which are set out in section 7, and the specific principles and considerations for young offenders, which are set out in section 46. Even though the paramount consideration under the Sentencing Administration Act is the safety of the community, that was obviously forgotten by the first

law officer when he allowed the grandmother-killer back into the community. We need to keep in mind that, as I understand it, when this individual was caught by police, he said something to the effect of, "Well, lucky you caught me, because I was about to go and kill some more people." Having killed his grandmother in the most vile of circumstances, he was lying in wait for the aunty. This is the type of person that the first law officer, with the full support of the member for Rockingham, has released into the community. That is despite the fact that the paramount consideration under the Sentence Administration Act is the safety of the community. I am sure Western Australians feel very safe with Mr Quigley and Mr McGowan releasing an individual of this ilk into the community. That is why we need to make sure that we get this particular legislation right so that these known terrorists will not also be released at will into the community. As I said, whereas safety of the community is the paramount consideration under the Sentence Administration Act, under the Young Offenders Act, community safety is specifically listed as paramount for repeat offenders only, although it is still an important consideration for all other offenders. It is similar to the changes to the Sentence Administration Act; the proposed changes to the Young Offenders Act will introduce a new tiered system of types of offenders and new definitions of terrorism offences. The bill before us will create new divisions to specifically address release consideration for offenders with links to terrorism or subject to a Commissioner of Police report. Although I will be quite happy if the parliamentary secretary wants to deal with this all under either clause 1 or in his reply or under the provisions dealing with the amendments to the Sentence Administration Act, again, the same consideration applies here. In what circumstances will we see the Commissioner of Police preparing a report under the Young Offenders Act? What will be the circumstances that will guide the commissioner to determine to invest the resources of his agency to prepare such a report?

As I said, the opposition supports this bill and agrees that it is a necessary reform to sentencing legislation. It is, of course, I imagine for every member of particular concern that there are children engaging in terrorist activities. One must consider this in light of the ongoing campaign by many not only Western Australians, but also Australians of goodwill who argue and advocate for an increase in the age of criminal responsibility. As I understand, the advocacy at this present time suggests that it be moved from the age of 10 to 14, although some are arguing it should be 12 years old. That is a debate for another day, I am sure the parliamentary secretary will agree; nevertheless, to the extent that it is relevant to the matter before us today, it is indeed particularly concerning to note that there are children engaging in terrorist activities.

I would have thought that probably a decade or so ago, the idea of children committing terrorism offences would not have been top of mind for lawmakers or policymakers. They would not have been considered to be a serious risk. But over the course of the last decade or so, things have certainly moved. I note at this time that in a 2018 report to the Prime Minister, entitled *The prosecution and sentencing of children for terrorism*, Dr James Renwick, Senior Counsel, in this fifth report had to say in the executive summary, for the benefit of Hansard, found at page viii, paragraph 1.10 —

> Since 2014, the risk of children committing terrorism offences has emerged as a significant issue, as reflected in the marked increases in intelligence interest and police investigations, as well as the number of charges and convictions concerning children. Significantly, over 10% of the total number of persons convicted of terrorism offences since 2014 were under 18 at the time of offending, and a further 25% were between 18 and 25 (meaning that over a third of the total group of federal terrorism offenders were under the age of 25).

That is over one-third. Now, that is of course not just children; that is what we would describe as children and young people, up to the age of 25. Nevertheless, I would share the concern noting that over one-third of the total group of federal terrorism offenders were under the age of 25.

I also note the rapid growth from increased online activity and found the Australian Federal Police's submission from February 2021. The Australian Federal Police made a submission to the Parliamentary Joint Committee on Intelligence and Security for its inquiry into extremist movements and radicalism in Australia. The AFP in its submission to the commonwealth parliamentary inquiry, at page 6, paragraph 27, had this to say —

> The AFP believes the rapid growth and globalisation of —

Extreme right-wing groups —

> comes from the increasing move to an online environment and ability to connect internationally with like-minded individuals and small groups online including through social media, encrypted communications and across dark web platforms. Law enforcement have identified young individuals supporting … ideologies and espousing them online.

It went on to say in its submission at page 10, paragraph 54 —

> Further, the increased prevalence and ease of access online makes it easier to radicalise young people and encourage their alignment with international extremist groups. As noted above, the AFP is aware of individuals as young as 13 years old holding … views.

That is at the age of 13, says the AFP in its submission to the commonwealth parliamentary inquiry.

It seems to me we need to consider how best to protect our community, in not only the short to medium term while young offenders are in prison, but also the long term once they are released. It is interesting that this bill was talking about a presumption against release in certain circumstances. It seems to me that it is imperative that we consider the principles and approaches that will minimise reoffending and maximise the chance of changing the mindset of these young offenders who have been radicalised. In New South Wales there is a proactive integrated support model, known as PRISM. I note that that model is a disengagement intervention delivered by corrective services in that state. It is aimed at prison inmates who have a conviction for terrorism or have been identified as at-risk of radicalisation. I note that it is a voluntary support service that uses tailored intervention plans to address the psychological, social, theological and ideological needs of radicalised offenders to redirect them away from extremism and help them transition out of custody. It would seem appropriate for the government to provide some indication, possibly in reply or otherwise under clause 1 in Committee of the Whole House, to what extent it has or intends to have programs of this sort, whether it be modelled on the New South Wales model or otherwise. It is all very good to have a bill before us that is making a presumption against the early release of these offenders, these people who have committed terrorism offences, but what does the government propose to do with them while they are being detained? What is happening at the moment and what are the government's plans for these individuals in the future? If we pass this bill, there is going to be a presumption that they will not get early release, so what will the McGowan Labor government do with them during that time of non–early release? During that time of continued incarceration, what does it propose to do with them? Will it be more of the same or does it have specific plans for what it intends to do with these individuals?

With that said, I indicate again that the opposition supports the bill. I intend to ask a few questions when we get into Committee of the Whole House, noting that there are some 45 clauses in the bill. To assist the parliamentary secretary with the passage of the bill, I indicate that those questions primarily relate to part 2 and the Sentence Administration Act 2003.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [5.40 pm] — in reply: I thank the member for his contribution, which obviously was interrupted in March after 12 minutes before we brought the Sentencing Legislation Amendment (Persons Linked to Terrorism) Bill 2021 on again for debate today. I note that I think it was listed for debate during the last sitting week, but I am not sure that we would have reached it. The problem was that I was in isolation, so it was not possible for us to further debate it even if we had been in a position to do so. The member has raised a number of issues about the bill, some of which he raised on 23 March. One of the issues that he wants us to explain to him, which I am willing to do at this stage, is why the bill was not referred to the Standing Committee on Uniform Legislation and Statutes Review. As he might recall, he raised that issue, and I think it is a reasonable question to answer given the nature of how this bill has come to us. I have a detailed answer to provide to the member, so please bear with me as I work my way through it.

In our view, the bill is not a uniform legislation bill as contemplated under Legislative Council standing order 126. The relevant question under this standing order is whether the bill before the house ratifies or gives effect to the intergovernmental agreement that was referred to by Hon Nick Goiran in his second reading contribution—that is, the Intergovernmental Agreement on Australia's National Counter-Terrorism Arrangements, which is dated 5 October. Relevantly, clause 4.1 of that agreement states —

> The Commonwealth, States and Territories will:
>
> (a) take whatever legislative action is necessary to ensure that their legal frameworks allow for terrorist incidents to be prevented, disrupted, investigated, responded to, and/or prosecuted; and
>
> (b) review their legislative arrangements to ensure they are effective in responding to changes in the national security environment.

The balance of clause 4 refers to consultation. The view of the government is that for a bill to give effect to the terms of an intergovernmental agreement, that agreement needs to include sufficient particularity of the matters that are contemplated by the bill. That is clearly not the case with the terrorism intergovernmental agreement. Appendix 1 of the sixty-fourth report of the Standing Committee on Uniform Legislation and Statutes Review from 2011, *Information report on uniform scheme structures*, provides guidance in considering whether a bill ought to be referred to the committee. This bill does not fall under any of the five structures referred to within the report: applied laws, model laws, referral of powers and adopting commonwealth laws, nor any combination of these things.

In the standing committee's 113th report on the Financial Transaction Reports Amendment Bill 2018, it also had an opportunity to consider the same terrorism IGA in the context of that bill and had the following to say about it at paragraph 5.6 of the report —

> There have been various commitments in relation to Australia's national counter-terrorism strategy. These include agreements between the Commonwealth and all States and Territories in 2004 and 2017 to

> ensure that legislative arrangements and legal frameworks enable an effective response to the terrorism threat. They are not specific to money-laundering, counter-terrorism financing or financial transaction reports legislation. They do not underpin the Bill.

The same can be said about the bill before us. The terrorism IGA is not specific to parole and does not underpin the bill. Outside of the IGA, COAG agreed to include a presumption against granting bail and early release orders, including parole, to those persons who have links to terrorism. That agreement, although specific to the subject matter, still did not do more than provide a commitment to have some consistent principles. COAG tasked the Australia–New Zealand Counter-Terrorism Committee with endorsing a set of principles, which I will state for the benefit of members. The following four principles were developed. The first principle is that the presumption against bail and early release orders, including parole, should apply to categories of persons who have demonstrated support for or links to terrorist activities. The second principle is that a high legal threshold should be required to overcome the presumption against bail and early release orders, including parole. The third principle is that the implementation of the presumption against bail and early release orders, including parole, should draw on and support the effectiveness of the joint counterterrorism model. The fourth principle is that implementing a presumption against bail and early release orders, including parole, should appropriately protect sensitive information. These principles provide for a minimum level of consistency, but afford a wide discretion for each jurisdiction choosing to give effect to them.

I also note for completeness that the Bail Amendment (Persons Linked to Terrorism) Bill 2018, to which the same COAG agreements were relevant, was not referred to the standing committee by the Legislative Council. I refer to the comments made by the then chair of that committee, Hon Michael Mischin, at the time. In his second reading contribution, he noted —

> We do not have the issue of a Standing Committee on Uniform Legislation and Statutes Review report or any examination of it, nor does there seem to be any need for us to do so.

In summary, on that basis, we do not think that this fits within standing order 126 for it to be referred to the uniform legislation and statutes committee. I am on that committee so I should try to remember to get the name of it right!

A member interjected.

Hon MATTHEW SWINBOURN: Statutes review—that is right. I hope that that is an explanation for why it was not referred to the uniform leg committee, as it is more commonly referred to.

The member raised a number of other matters in his two-part speech, if I can call it that, on 23 March and today. Some of those matters are quite technical in nature. I do not want to do a disservice to them in my reply, other than to note the fact that we are now aware of the matters that the member is interested in. I think it would be helpful for us to deal with those matters in more detail, perhaps during debate on clause 1. It would certainly give the member the opportunity to explore them and open up lines of inquiry for responses, as opposed to in the second reading reply and running the risk of repeating them. I note the points he has made about those things and I have a red pen.

At the beginning of the second part of the member's speech today, he made a number of points about a matter involving a person who was not accused of a terrorism offence, notwithstanding the heinous nature of his offending. I am not in a position to get into a debate with the member about his views on it and I do not think it would take this bill any further at this point. He is certainly entitled to express his views as he did, but I am sure he can understand my lack of interest in getting involved in the nature of that particular part of the debate. As I say, we are not talking about a person who has been charged with a terrorism offence or is viewed as being involved in terrorism, which is what this bill is more specifically related to. I will just leave that there. I am sure we have not heard the end of that, and I do not mean today; I mean more broadly. I am sure that we will hear much more, and others will take up the cudgel on that particular point.

I note the points that the member made about young people and recognise the different principles that we deal with in sentencing young people and what the Young Offenders Act tries to achieve as opposed to the Sentence Administration Act. I appreciate the member bringing to the attention of the house some of the complexities with young people, particularly children, that we would not countenance from fully formed adults. One of the things that continues to strike me—not just in this area, but in some other areas as well—is the impact of access to information through social media and electronic devices. The member referred to 10 years in terms of the change; I actually think it is probably a little longer than that—maybe more like 20 years—but it is only getting worse in terms of the ability of a young person or a child to access imagery and information, and people who are disposed to terrorism-like activity. That is a continuing concern for all of us in our society, not only for the prevention of harm that might arise for the community from them engaging in those activities, but also the harm that those people do to themselves by involving themselves at such a young age in very antisocial, rather than pro-social, activities. As I say, it is not only limited to terrorism; there is obviously a range of other areas in which social media and online activities are causing issues.

We appreciate the opposition's support for this bill. I think it is one of the important parts of our society that, across the political divide, there is a consensus amongst political parties as to how serious these issues are and how we should deal with them. The government appreciates the support of the opposition and the other parties, although

the other parties have not yet spoken; we shall see whether they support this bill, but I presume they do. They have not indicated otherwise to me. On that basis, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Jackie Jarvis) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon NICK GOIRAN: We will make our way through this 45-clause bill, but as I indicated earlier, the vast bulk of my questions pertain to the Sentence Administration Act 2003 and the amendments to that act as set out in part 2 of this bill. I think the parliamentary secretary will agree that, in large part, part 3 seeks to mirror, to the extent that it can, the amendments to the Sentence Administration Act 2003 by inserting those mirror-like amendments into the Young Offenders Act 1994, with at least one notable exception, which we will get to. Otherwise, there are some ancillary changes in parts 4 and 5 to the Criminal Procedure Act 2004 and the Freedom of Information Act 1992.

Before we get to part 2 I have some preliminary questions on part 1 that are probably best addressed under clause 1. I note that this bill is part of a concerted effort by what is now known as the National Federation Reform Council—the new name, as I understand it, for the Council of Australian Governments. To what extent does the bill before us vary from the law reform that was implemented by the other jurisdictions as a result of the COAG agreement?

Hon MATTHEW SWINBOURN: As the member probably knows, the parole arrangements across the different jurisdictions are significantly different in their nature, so it is heavily detailed in terms of what those changes are. We have a spreadsheet that details them, but it is rather large and reflects the nature of the point I have just made, which is that, as the member can appreciate, in each particular jurisdiction, their parole arrangements have developed over time for their own circumstances and in their own particular manner, so it is hard to say like for like in that regard. We have a table here, and if the member wishes, we can table it, but it is quite detailed, so the member is probably not going to be able to get across it unless he spends his dinner break examining it.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: No, I would not be, member. Knowing the member, I can see him enjoying his pinot noir over the finer details of the jurisdictional comparison presumption against parole table! I table that document.

[See paper 1256.]

Hon NICK GOIRAN: I thank the parliamentary secretary for tabling that document, which we will digest over the dinner break. In the interim, can he indicate whether there has been any analysis undertaken within government to answer this question: will it be easier for a terrorist to be released from prison in another Australian jurisdiction, or will it be easier for them to be released from a Western Australian prison? That goes to my earlier point of making sure that there is consistency across the nation. Has anyone done some work in that respect?

Hon MATTHEW SWINBOURN: Work has been done in one respect, because the table the member has in his hands now is a reflection of that work, but it is not as simple as saying that one jurisdiction is stronger than another jurisdiction, owing to the complexities within the jurisdictions, or between jurisdictions. Certainly, they have different parole frameworks, which is where there is a departure between states in terms of how they are achieving their principal common goal, which is the presumption against parole for those people. There is a general uniformity regarding terrorism offences, and there is obviously uniformity in terms of the goal of the presumption against parole. We also have to take into account that, within each state, there is still a discretionary element, and that will depend on the individuals who might make up a parole board, or the chair of a parole board in a particular state. Also, there is not enough comparative data available because we have not had a suite of people who have come through the system to be able to say that theoretically they are the same. In practice, there have been differential outcomes. We do not have that data yet because we are not talking about thousands of people coming through the system. There is a relatively small but significant number of people who fit within the class of people whom these terrorism sentencing provisions would affect.

Sitting suspended from 6.00 to 7.00 pm

Hon NICK GOIRAN: The dinner break has been timely because it will have enabled the parliamentary secretary to become expert in the document that was tabled prior to the break. The document provided a useful jurisdictional comparison. Members will recall that this bill will create a presumption against early release for a range of prisoners, in particular, category 1 and category 2 prisoners. As the parliamentary secretary indicated, the first part of the table is a large document of four pages dealing with category 1 prisoners and another six pages dealing with category 2 prisoners. For the sake of better understanding the table that has been provided to members, on the

left hand side of the document is a number of, shall I say, criteria or characteristics. Each of the jurisdictions from New South Wales through to Western Australia, including the commonwealth, are reconciled against these criteria or characteristics. Is it intended that each of the characteristics is seen as a positive or necessary provision for the legislation, and although I know the parliamentary secretary is reluctant for us to use the phrase "weaker or stronger" in terms of different jurisdictions, they are desirable criteria for category 1 and 2 prisoners?

Hon MATTHEW SWINBOURN: I will do my best here. The advisers have brought to my attention that the member referred to a "desirable" element and they are not comfortable with that. My note refers to not putting too much emphasis on its being a "desirable" thing. To explain what they have tried to do, we can go to the far left column at annexure E, which are the category 2 links to terrorism that enliven the presumption against parole. They have come up with what they think are the potential elements, which the member can tell by the question marks, that constitute an association with a terrorist organisation that supports those activities, links, affiliations or notification. Then they have analysed the law in those other jurisdictions as against those other categories of things, potentially, to give an indication of, firstly, how they have dealt with those things; and, secondly, if they have dealt with them, to see how well they have dealt with them and whether that will help to inform us. One of the benefits that Western Australia has is that it is one of the last jurisdictions to proceed with this, so it has the advantage of reflecting on what the other states have been able to do. That is the exercise they have engaged in through this table to try to come up with where Western Australia should land in constructing the law that gives effect to those principles identified in the intergovernmental agreement.

Hon NICK GOIRAN: I think the analysis that has been done in this table is very good and it has been most worthwhile and helpful. I take the parliamentary secretary to a specific example. In the first table, the final page, page 4, deals with a category 1 prisoner. The penultimate category is "Special treatment/considerations in the case children with links to terrorism?" It then asks a question. The parliamentary secretary will see that in each of the jurisdictions, including Western Australia, the answer is no, with the obvious exception of the commonwealth where the answer is yes. This goes to my earlier question about desirability. If we can use this as a case example, is it desirable, from the government's perspective, that there should be special treatment or consideration in the case of children with links to terrorism? It would appear the answer to that is no, because the proposal for WA is no, yet the commonwealth has that criteria. As a case example, can the parliamentary secretary give an explanation, first of all, of whether it is desirable that there should be special treatment; and, if the answer to that is no, why is that not desirable?

Hon MATTHEW SWINBOURN: If we are going to characterise this particular point about special treatment of children, I am told that when they are in the juvenile justice system they are called "detainees" and not prisoners, so there is a difference in language there. If members hear me saying detainees, it is in reference to those children. There is no special treatment for them. Why? First of all, it is worth noting that no children in Western Australia would currently be subject to these particular laws because there are no children in Western Australian detention who fall within the terrorism categories, but we are legislating for the prospect that that may happen in the future, unfortunately, because of the society we live in and all those sorts of things. It is also worth noting that there is no commonwealth equivalent of the Young Offenders Act, so obviously when they are dealing with it, they do not have the intersection between the commonwealth laws and the Young Offenders Act, whereas we still do. Currently under sections 7(h) and 7(k) of the Young Offenders Act, the general principle of juvenile justice mandates that detention should be used only as a last resort and for a shorter time, as is necessary, and the punishment should be dealt with in a time frame that is appropriate to a young person's sense of time. That principle is incompatible with the purpose and operation of the presumption against parole. Really, that is what we are dealing with here. If we are thinking about the kind of reasons for that, it is that if those particular children are accused or have been convicted of terrorism-related offences or they are suspected of continuing to be involved in terrorism activity, however that might be described, then their risk to the community—à la what happened in Victoria, which precipitated the onset of this legislation, which is a person coming out on parole and then committing a further act of terrorism when we already knew that they presented a risk for the community—is identified through the process that I am sure we will get into in more detail as we get to that sort of thing. I think it is worth recognising that particular point and acknowledging that this does generally cut across the principles of the Young Offenders Act and juvenile justice principles in terms of detention as a last resort and understanding that children experience time frames differently from adults.

Hon NICK GOIRAN: The parliamentary secretary will see that on the first page of the category 1 table, the third category is "Convicted of Commonwealth terrorism offences". There is reference in each of the jurisdictions to an "Annexure F". It does not seem to me that annexure F has been provided in the tabled documents, but if it has, could the parliamentary secretary identify it; and, if it has not, could that now be tabled?

Hon MATTHEW SWINBOURN: I am sorry that we have omitted it. That was not our intention. As the member can see from what I am holding in my hand, it is not an A3-sized piece of paper; it is A4 but it is annexure F. The table deals with how the Western Australian law deals with both the bail and the parole with respect to the

commonwealth laws. I am happy to table this in any event because I think that was our intention and it really just forms part of the larger document that was tabled earlier.

[See paper 1257.]

Hon NICK GOIRAN: While copies are being made of annexure F, I have just a few more questions on the helpful jurisdictional comparison. Members will see on the third page of the category 1 table that those conducting this useful analysis asked the question whether the legislation captures those who are "Subject of a Commonwealth Control Order". There is a curiosity here in the analysis because in each of the jurisdictions, reference is made to either a current control order, which is said to include an interim control order but in some circumstances, such as for South Australia, Victoria and Queensland and, from what I can gather, although I think some further elaboration is going to be required, also the proposal for Western Australia, there is reference to former control orders. Why is it the case that some jurisdictions are looking to ensure that former control orders are captured and not just current control orders, including interim control orders?

Hon MATTHEW SWINBOURN: As to why the other jurisdictions have chosen to do what they have done or not done, we cannot really go into their reasoning because we do not know. We are not trying to be glib but we are not involved in that. The analysis done here is more about whether it is or it is not, rather than why. The question then became for us why we have provisions relating to what we call historic or former control orders; that is probably where the member was leading in any event. I have a prepared answer before me. Why do the equivalent persons linked to terrorism provisions in the bill apply only to a person who has been subject to a confirmed control order within the last 10 years and not an interim control order within the last 10 years? It is because that is the time frame that we picked. Control orders are initially made in an interim form. The terms of the interim control order must specify the date for the court to consider confirmation of the interim order, which may be contested by the person for whom the interim control order was sought. During a confirmation hearing, the court will consider the factual basis for the control order with all the evidence provided. Until this time, an interim control order cannot be confirmed. When parole is being considered, a judicial function is being exercised. In these circumstances, there is a greater requirement for the rules of natural justice to apply. For example, in judicial proceedings, a person is innocent until proven guilty. For this reason, it was not considered appropriate to include a person who had been subject to an interim control order as the control order had not been confirmed by the court. I have been asked to confer with my advisers a bit further, so I ask members to hang on for a moment if they do not mind.

I was unintentionally leading the member down the wrong path. There was some confusion on our part, so I apologise for that. I think the member asked why jurisdictions want to capture current and former control orders. I said that we cannot really speak about that. We can say why we want to capture current and former control orders. I will explain what a former order is. It is a historic order that has expired. These control orders are not in perpetuity, so in time, they might have expired. I think the question for us as a matter of policy was how long should a historic control order that had expired remain a relevant consideration for the board to take into account when determining whether to grant parole for a person who is involved—I will use the generic term—in terrorism and terrorism-like activities or those sorts of things. We settled on 10 years, which is consistent with the Bail Act, which dealt with similar provisions. It had a 10-year arrangement. That is where we have landed on this issue. I think the member already identified that other jurisdictions dealt with it differently, but that is the choice that we have made in this legislation. It comes back to what we think is a reasonable consideration when determining possible risk and what should be a relevant consideration in determining that. Historic and/or former—however we wish to describe them—control orders will continue to be relevant up to that 10-year mark.

Hon NICK GOIRAN: I thank the parliamentary secretary. That is curious, because New South Wales has elected not to capture what are being described as former control orders. New South Wales is not alone. The same situation applies in Tasmania, and indeed the commonwealth. It would seem that these three jurisdictions are only interested in capturing a group of terrorists, at least in part, who are subject to either a current control order or an interim control order. As the parliamentary secretary already explained, the necessity for the two is because we start with an interim control order before a control order is finally made. Yet a number of jurisdictions, including our own, intend to include former control orders. The parliamentary secretary will see that that includes South Australia, Victoria and Queensland. The parliamentary secretary seemed to indicate that our definition of a former control order, to the extent that it can be defined, is that it is a historical control order no greater than 10 years of age. That is me paraphrasing the parliamentary secretary to provide some form of definition. I could not find a definition of "former control order" in the bill. I found the definition of "confirmed control order" in clause 4 of the bill. Indeed, "interim control order" is also defined there. From memory, I also found a like provision in clause 30, which deals with the amendments to the Young Offenders Act.

I guess my twofold question is: how is "former control order" defined in the bill? Perhaps I should rephrase the question and ask: where is "former control order" defined in the bill? That is part one of the question. Part two of the question is: why is Western Australia choosing a former control order to have a maximum age of 10 years when it is not apparent that any of the other jurisdictions choose to narrowly define a former control order in that way?

Hon MATTHEW SWINBOURN: There is no place where that is defined because there is no definition for a "historic" or "former" control order. To get an understanding of it, we will have to have a bit of a construction exercise. I take the member to clause 4 of the bill, which amends section 4 of the Sentence Administration Act. I note it is the same provision that applies to the amendment of the Young Offenders Act as well.

Hon Nick Goiran: It's a category 1 prisoner.

Hon MATTHEW SWINBOURN: Yes. Clause 4 states —

> ***category 1 prisoner*** means —
>
> (a) a prisoner who —
>
> (i) has been charged with, or convicted of, a terrorism offence; or
>
> (ii) is subject to an interim control order or a confirmed control order;

The first part of the definition is essentially in the present tense and then we have the critical disjunctive word "or" followed by —

> (b) a prisoner who has been subject to an interim control order or a confirmed control order at any time during —
>
> (i) the period of the prisoner's sentence (the current sentence); or
>
> (ii) the period of 10 years ending on the day on which the prisoner's current sentence begins or is taken to have begun;

As members can see from that provision, effectively if we want to define what a historic control order is, it arises really from the construction of the definition in this particular clause. As I say, it is not a term that is defined in the bill. I think when we were using the term "historic" before, it was not in a definitional sense as historic but the fact that this category 1 prisoner includes that particular definition.

As to the member's further question, which I am not sure I answered fully, about the 10 years, like anything, a decision was made that it should not be open-ended and there had to be a time limit that is reasonable. The working group's view, as it advised the government, was that 10 years would be reasonable in the circumstances. The government accepts that advice from the working group that helped to develop the bill. Could it be 12 years or eight years? Of course it could be. There is no magic about 10 years in particular, but the working group felt that that time period is where the balance sat appropriately for what is reasonable. I cannot really take the member much further on that and say why other jurisdictions have left it open-ended. I suppose over a period, if someone had a historic control order from 30 or 40 years ago, how relevant might that be given the course of their life, when they might engage in a whole different set of potentially terrorist activities that are unrelated to what they might have been involved in? I trust that the experts who work in this area made a decision that 10 years is the appropriate measure in that regard.

Hon NICK GOIRAN: I suspect the parliamentary secretary would prefer to take a break from this topic; we might pick it up again at clause 4. Rather than ask a question now, I will flag my concern so that consideration can be given to it in readiness for when we get to clause 4. The parliamentary secretary helpfully drew our attention to the definition of "category 1 prisoner" at clause 4. The first of the three subcategories of a category 1 prisoner, as set out in paragraph (a), deals with, in the present tense, if you like, what I will refer to as a current terrorist. That is not the language used in the bill, but to be clear about who we are trying to capture under this subcategory of a category 1 prisoner I will refer to them as a current terrorist, because the clause states it is a person who "has been charged with, or convicted of, a terrorism offence". I accept that obviously that is a person who has been charged but not yet convicted, and it is perhaps a leap to call them a current terrorist because that is yet to be proven; nevertheless, they are currently incarcerated and have been charged with a terrorism offence—present tense. It may also be somebody who is subject to an interim control order—that is, a current interim control order or a confirmed control order, which I understand to be, if you like, the next iteration of a control order. First there is the interim control order, and then ultimately there is the confirmed control order. In any event, it is a person whom the authorities currently consider to be a current terrorist.

In contrast, the second category of person is —

> a prisoner who has been subject to an interim control order or a confirmed control order at any time …

Are we really talking about a historical control order? Rather than use the terms "interim" and "confirmed", for the purposes of this exercise, I will simply refer to them as a "control order". It is a person who has been subject to a historical control order at any time in the period of the prisoner's sentence or a period of 10 years ending on the day on which the prisoner's current sentence begins or is taken to have begun. I am not asking that this question be answered now; this is being flagged in advance for consideration of clause 4. Is it not the point that we are sufficiently concerned about this prisoner with this historical control order that we will invoke this scheme for them

that includes the presumption against early release? At some time in the last 10 years this prisoner was considered a terrorist. It is not apparent to me why we would no longer be concerned about that individual just because it happened to be 11, 12 or 15 years ago when the person was subject to either an interim control order or a confirmed control order. The fact is that there is a historical concern that this person is a terrorist, and it is more than a mere concern. It is a concern that has been elevated, at a minimum, to that of an interim control order, and quite possibly a confirmed control order. However, because more than 10 years has passed, we seem to no longer be concerned about that. It is not readily apparent to me why we would do that and why we would not instead allow the open-ended definition that appears to be in place, according, at least, to a quick perusal of this very useful jurisdictional comparator, in South Australia, Victoria and Queensland. It seems that those places allow historical control orders to be a factor, but in Western Australia we are interested in historical orders only if they happen to be fewer than 10 years prior. As I said, hopefully that outlines my concern. We can take that further when we get to clause 4 and we consider the definition of a "category 1 prisoner".

I am keen for us to make progress on clause 1, so I simply have one further question to ask about this, as I say, very useful table that has been provided. Again, we are still dealing with page 3 of the category 1 table. The second-last category deals with the decision-making authority. This once again demonstrates the benefit of this work having been done by whomever is responsible for it because we can very readily see that there is, once again, a divergence in the approach taken across our nation. I will deal exclusively with the situation for adults. In New South Wales, the parole authority will be the decision-making authority; in Queensland and Tasmania, it will be the parole board; and in Victoria, it will be the serious sexual and serious violent offenders' division of the board. I think the parliamentary secretary will agree with me that in each of those circumstances we are talking about more than one person. We are talking about a board or a division of the board. We can compare and contrast that with the situation in South Australia, in which it will be a presiding member of the board; in other words, just a single person. In the commonwealth's case, it will be the Attorney General. I raise this matter at this time because the parliamentary secretary will be aware from his earlier briefings on this bill that in Western Australia the decision has been made to vest quite a bit of the authority in one single person, which is the chairperson of the Prisoners Review Board or the Supervised Release Review Board, as the case requires. Noting the number of jurisdictions that have chosen to vest this authority in more than one person and the limited number of jurisdictions that have chosen to vest it in a single person, why was the decision taken to vest such an important decision in a single person, albeit the eminent chairperson of the review board?

Hon MATTHEW SWINBOURN: In the first instance, perhaps there should be a little bit of caution about the table itself and particularly the row that the member has pointed out, which, I think —

Hon Nick Goiran: The decision-making authority.

Hon MATTHEW SWINBOURN: Yes. I am told by the advisers, at least two of whom were, I think, significant contributors to the table, that the information there is of a general nature. It is not really as precise as it could be for each jurisdiction. Even though, on the face of it, the table might represent it being a group of people, in some cases it might not be. Even in the case of South Australia it says a presiding member of the board, but we do not know precisely whether that is a single person or multiple people. That is a bit of a caution about that particular row. The overall table, as the member has already indicated, is a significant piece of work, but in this instance that is the level of superficiality about it in one regard. With all due respect to the advisers; I am not calling them superficial.

Hon Nick Goiran: No. Understood.

Hon MATTHEW SWINBOURN: On the more important question, which is why Western Australia has picked only the chairperson to be the person who would receive that information, I think we have to understand it within the broader context of the type of high-level nature of the information that is being received, because that information is coming from WA police, which is also coming from the federal police and other federal government agencies. It is a question of how we can be as comfortable and as secure about what can be very critically sensitive information being as limited as it can possibly be in our jurisdiction so that that information could not possibly fall into the hands of a person who could use that against the Western Australian community and things of that nature. It is our view that the most senior and eminently qualified member of the board, for want of a better word to describe that authority that makes those decisions, is the appropriate person, particularly given the standing of the chairperson of those boards. That person has to be vetted at security levels. I think we could probably go to the appropriateness of the person receiving that information when we get to those stages of the bill. We just wanted to make sure that it was as limited as it could possibly be, and the most limited that it can be is a single person.

As the member knows, that board is made up of community representatives and a deputy chairperson. Those people might be absolutely the most outstanding citizens, but they can be on the board for different reasons because the role of the board is obviously not limited to the parole of terrorists; in fact, its role is extremely broad. Potentially vetting those people might end up excluding them from that role. If we can narrow it down to one person, that person will be absolutely assured in terms of who they are, what they are about, their appropriate security clearances and

all those sorts of things. That is the policy decision that was made to limit it to one person. Hon Nick Goiran and I are both lawyers and, as lawyers, obviously, the rules of natural justice and procedural fairness are in our DNA. But, of course, in these parole decisions—we will come to that as well—there is an element whereby there is not a level of accountability that we would expect in other areas and points of the law. That is because we are talking about a special group of people who are not only already convicted of the offences for which that they are in jail—or detention if they are juveniles—but also because parole is a privilege in any event. It is not like bail. We are not talking about the same level of mechanisms and those sorts of things. As I say, we will probably have the luxury, therefore, of limiting it to single individuals in those circumstances.

Hon NICK GOIRAN: Thank you for that helpful explanation, parliamentary secretary. I understand the caution that has been taken by the government for sensitive information that will go before the chairperson when making this type of decision. That information will come from the Western Australia Police Force, but in total how many people currently serve on the Prisoners Review Board and on the Supervised Release Review Board? I am interested in that number because I am also interested to know how many Western Australian police officers will have access to that sensitive information? I do not make light of this. It is such sensitive information that a decision is being made here so that only the chairperson can see it. It would be making a mockery of this decision if we were to say only one person from the Prisoners Review Board can see it when thousands of police officers in Western Australia have access to that same bit of information. I am not suggesting that thousands of officers would have access to it, but, by way of comparison, would the parliamentary secretary have that information at his disposal at the moment? It does not need to be the precise number. We do not need the precise number to get to the bottom of this, but how many people approximately serve on those two boards? As a comparator, how many Western Australian police officers will have access to this sensitive terrorist offence information data that will be provided to the board for a decision?

Hon MATTHEW SWINBOURN: I will start with the WA Police Force. I cannot give a precise number, but I am advised that fewer than 50 people in the Western Australian Police Force have access to the kind of counterterrorism information that will be captured by the bill. I am also advised that all of them will not have access to a lot of that information—that is, a piece of counterterrorism information. Within that group, I think the words that were used is that it is "grouped up". There will be some "eyes only" things, so some people will see it and others will not. It is caveated and things like that. The police adviser used those words and I take them to be in their ordinary meaning. With that sort of figure, we are talking about fewer than 50 people among the 8 000 or 9 000 sworn police officers in Western Australia. We covered those numbers in an earlier debate; I cannot remember them precisely.

We are getting the numbers of the Prisoners Review Board now. There will be 21 appointed Prisoner Review Board members, plus the Department of Justice and WA police. There will be six members on the Supervised Release Review Board. The board is made up of fewer than 30 people altogether, so that is the comparison of the total number of people.

But to help the member and people following the debate, the members of the Prisoner Review Board are as follows—a chairperson, to be nominated by the minister and appointed by the government; at least two deputy chairpersons; as many community members as are necessary to deal with the workload of the board; as many officers of the public sector agency, of which the CEO is the chief executive officer, as are necessary to deal with the workload of the board; and as many police officers as are necessary to deal with the workload of the board. That figure will go up and down depending on the workload of the board. The minister must not nominate a person as the chairperson unless the person has served as or is qualified for appointment as a judge of the District Court of Western Australia; the Supreme Court of Western Australia or another state or territory; the High Court of Australia or the Federal Court of Australia; and, if the person holds judicial office, the person has consented in writing to being nominated. A person holding judicial office must retire upon being nominated as chairperson. An order giving effect to the decision made by the board is to be signed. I do not need to get into that.

But the Supervised Release Review Board will be constituted by the chairperson, who is appointed by the Governor; two persons appointed by the Governor who are to include at least one person who has an Aboriginal background and is appointed from a panel of persons nominated by the Aboriginal community organisations that have been invited by the minister to submit nominations; at least one person appointed from a panel of persons nominated by community organisations that have been invited by the minister to submit nominations—these members are to have such skills and experience with young persons as the minister considers appropriate—and one person with an understanding of victims' interests and concerns appointed by the Governor; the chief executive officer by reason of the office; and a police officer nominated by the Commissioner of Police. Membership of the board is to include at least one male and one female. The chair is to be a person who is or has been a judge of the Supreme Court or District Court, or a person who is and has for at least eight years been an Australian lawyer. His Honour Allan Fenbury is the current chairperson. I have been advised that that has just changed.

Hon Nick Goiran: Yes; somebody has got it for an interim period, I think, and they are looking for a permanent placement.

Hon MATTHEW SWINBOURN: The former chairperson was His Honour Allan Fenbury, and I have been informed that it is an interim person in former District Court judge Kevin Sleight. I had not come to the other part that says that Mr Fenbury's appointment ended in April 2022. We are in that phase at the moment. I hope that has been helpful for the member.

Hon NICK GOIRAN: I think that is very helpful to understand. What was particularly interesting was the reference to the fact that—I appreciate we are not working with precise numbers here, but as a general response—approximately fewer than 50 police officers will have access to this sensitive information. Helpfully, the parliamentary secretary was at pains to explain that not all those fewer than 50 police officers will have access to all the information; some of the information will be accessed, if you like, in tiers or in groups. The Commissioner of Police will obviously have access to all the information, because the bill refers to a police commissioner report. Again, I do not mind if it is an approximate number: how many police officers other than the commissioner would have access to all the information? In other words, when I say "all the information", remember, the decision is being made at a policy level here to say that the only person from the review board who will be able to see this will be the very highly qualified eminent chairperson; that is one person who will get to see all the information. We know that the police commissioner will get to see all the information. How many other police officers—it will obviously be a figure fewer than 50; I imagine a much smaller number than 50—would have access to all the information that the police commissioner and the chairperson will have?

Hon MATTHEW SWINBOURN: The figure is not a precise one, because things change, and I do not want to be too precise in these things for obvious reasons, but about 10 to 12 people would have access to all the information. Those people are all people who will be involved in the preparation of the report that the commissioner would have to consider, so they will obviously have an integral role. They will all have the highest necessary level of security clearance. They are really the people who will be supporting the role that the police commissioner will have under the act. It is worth noting that the act provides for delegation from the police commissioner of his—eventually maybe one day her—functions to others. I will read from my notes. The bill provides delegation powers to provide that the Commissioner of Police may delegate the commissioner's powers or duties under the Sentence Administration Act and the Young Offenders Act to a police officer who is or is acting as an officer of rank more senior than commander.

It is not surprising that we have a delegation of power given how busy the police commissioner is, but it will not be to every person. The delegation would occur to a specific person; therefore, not every officer more senior than commander would have access by virtue of the fact that there is a delegation power. It would be only to the person to whom the delegation occurs, who will be a person within the state security operations division, which is the part of the Western Australia Police Force that deals with these counterterrorism matters.

Hon NICK GOIRAN: I think all I can say at this point is that although it would be preferable to be able to properly compare and contrast how other jurisdictions deal with this with the decision-making authority, and particularly whether they invest in only one person or a group of individuals, in the absence of being able to do that—we have already deliberated on why that is—I think I can at least say that it is not unreasonable that the government is allowing only the chairperson to have access to this sensitive information, given just how few Western Australian police officers will ultimately have access to all that information. As I say, in circumstances in which we had—dare I say it—unlimited time to scrutinise these things, I would prefer to be able to see exactly what those other jurisdictions are doing, but that is something that would be better left for a parliamentary committee and we do not have that option available to us at this time.

I will move on to a different theme. The parliamentary secretary will recall during the second reading debate that we identified that the genesis of this matter was a COAG agreement. In particular, on 5 October 2017, in Canberra, there was a special meeting of the Council of Australian Governments on counterterrorism, and the communiqué of that meeting of 5 October 2017 referred to an agreement to ensure that there is a presumption against bail and parole. That, of course, is nothing new; we have already discussed that at some length during the second reading debate. However, what is interesting is that the communiqué goes on to say that there is an agreement to ensure that there is a presumption against bail and parole in agreed circumstances across Australia. What are those agreed circumstances?

Hon MATTHEW SWINBOURN: I have not had a chance to look at the communiqué that the member is referring to, but my understanding about the term "in the agreed circumstances" is that the circumstances were not agreed at the time, which was 5 October. In October 2017, COAG agreed to the development of a nationally consistent approach across the states and the commonwealth, and then in November 2017, as tasked by COAG, the Australia–New Zealand Counter-Terrorism Committee endorsed a set of principles to guide jurisdictions in the development of their legislation. That comes back to the four principles that I have previously outlined to the member, which I do not propose to read again, unless the member really wants me to, but it is essentially the presumption against bail and early release, high legal thresholds and the implementation of the presumption against bail and early release. Does that make sense? The communiqué obviously set out the initial headline theme, which is the presumption against bail and parole, and then the point that the member made about agreed circumstances, which

were then worked through with the Australia–New Zealand Counter-Terrorism Committee in November 2017. It then came up with the four principles that were developed and categorised the agreed circumstances, which I think is being referenced there. We did not write the communiqué, so we are trying to thread these things together to provide the context.

Hon NICK GOIRAN: The second paragraph on the second page of the communiqué states —

> At their last meeting, leaders agreed to ensure there will be a presumption that neither bail nor parole will be granted to those persons who have demonstrated support for, or have links to terrorist activities.

I will pause there for a moment. It is an interesting line in the communiqué, because it goes to my earlier point, and I will get to it when we get to clause 4, about historical orders. There is no reference there. Interestingly, the agreement is signed by none other than Hon Mark McGowan. We do not see any reference there to it being limited to a 10-year period. It is stated here that the leaders agreed that there will be a presumption that neither bail, which we have dealt with previously, nor parole, will be granted to those persons who have demonstrated support for or who have links to terrorist activities—those persons who have demonstrated support for or have links to terrorist activities, not necessarily in the last 10 years. It might have been 15 or 20 years ago, but, as I said, we will pick that up when we get to clause 4. It then goes on to state that on 5 October 2017, leaders agreed that legislation implementing the 9 June COAG decision will be underpinned by nationally consistent principles to ensure that there is a presumption against bail or parole in agreed circumstances across Australia. The parliamentary secretary has quite rightly drawn to my attention that a consequence of these decisions, and indeed this special meeting that took place on 5 October 2017, was the creation of the Australia–New Zealand Counter-Terrorism Committee, which subsequently met. Annexure A of the intergovernmental agreement sets out the terms of reference for that committee. It subsequently met, and the parliamentary secretary has helpfully drawn to our attention that it determined the four principles, or something to that effect. It does not necessarily explain to us what the various jurisdictions had decided would be the agreed circumstances. It might well be the case, as the parliamentary secretary indicated, that they had not yet determined the agreed circumstance on 5 October 2017. I do not think those listed principles are necessarily the agreed circumstances either, particularly when we consider that this line in the communiqué seems to draw a distinction between the two of them. It states —

> Today leaders agreed that legislation implementing the 9 June COAG decision would be underpinned by nationally consistent principles to ensure that there is a presumption against bail and parole in agreed circumstances across Australia.

It seems to be two different things. I accept what the parliamentary secretary is saying about the work of the committee, but is any other information available that might help to shed light on what was ultimately the agreed circumstances for the presumption against bail and parole? Again, by way of explanation, we want to make sure that the bill before us, which deals with the second phase—the parole phase—will actually implement the presumption in those agreed circumstances, and that we are not missing something.

Hon MATTHEW SWINBOURN: Unfortunately, I do not have a lot for the member because, although this did not happen donkey's years ago, it was back in 2017. It is fair to say that the framework put in place was fairly broadbrush and did not particularise what each jurisdiction must do at each level; it was guided by those principles. The advisers think—they are not 100 per cent sure—that in relation to principle 1, the presumption against bail in early release orders, including parole, should apply to categories of persons who had demonstrated support for or links to terrorist activities. That is not settled. There must have been some work done after that to establish those particular categories, but at the table here we have not been able to put our hands on anything of more substance. The chronology was that the original meeting was in June 2017, the follow-up in October and by November the Australian counterterrorism committee had already set that framework, and the other states legislated not long after. Some legislated as early as 2018, going by the dates. The bills may not have been passed in those years that they are listed, but we presume it occurred not long after that.

Hon NICK GOIRAN: That takes me to my next point. The parliamentary secretary will recall that each of the states has implemented its amending legislation. The chronology provided has been helpful with the original meeting in the middle of 2017; a special meeting in Canberra, which led to the communiqué in October; and then the committee met in November to develop the principles—all in 2017. Presumably, sometime in 2017, South Australia passed its legislation, which commenced in February 2018; Victoria passed its legislation, presumably in 2018 and it commenced in November of that year; Tasmania did the same, albeit it commenced in December 2018; and Queensland and the commonwealth waited until the following year, 2019. Queensland's legislation commenced on 11 April 2019 and the commonwealth's commenced on 12 December 2019. The curiosity in all this is that New South Wales had done all of this before there was even an agreement, because according to the table, its Terrorism Legislation Amendment (Police Powers and Parole) Act commenced in June 2017, so New South Wales must have had a crystal ball and understood what was going to be agreed to in October and ultimately by the committee in November. That said, was there an agreed time frame in which all this needed to be actioned?

Hon MATTHEW SWINBOURN: There was no agreed time frame. To put it in my words, it was as soon as jurisdictions could get it done, but that was not an explicit agreement. To add context, Western Australia, touch wood, has a different environment from Victoria and New South Wales with home-grown terrorism. The imperative for those states to have these laws in place was much more pressing than here. We are fortunate that is the case. That does not mean it is not important for us to get on and do it, but it gives us more breathing space. From a legislative point of view, they have been driving the agenda and been more innovative with the laws—I am only speculating with New South Wales, but it had the terrorist attack in 2014 with the Lindt Café siege in which the individual was on bail, not parole. The second reading speech also mentioned the circumstances in Victoria where an individual was on parole and engaged in a terrorist act. Unfortunately, they are more at the coalface on this issue than Western Australia. Again, touch wood, we are fortunate in Western Australia that we do not have the same pushes happening in our community that make it as imperative as it is for those states; nonetheless, it remains extremely important.

Hon NICK GOIRAN: On the surface, I agree with the parliamentary secretary, albeit it is probably only those 12 or so police officers who have access to all of that information, including the police commissioner, who will probably be well apprised and able to give an opinion on the state of affairs in our own state. Nevertheless, I note that every other jurisdiction had attended to this, including the commonwealth, by no later than the end of 2019. More than two full calendar years have passed since that time and Western Australia has not brought its legislation into effect. No doubt, of course, as I have heard many times from the McGowan government, it will all be because of COVID-19. It is interesting that every other jurisdiction in Australia managed to do this before the arrival of the coronavirus, but not Western Australia. We decided to wait until such time as the pandemic arrived. I know that will be part of the explanation that is provided by the government, amongst other things, including that very important bill that had to pass the Parliament to ensure that it would be as difficult as possible to extend Roe Highway through the Beeliar wetlands—a project this government has absolutely no desire to undertake. That was more important than this bill, interestingly enough. The real question here is: how many Western Australian prisoners will be captured by the bill that is currently before us?

Hon MATTHEW SWINBOURN: I am advised that in Western Australia no-one has been charged with a terrorism offence as defined in the bill. There is, however, one person who is an adult who has been charged with offences of advocating terrorist acts. That person is currently before the courts and is on remand. Under the provisions of the bill, if this person is convicted and was to become subject to a Commissioner of Police report, the person would then fall under the definition of a prisoner with links to terrorism. There are currently no prisoners or detainees sentenced for commonwealth offences related to terrorism in Western Australia and there are no prisoners or detainees on early release who fall under the definition of a prisoner with links to terrorism. There is also currently one adult person who is subject to a commonwealth control order.

Hon NICK GOIRAN: Is that the parliamentary secretary's way of saying that if this bill had been introduced two years ago—let us say at the later end of when all the other jurisdictions brought theirs in—at the end of 2019, there would be no prisoner who would have been released in the last two years as a result of this legislation not being in place because there is currently no-one in Western Australia charged with those particular offences or detained for a commonwealth offence? The parliamentary secretary mentioned that there is one control order individual. I am trying to ascertain that no-one has had an early release from prison in the last two years who otherwise would have been captured by this bill.

Hon MATTHEW SWINBOURN: The short answer is no; there was not anybody in that regard. There is a qualification and I take the member back to clause 4, which will be the amended definition section, and the definition states —

> ***prisoner with links to terrorism*** means —
>
> (a) a category 1 prisoner; or
>
> (b) a category 2 prisoner who is subject to a Commissioner of Police report; or
>
> (c) a prisoner who —
>
> (i) is subject to a Commissioner of Police report; and
>
> (ii) the Board as constituted by the chairperson alone is satisfied, having regard to the report, has made statements or carried out activities that support, or advocate support for, terrorist acts;

That is a discretionary exercise of that particular power. We do not know of anyone who has fallen within that category, but we could not exclude the absolute possibility that there was someone. It is highly improbable and unlikely, but it is within the realms of possibility that someone may have fallen within that discretionary thing. However, we do not have any information from the police advisers to suggest that somebody would have fallen within that category.

Hon NICK GOIRAN: That is fair. In 2017, the government agreed to better integrate security-cleared state and territory corrections staff with joint counterterrorism teams as part of this agreement. Is the parliamentary secretary in a position to advise us what has been done on that?

Hon MATTHEW SWINBOURN: Part of the member's question relates to the corrective services side of things. Although I am here in the capacity of Parliamentary Secretary to the Attorney General, I am also the Parliamentary Secretary to the Minister for Corrective Services, but I have no advisers in relation to —

Hon Nick Goiran: So you are an expert in both fields!

Hon MATTHEW SWINBOURN: Hardly. I am subject to advice in both fields, but I do not have corrective services advisers with me to be able to answer some of the specifics that the member has asked about that relationship. However, the police adviser whom I have with me has indicated that they work regularly with corrective services on a number of very high level issues. What I can do is give Hon Nick Goiran some information about the joint counterterrorism team model and how it works in practice, if that will be of any assistance to him.

Hon Nick Goiran: Yes.

Hon MATTHEW SWINBOURN: Joint counterterrorism teams, or JCTTs, are established in each state and territory and comprise Australian Federal Police, state or territory law enforcement, the Australian Security Intelligence Organisation—otherwise known as ASIO to its friends—and other government agencies as per each jurisdiction's arrangements. The WA Police Force is the mainstay agency represented on the Western Australian JCTT. The JCTTs provide a coordinated and consistent approach to combating terrorism. Specifically, the JCTTs conduct threat-based preventive investigations with a view to utilising a variety of measures to minimise threat and risk and/or bring criminal prosecutions for breaches of terrorism legislation. Comprehensive governance arrangements are in place in the form of a national memorandum of understanding for the operation of JCTTs to ensure that there is a coordinated response to terrorism within and across the jurisdictions in accordance with the national counterterrorism plan. This bill will support the effectiveness of the JCTTs by ensuring that the presumption against early release legislation does not create individual roles or impose obligations that may be counterproductive to those special arrangements. The bill introduces provisions to ensure that classified terrorist intelligence information that may relate to the investigation decisions and risk assessments of JCTTs is appropriately protected when determining whether an early release order should be granted.

Hon NICK GOIRAN: Will the sensitive information that we discussed earlier that ultimately makes its way to the chairperson through the Commissioner of Police come from the Western Australia Joint Counter Terrorism Team?

Hon MATTHEW SWINBOURN: That information could come from the JCTT, but I am advised that the WA Police Force generates its own intelligence through its own work. The information that is produced in the commissioner's report could have the JCTT information, but it also might have unique Western Australia Police Force intelligence information. The Western Australia Police Force work agency to agency, so it might come from the Australian Border Force or even Fisheries. I am surprised about that element. The police collect that information and our own people analyse it and make sure it is assessed appropriately. The short answer to the question is that the JCTT is an information source, but it is not the only one.

Hon NICK GOIRAN: The Western Australia Police Force, as the parliamentary secretary indicated—this might not be the phrase he used—is what I would describe as the key agency in the Western Australian arm of the Joint Counter Terrorism Team, which consists of the AFP, ASIO and WA police. Why would the Western Australia Police Force have any sensitive information about terrorism that it would keep to itself and not provide to the Joint Counter Terrorism Team?

Hon MATTHEW SWINBOURN: It does not happen that way. The information is shared. It is just about the source of that information. The point I was making is that the Western Australia Police Force might be the source of its own counterterrorism information but that information is absolutely being shared with those other agencies because of the risks of siloing information and then not being able to make an appropriate response. I can understand where we ended up, but it is not the case that we have our stuff and we are keeping it away from these other agencies.

Hon Nick Goiran: It just originated from WA?

Hon MATTHEW SWINBOURN: That is right; that is the source.

Hon NICK GOIRAN: That is fair enough. The parliamentary secretary mentioned three agencies in the Western Australian context—ASIO, WA police and the AFP. Is no role played by the Australian Defence Force in these counterterrorism organisations?

Hon MATTHEW SWINBOURN: I do not know whether the ADF is an intelligence-gathering organisation in the same way that the Australian Security Intelligence Organisation, Australian Border Force and Australian

Federal Police are. The ADF tends to act on the information that is provided. It is not a police force, if I can put it that way. It may have intelligence-gathering things. This is not completely unrelated but my colleague the member for Darling Range, Hugh Jones, was in the Navy for 30 years. His first job was a Morse code eavesdropper, so, as he tells me, he used to sit off the coast of Indonesia listening to Morse code as they communicated between islands, so, yes, the ADF does collect intelligence. One of the other key agencies is the Australian Signals Directorate. A range of agencies fits in there. We covered ASIO, the Australian Federal Police, Australian Border Force and the Australian Signals Directorate. I do not know of any more, but I think that covers it.

Hon NICK GOIRAN: The communiqué also refers to a further three phases to deliver nationally consistent support and treatment referral frameworks. Has this been done, because it is one thing for us to create a presumption against early release? As important, as I identified in my second reading contribution, is the support and treatment frameworks. The communiqué does refer to three phases. Have one or more of these phases been implemented?

Hon MATTHEW SWINBOURN: I do not have information on what the three phases are because it cuts across agencies or involves agencies that are outside the remit of the advisers I have here. For example, I have been advised that another body of work on counterterrorism stuff is being run through the Department of the Premier and Cabinet. We are not privy to what it is doing with those particular things. It does not come strictly within the four walls of the bill that we are dealing with here. I am not trying to fob the member off or anything like that. It is just that this is a much larger issue than the bill before us now. As the member knows, we did the bail stuff a couple of years ago. We are trying to do the parole stuff today and other work is continuing within government to deal with other elements of counterterrorism.

Hon NICK GOIRAN: Perhaps in order to make progress, depending on how we go between now and the end of the evening, in the event that we do not fully complete the Committee of the Whole phase, might that be something that could be considered overnight? Then the parliamentary secretary could inform the chamber what the situation is with those three phases. If the parliamentary secretary could give that some consideration, I will leave it at that.

On the issue of consultation, who within government was consulted on the bill before us and which stakeholders outside government were expressly consulted on this matter? I imagine agencies like the Western Australia Police Force and indeed the Australian Federal Police and perhaps also the Australian Security Intelligence Organisation might have been consulted. If the parliamentary secretary can give us a list of the stakeholders consulted, he will appreciate the question that will flow from that about the issues that were drawn to the government's attention by those stakeholders.

Hon MATTHEW SWINBOURN: Consultation on the development of the bill was coordinated by the Department of Justice through a Western Australian interagency working group established to implement the Council of Australian Governments agreement. The working group comprises representatives from the Department of the Premier and Cabinet and advisers from the State Solicitor's Office, the Western Australia Police Force and the Department of Justice. The working group includes members with experience in legal policy and counterterrorism policy and operations. In October 2020, the Department of Justice consulted with the Chief Justice of the Supreme Court of Western Australia, Hon Peter Quinlan, and the Solicitor-General. They were given an opportunity to consider a consultation draft of the bill. The Solicitor-General advised that the proposed amendments did not raise any constitutional difficulties. The Legal Aid Commission of Western Australia was provided with an earlier cabinet comment and then later, in October 2020, advised that it would not be making any further comment on the bill.

The chairperson of the Prisoners Review Board and the Supervised Release Review Board queried whether it was appropriate that the Attorney General or Minister for Corrective Services intervene to ensure that the board's annual reports did not contain protected or sensitive information. The chairperson's concerns were considered by the working group, which was of the view that the bill's provisions in relation to annual reporting were appropriate due to the potential sensitivity of the contents. The chairperson has no further issues with the final bill.

The Director of Public Prosecutions provided feedback on the bill in relation to disclosure of Commissioner of Police reports that could contain terrorist intelligence information. The DPP was of the view that this was best addressed in the Criminal Procedure Act 2004 by providing that Commissioner of Police reports were not disclosable in the absence of a court order. The interagency working group did not support a blanket exemption from disclosure for such reports but was of the view that it was sufficient to provide specific protections for terrorist intelligence information that exists within such reports. In implementing the bill, the Western Australia Police Force will work with the DPP to help devise appropriate processes to alleviate any disclosure concerns.

In relation to consultation with the Chief Justice of the Supreme Court, as the member knows, it is not the practice to disclose the nature of those consultations, given that he is an independent judicial officer. We have had that debate a number of times. The member might also then need to ask why there was not wider consultation —

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: I know that. I am not trying to agitate the points, member.

Hon Nick Goiran: I still do not see why he cannot be asked if he is happy to have his feedback provided.

Hon MATTHEW SWINBOURN: Yes. As I said, I am not here to agitate the points that we have already debated exhaustively, but I can indicate that he was consulted or provided with that draft, as I said previously.

The question might be asked why there was not wider consultation with stakeholders such as the Law Society. The bill was subject to extensive consideration by the interagency working group. This working group was led by the Department of Justice. We are of the view that the working group had the required knowledge and expertise to properly inform the development of the bill. The working group made the decision to consult beyond its membership to test issues around the operationalisation—that is a terrible word—and implementation of the bill. The Department of Justice therefore consulted with Hon Peter Quinlan, Chief Justice of the Supreme Court; the Solicitor General; the chairperson of the Prisoners Review Board; and the Director of Public Prosecutions. There was also significant internal consultation within the department, in particular with the corrective services branch. The working group agreed that this was sufficient consultation, in that it was tasked with coming up with the best way to implement the principles agreed to at the national level, utilising the existing Western Australian parole structures and legislation as a base. For this reason, external consultation was not considered necessary. As far as I am aware, since the bill was introduced in Parliament on 18 August last year, legal stakeholders have not raised any concerns about the bill.

Hon NICK GOIRAN: I thank the parliamentary secretary for that comprehensive explanation of the consultation, but, to be clear, was there no consultation with the Australian Federal Police or with the Australian Security Intelligence Organisation, notwithstanding the fact that they are members of the task force that we discussed earlier?

Hon MATTHEW SWINBOURN: No, member, they were not consulted. That is on the bill itself, obviously.

Hon NICK GOIRAN: The other key members of the joint counterterrorism team were not consulted about the bill, for reasons unknown. Was the Commissioner for Children and Young People consulted about the bill?

Hon MATTHEW SWINBOURN: No, member.

Hon NICK GOIRAN: I might take up the issue of the presumption against children who were released early and the lack of consultation with the Commissioner for Children and Young People a little later, but in the interim, the parliamentary secretary mentioned that Legal Aid had a comment to make about the bill. What was the comment?

Hon MATTHEW SWINBOURN: The comments that Legal Aid made were made at the cabinet-in-confidence stage, so I cannot go into it in any detail because of that, but I can say that it was at the early stage of the development of the bill.

Hon NICK GOIRAN: Without disclosing what the comment was, is the parliamentary secretary in a position to indicate whether the issue that was raised remains in the bill or whether it has been addressed?

Hon MATTHEW SWINBOURN: I am advised that it was addressed to the satisfaction of everybody.

Hon NICK GOIRAN: The other issue is the parliamentary secretary indicated that the Director of Public Prosecutions provided some advice to the government on the consultation that was undertaken with her, and that advice included that disclosure provisions would be best dealt with by way of an amendment to the Criminal Procedure Act. When we turn to the bill before us, as is the way, the long title helpfully sets out the acts that will be amended, one of which is the Criminal Procedure Act 2004. That is dealt with in part 4 of the bill, specifically at clauses 41 to 43. To what extent do those clauses address the recommendation of the Director of Public Prosecutions?

Hon MATTHEW SWINBOURN: If I can put it this way, the DPP wanted a blanket exclusion against disclosure, whereas the working group's decision and the ultimate policy decision was that there should not be a blanket exclusion and that the DPP should make an application to the court for the exclusion. It is a matter of where the onus rests when that happens. Does the member understand what I am saying? The working group did not agree with the Director of Public Prosecutions, so we cannot ask where it is in the act, because we did not adopt the position taken by the DPP on this point of view. However, the position that was taken is dealt with in the clauses the member highlighted in part 4, which is that an application must be made by the DPP for non-disclosure to the judge and then the judge will say that, yes, they agree that there should be no non-disclosure of the Commissioner of Police's report or parts of the police commissioner's report, as opposed to the defence making the application to justify it. Does the member see where I am coming from?

Hon NICK GOIRAN: Yes. Are we talking about circumstances in which a subsequent charge is being prosecuted by the DPP and that pursuant to the disclosure requirements for the subsequent charge, there will be some contention about whether a historical Commissioner of Police report needs to be disclosed?

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: It is just very interesting. Let us keep in mind that a policy decision was made earlier that the information in the Commissioner of Police report is so sensitive that only one person on the review board can

see it—that is, the chairperson. No-one else will be allowed to see it, only the chairperson. Remember, we discussed how few police officers have access to this supersensitive information. I stressed previously—not making light of this very serious matter—that it seems odd that the Director of Public Prosecutions, the most senior prosecutor in Western Australia, must come to government to say that we should therefore have a blanket ban and the government saying, "No. You need to go and apply to the court." Now I am making a little light of it, that is effectively saying to the DPP, "Good luck. Cross your fingers and hopefully you will succeed before the court."

I have to say I have a fair degree of sympathy for the proposal that has been put forward by the DPP. If this information is so sensitive, what is the rationale for effectively rejecting her seemingly reasonable proposal to provide a blanket ban and instead creating a possible loophole, a possible gap, whereby some of this sensitive information will become available? The parliamentary secretary is probably already preparing his answer along the lines of, "We will leave that to a learned judge to make that decision." Yes, I understand that, but we will now, once again, be allowing another cohort of individuals to have access to information. It will not be only the judge who will be able to see it; people within the court system will have access to this while the judge is considering the matter. At the very least there will be associates, orderlies and the like. We will now be expanding the group or cohort or class of persons who will be able to see the sensitive information. That seems counter to the policy that was made earlier and it is in circumstances in which the DPP has expressly suggested that there should be a blanket ban on disclosure.

I also accept that the parliamentary secretary indicated that the working group, comprising individuals from the Department of Justice, the Department of the Premier and Cabinet, the State Solicitor's Office and Western Australia Police Force, had, shall we say, subject matter experts driving all this. With all due respect to those individuals, a recommendation from the DPP does not necessarily have to be accepted in each instance, but to say that very few people should see information on something on which the government has already made a policy decision potentially looks like someone has missed something. Was the proposal that was put by the DPP for a blanket ban considered by any of the other stakeholders other than those on the working group?

Hon MATTHEW SWINBOURN: The member asked whether the issue raised by the Director of Public Prosecutions was considered by stakeholders other than the working group. I can confirm that only the working group considered the issue.

Hon NICK GOIRAN: I say with the greatest of respect to those involved that I think that that was a mistake. I think that the working group, on reflection, should have put the proposal by the DPP to the Solicitor-General and to the Chief Justice. As per the usual McGowan government's approach, we know that the feedback from the Chief Justice is always secret, almost as secret as some terrorism information. Nevertheless, if we are going to consult some eminent minds on the bill and if one of them provides what seems on the face of it to be a very reasonable recommendation, it would be odd not to go back to the others and ask whether they agreed with Amanda Forrester. If the majority of those external stakeholders had come to a different conclusion, I would understand why the working group had to weigh up those matters. But I find it odd just to dismiss it and not consult any of the others. With respect, I doubt—I know the parliamentary secretary is not going to be able to tell me—that this matter was actively considered by the cabinet. I cannot imagine that there was a specific deliberation on the cabinet table saying that Amanda Forrester says that there should be a blanket ban on this disclosure and that there was a forthright debate around the cabinet table, with the Attorney General specifically urging his colleagues to reject the DPP's recommendation. I doubt any of that happened. I suspect, even though the parliamentary secretary is not going to be able to tell me, that the only people who have thought about this are the hardworking working group who have done a great job on this bill and its preparation and ourselves now. I do not think that anyone else has thought about this issue.

I will move on to the next topic, but given that I suspect it will be tough for us to move from where we are at the moment on clause 1 through the remainder of the bill—specifically to part 4, which deals with the Criminal Procedure Act 2004, clauses 41 to 43—in the next 30 minutes, I implore the government to reconsider this recommendation by the Director of Public Prosecutions during any short adjournment that we might have. Ultimately, the government will do whatever it wants to do. It may want to stand by the working group's decision, which is set out in this bill. But if the government, on reflection, were to move some form of amendment to address this and implement what the Director of Public Prosecutions suggested, I foreshadow that it would receive our support. I encourage the government, with all goodwill, to reconsider that particular issue. As I say, without wanting to labour the point, it seems counter to the policy decision to make sure that the smallest number of individuals have access to this highly sensitive information to then, I would say, open a gap whereby other individuals will have access to it. I mentioned earlier the judge and those within the court process, but of course there will be the Director of Public Prosecutions and its staff, too. The number of people has doubled just by virtue of the fact that the DPP's recommendation has not been accepted.

Moving on, I want to deal with one of the last themes in clause 1, and that is the issue of the presumption against early release for children. The bill will create a presumption against early release for children. I acknowledge that when the parliamentary secretary gave us some information earlier about the number of prisoners or detainees in Western Australia who might be captured by this bill, the indication was, in accordance with my notes, that no

Western Australian had been charged with a terrorism offence, but one adult had been charged with some form of offence of advocating for terrorism. I think, by the sound of things, that is presently before the courts. There are no, shall I say, commonwealth prisoners relevant at this time and one person, who, I have assumed until now, is not a child, is subject to a control order. In the absence of further information —

Hon Matthew Swinbourn interjected.

Hon NICK GOIRAN: Yes, an adult. Very few people will be captured by this bill and, in any event, they will all be adults. I can understand in those circumstances how it could easily be forgotten to consult with key stakeholders, not the least of whom is the Commissioner for Children and Young People, about a very important principle that will impact children. The parliamentary secretary has already confirmed that the commissioner was not consulted on this bill. Again, with respect to the working group, I think that was a mistake. That said, were any of the stakeholders who were consulted specifically asked to give consideration to applying the presumption against early release for children; and, if so, what did they say?

Hon MATTHEW SWINBOURN: No, there was no specific consultation around the particular issue that the member has raised; that is, they did not specifically point out that this would affect the presumption against early release for children. The consultation was on the bill in its entirety, once it was being drafted or in the lead up to the drafting instructions and things like that, but stakeholders' attention was not specifically brought to a particular point such as the one the member identified.

Hon NICK GOIRAN: Is it fair to say that notwithstanding the fact that New South Wales has had its legislation in place for more than four years now, there was no express consultation with New South Wales to identify how the legislation has been working and, in particular, how it has been working with children?

Hon MATTHEW SWINBOURN: No, member.

Hon NICK GOIRAN: To finish off on clause 1, I want to deal with the issue of rehabilitation programs. Once the bill passes, we will have this presumption against early release. That presumption has the support of the opposition, but we would like to have some assurance or confidence about what the government intends to do with these individuals while it does not allow them out on early release. While it continues to detain them, are there going to be special programs in place? I accept that I have already asked the parliamentary secretary to take on notice the question of what, if anything, is happening with the further three phases that were announced in the communiqué about nationally consistent support and treatment referral frameworks, and I accept that that information may come forth over the next day or so, but I also want to note that given that we do not currently have any child detainees who would be captured by this legislation, which is a good thing, I think it is reasonable to assume—this is not a criticism of the government—that it does not have any current rehabilitation programs for children charged with terrorist-related offences. I doubt very much that the government has a ready-made program to address that situation, given the lack of numbers. If I am wrong about that, I would welcome information about any such program that is effectively ready to roll out when the first such detainee exists. I also accept that there are very few adult detainees. I think the parliamentary secretary indicated that one person is currently before the courts with what I am referring to as an advocating charge, and another is subject to a control order. Nevertheless, that appears to be two separate adults whom I assume would be captured by this legislation. What types of programs are in place at the moment to identify, manage and rehabilitate people charged with terrorist-related offences within our adult corrections facilities?

Hon MATTHEW SWINBOURN: As the member can appreciate, the willingness of anyone in prison to participate in these kinds of programs is entirely up to them. We cannot compel them to do the programs and whether or not they have completed them can obviously affect whether or not they are released. I have been advised that there are programs in place. There is a countering violent extremism program that Western Australia Police Force is involved in. It is not really aimed at those who have been charged with or convicted of terrorism offences, but those who are at risk. The police are reaching out to them, and some of them are children; there have already been two young people working with police to try to —

Hon Nick Goiran: Is this some kind of preventive program?

Hon MATTHEW SWINBOURN: Yes, it is a preventive program in the first place, which is obviously much better than a back-end program when the damage may already have been done. That is happening, and there are people who have experience in deradicalisation from the front end, but there are some more specific things here. It is important to note that prisoners and young offenders with these ideologies are not prevalent in the Western Australian custodial environment at this stage—I think the member has acknowledged that—but this could, unfortunately, change in the future. Corrective Services staff have been educated in terrorism and radicalisation through training targeted at ideological, political and religious reasoning. For example, there is an online radicalisation and extremist awareness training program available so that frontline officers can be prepared to identify offenders who may be radicalising to violent extremism. The radicalisation and extremist awareness program is the department's primary tool for raising awareness of radicalisation and violent extremism in corrections environments. The training supports staff to recognise, respond to and report concerns about offenders potentially radicalising to violent extremism,

and helps staff recognise core indicators that suggest that a person is developing extremist views. There is no single path that an individual takes to violent extremism, but community corrections officers are uniquely placed to identify these indicators through their work with offenders. The purpose of the training is to help staff identify a person who may be radicalising to violent extremism and to support staff responding to and reporting those concerns.

An additional question might be: how do we prevent radicalisation and violent extremists from being organised by prisoners or young offenders with links to terrorism in the custodial environment? Terrorism and radicalisation in Western Australia at the present time is not common, as I have already said. However, if a prisoner were to be brought into custody for terrorism offences and consequently had the potential to radicalise others, there is an option to separate and place such a prisoner into the special handling custodial unit at Casuarina Prison to remove the prisoner from the general population and address the risk. The special handling custodial unit can accommodate prisoners who meet these types of thresholds, and provides the federal and state governments with options to separate and isolate prisoners suspected of, or charged or convicted with, acts of terrorism or radicalisation. Additionally, the department has pathways in which a prisoner or offender can be referred to the countering violent extremism program.

I have spoken about this but I will go into what is in front of me for the sake of completeness. The program provides individually tailored case management support. I talked about the preventive aspects, but I will talk more directly to the member's question about how we deal with the person who is in prison and already radicalised or on the path to radicalisation. This program provides individually tailored case management support such as mentoring, coaching, counselling, and education and employment support to individuals who are considered at risk of becoming or who are already considered to be violent extremists. The program works with the individuals to reduce the risk they pose to themselves and the community and builds resilience to negative influences. I can never get that word right—it is getting late and I have had a very long day. The WA Police Force receive referrals for this program and assess whether the individual or individuals are suitable. It is possible for the countering violent extremism program to be made available to individuals within the custodial environment in the future if it is required. The department is currently consulting with the WA Police Force regarding raising awareness and developing and improving processes in regard to this program. It is also worth noting that the federal government recently announced new funding for a national rehabilitation program to help rehabilitate and reintegrate extremists who are already in custody.

It is fair to say Western Australia does not have a significant cohort of these people, like Victoria or New South Wales, which have a number of people who are already convicted of these terrorism type offences who are in the prisons and will eventually come up for parole and which have these sorts of programs. In the event—again, touch wood we do not—we have people who are charged or convicted of terrorism or become radicalised, we have these mechanisms in place but we also have access to our federal and state counterparts to move these things forward. We do not have a team of people sitting around waiting for these things to happen, because that is not how government works, but in the event it happens, we have mechanisms in place to help us address that.

Hon NICK GOIRAN: I notice that this bill has no specific review clause. The two primary acts that will be amended are the Sentence Administration Act 2003 and the Young Offenders Act 1994. Do both those acts already have an existing statutory review clause that will capture any review of the amendments before us?

Hon MATTHEW SWINBOURN: Section 122 of the Sentence Administration Act already requires the minister to review the operation and effectiveness of the act every five years. The provisions in the bill relating to persons with links to terrorism, if passed by Parliament, will be reviewed as part of the regular review process. In contrast, the Young Offenders Act 1994 does not currently provide for a statutory review to be done. Accordingly, the bill will require the minister to review the operation and effectiveness of those provisions relating to offenders with links to terrorism—in other words, division 2A—to be reviewed every five years. This is covered off in what will be section 150G, which is on page 40 of the bill. Does the member have that in front of him?

Hon Nick Goiran: The review of the division?

Hon MATTHEW SWINBOURN: Yes. Proposed section 150G states —

> (1) The Minister must review the operation and effectiveness of this Division, and prepare a report based on the review —
>
> (a) as soon as practicable after the 5th anniversary of the day on which the *Sentencing Legislation Amendment (Persons Linked to Terrorism) Bill 2021* section 36 comes into operation; and
>
> (b) after that, at intervals of no more than 5 years.

Hopefully, this addresses the member's regular concerns about the review provisions. Although there is no statutory requirement to do so, the minister, at his discretion, can review the operation of the Young Offenders Act 1994 at any time, which is obviously true of any act, I suppose.

Clause put and passed.

Clause 2: Commencement —

Hon NICK GOIRAN: Not for the first time in this forty-first Parliament, clause 2 provides that the rest of the act should come into force on a day fixed by proclamation. Why is that decision being made by government?

Hon MATTHEW SWINBOURN: Clause 2(a) provides that part 1 will come into operation on the day on which the act receives royal assent. Clause 2(b) provides that the rest of the act will commence operation on a day fixed by proclamation. The delay in commencement is to ensure that any required administrative arrangements, including updating Western Australia Police Force and corrective services computer systems to identify persons with links to terrorism and establishing the Prisoners Review Board procedures and training on the new processes, are all undertaken before the new regime commences. To ensure adequate time to prepare, it is expected that the legislation will commence within three months of royal assent.

Hon NICK GOIRAN: Notwithstanding the fact that there is one adult who is currently before the courts on an advocating charge and one adult on a control order, there will be a need to update computer systems and undertake training, which might take three months. It seems a little odd only insofar as it was readily ascertainable for the parliamentary secretary, through his hardworking advisers, that there are only two people who can possibly be captured by this at the present time, so it does not seem that there needs to be too much computer system updating. Nevertheless, the parliamentary secretary is indicating that it will become operational three months from when the bill receives royal assent.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 4 amended —

Hon NICK GOIRAN: Clause 4 amends section 4 of the Sentence Administration Act 2003 by inserting a number of new definitions into that act. We have previously touched on the new definitions of a category 1 prisoner and a category 2 prisoner. The parliamentary secretary mentioned earlier that one adult who is currently before the courts has been charged with an offence and that there is also a person who is the subject of a control order. Are both of those people therefore category 1 prisoners?

While the parliamentary secretary is taking further advice on that, I might rephrase the question to ask whether the person who is currently before the courts—he or she—is a category 2 prisoner. I think the parliamentary secretary indicated earlier that they are charged with advocating terrorism. Is the person who is subject to a control order a category 1 prisoner? All of which is to say that at the present time we have one category 1 prisoner and one category 2 prisoner.

Hon MATTHEW SWINBOURN: We just want to get some of this squared away because obviously the person who has been charged has not been convicted, so therefore to some degree we could be speculating which category they fall under.

Hon Nick Goiran: The category 2 prisoner, as defined on page 3, has been charged —

Hon MATTHEW SWINBOURN: If the member lets me continue, he has been charged but not convicted, so he is not a prisoner; he is on remand.

Hon Nick Goiran: I know, but that is the definition.

Hon MATTHEW SWINBOURN: Yes, okay. He has been charged.

Hon Nick Goiran: It is interesting language, I agree.

Hon MATTHEW SWINBOURN: Yes. He falls within category 2, if I can put it that way, because he has been charged with an offence against the commonwealth Criminal Code, section 80.2C(1), which is advocating terrorism. The point I am trying to make is that regardless of whether he is guilty or not guilty, he would be under that particular category theoretically and practically if he gets the conviction; I presume it is a he. In relation to the control order, I think we might leave it there noting the time.

Progress reported and leave granted to sit again, on motion by Hon Matthew Swinbourn (Parliamentary Secretary).