SENTENCING LEGISLATION AMENDMENT (PERSONS LINKED TO TERRORISM) BILL 2021

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 16: Part 5 Division 1B inserted —

Committee was interrupted after the clause had been partly considered.

Hon MATTHEW SWINBOURN: Before we proceed further on clause 16, members may recall that yesterday Hon Nick Goiran raised an issue about the reference in the bill that the board is constituted by the chairperson and asked us to undertake a little bit of work. We have done that. I now table a document that deals with the provision in the bill in which the board is constituted by the chair alone. In doing so, I note that there are other provisions in the bill that refer to the board as constituted by the chair alone that we have not included in this list, but they are only additional provisions that come up as a consequence of the provisions referred to in this document.

[See paper 1273.]

Hon NICK GOIRAN: Parliamentary secretary, thank you for that information. While we wait for the document to be distributed, just prior to the interval and the interruption for other urgent parliamentary business, we were considering the issue of the board recommending the release of an ordinary prisoner contrasted with the circumstances under this legislation whereby the chairperson alone would recommend a person's release. The parliamentary secretary provided a response to that. Do I take it, then, that in either case—whether it is what I refer to as an ordinary prison or a prisoner with links to terrorism—a report will be made by the board, whether it is the full board or the board constituted by the chairperson alone, and that report will be provided to the Attorney General for his or her consideration?

Hon MATTHEW SWINBOURN: Yes, it is with regard to the lifers, which I think is the non-technical term used. I am sure they have another term, but it is the lifers.

Hon NICK GOIRAN: Clause 16 will insert a number of what I describe as new section 66 provisions. Reference to some of those new section 66 provisions will appear in section 12 of the amended Sentence Administration Act 2003. That will be seen specifically in what will be amended section 12(4) of the Sentence Administration Act 2003. It is best to look at the blue bill there. Therefore, will there be any difference between the treatment of an ordinary prisoner for release and a prisoner with links to terrorism insofar as a report going to the Attorney General? All the lifers, as the parliamentary secretary described them, who are ordinary prisoners will be are subject to a report that goes to the Attorney General and that will be the case for persons with links to terrorism. The parliamentary secretary already indicated that that will be the same. Would there be any other circumstance other than for the lifers in which a report would go to the Attorney General?

Hon MATTHEW SWINBOURN: Yes, in relation to lifers for resocialisation programs. It is for release and for resocialisation programs for lifers.

Hon NICK GOIRAN: Will that be the case irrespective of the category of prisoner, whether they are ordinary, as I have described them, or a prisoner with links to terrorism?

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: I take it that even though the chairperson might conclude that there are exceptional reasons that facilitate the early release of this person with links to terrorism, the Attorney General of the day will still have what might be described as a veto on that decision, in the sense that they will still have the final determining say on whether the person with links to terrorism will ultimately be released or not.

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: In other Australian jurisdictions, are there any specific grounds on which a prisoner with links to terrorism can be granted early release that are not included in the bill before us?

Hon MATTHEW SWINBOURN: I think the member's question was about whether other jurisdictions have any grounds for early release that we do not have here. I am advised that in the first instance all other jurisdictions have a version of the exceptional reasons provision that we have and they are consistent with the principles that were agreed by COAG back in, I think, 2017. However, it is worth noting—we do not have a cross-jurisdictional analysis in front of us—that each of those jurisdictions may operate slightly differently from the way that we do. I will give the member an example that hopefully will illuminate that point. Most jurisdictions do not have a role for their Attorney General in making the final decision on lifers, like the role for our Attorney General that we discussed earlier. The other jurisdictions do not have such a provision. Their boards, however constituted, would make that final decision; it is not in the hands of a politician.

Hon NICK GOIRAN: I must say that on that I much prefer the Western Australian model. The reason I give for that is that we have a situation in which only one person—that is, the chairperson—will have the say and the capacity. Otherwise, but for the Western Australian safeguard, if I can call it that—being the Attorney General of the day—it would be one person, the chairperson, albeit an eminent individual with great experience and qualifications, who could release what I would describe as a known terrorist into the community. If that is the model other states have chosen to use, I far prefer the extra safeguard of an extra set of eyes getting to determine these things.

On that point, would the Attorney General of the day have access to all the information that the chairperson had when determining whether exceptional reasons existed?

Hon MATTHEW SWINBOURN: The direct answer to the member's question is yes, but I will take him to the provisions that deal with that in the bill if it is of any assistance to him. I take him to clause 26, which is on page 23 of the bill, and proposed section 119B, "Protection of Commissioner of Police reports containing terrorist intelligence information". Proposed subsection (2) states —

> The Board must take all reasonable steps to maintain the confidentiality of a Commissioner of Police report that the Board is satisfied contains terrorist information …

It has all those things there. Then, critically, I take the member to proposed subsection (3), which says —

> Despite subsection (2), the Board may give the report to —
>
> (a) the Attorney General; or
>
> (b) a court; or
>
> (c) a person to whom the Board authorises disclosure.

An important additional rider is in proposed subsection (4), which states —

> Before giving a report under subsection (3)(b) or (c), the Board must, in writing, notify the Commissioner of Police of the Board's intention to give the report.

That is obviously so the police commissioner is aware that additional information will be disclosed to the Attorney General, a court or a person to whom the board authorises disclosure.

Hon NICK GOIRAN: With the parliamentary secretary's indulgence, I propose to ask this question now while we are on this clause rather than waiting until clause 26. I thank the parliamentary secretary for drawing to our attention that the bill says that the board "may" give the report to the Attorney General; it appears that it is not mandatory. It would be quite outrageous if the Attorney General of the day called for such a report and the board or chairperson refused to provide it. I can imagine that whoever is the Attorney General of the day would say that is fine, in which case the person would not be released. We would have to think that common sense would prevail. But is there any possibility that the Attorney General might not be aware of the existence of a report? The board may give the report to the Attorney General, but I take it that there would be no doubt in the mind of the Attorney General that a Commissioner of Police report would exist. But remember that I was referring to all information, not just the report. I am just keen to make sure that the decision-maker, who is the chairperson, might have the Commissioner of Police report and, let us say, 10 other pieces of information. Is there any danger that the Attorney General would not have access to those other pieces of information?

Hon MATTHEW SWINBOURN: I think one of the first issues the member raised was whether the Attorney General might not be made aware by the chair of the existence of the report. I think what would be telling is that putting aside the fact that the chair of the Prisoners Review Board is a person of high eminence and standing—I am not casting anything on that—the material provided to the Attorney in those circumstances would be chair-alone material because the rest of the board is not involved. Therefore, on the face of it, it is apparent that this involves one of these decisions that this bill contemplates. If there were any shenanigans of that kind, it would be very apparent to the Attorney General that he or she is not being furnished with all the information.

The member's follow-up question was about the other information being provided and whether there was any risk associated with it. The answer to that is no because, essentially, the practice now is that the Attorney General gets the complete file of information and what happens in practice, I am told, is that there is to-ing and fro-ing sometimes with these people, so additional information is sought by the Attorney General of the day. Given the very serious nature of these instances, there is no reason to think that that practice is not going to continue, because, as the member identified in the response earlier, this is an additional set of eyes. It would be alarming that an Attorney General of the state would be just rubberstamping these things and not giving them full consideration. Of course, it only involves life; it does not involve other matters of fixed-term prisoners in which the Attorney General does not have a role at all.

Hon NICK GOIRAN: That is good. If the existing practice applying to ordinary prisoners will continue in this instance—in other words, all the relevant information and the file is provided ordinarily by way of custom and practice—that is highly satisfactory.

My final question on clause 16 is: are there any other circumstances at present where the board has to consider whether exceptional reasons exist?

Hon MATTHEW SWINBOURN: I am advised that it is the no body, no parole provisions that the board has to consider. We do not have the precise reference before us, unfortunately, but I am sure the member will recall those provisions. There is an exceptional reasons test. It is worded slightly differently.

Hon NICK GOIRAN: The reason I ask that is if there is such a provision—which clearly there is, albeit it is a fairly recent provision—and if any decisions have already been made by the board as a whole with regard to those types of exceptional reasons, it is reasonable to infer that those types of exceptional reasons that the board has already decided existed in cases A or B will influence in some respect the mind of the chairperson when they are making a decision on the exceptional reasons for persons linked with terrorism. Have any of those exceptional reasons decisions been made by the board as a whole under the no body, no parole legislation?

Hon MATTHEW SWINBOURN: Member, I must correct myself because I said that we do not have the no body, no parole provisions before us, but in fact we do, because it is part of the Sentence Administration Act. I was thinking of the bill that was passed that amended that act. The question is really whether there is any precedent for the no body, no parole provisions, and I am essentially advised that there is not. I take the member to section 66B(1) of the Sentence Administration Act. I will just give the member a chance to get it in front of him. It states —

> The Board must not make a release decision, or take release action, in relation to a relevant prisoner in custody for a homicide offence or homicide related offence unless the Board is satisfied that —
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> (a) the prisoner has cooperated with a member of the Police Force in the identification of the location, or last known location, of the remains of the victim of the homicide offence; or
>
> (b) a member of the Police Force knows the location of the remains of the victim of the homicide offence.

It is a specific exception provision. It does not really relate to the exceptional reasons that are referred to in the other act. I am also advised there are no exceptional reasons-type provisions that are comparable with the ones that we have here. I hope that is of assistance to the member.

Hon NICK GOIRAN: Perhaps to round it out, it is useful to recognise, in accordance with the advice that the parliamentary secretary has been provided, that we are going into uncharted waters. There is no precedent or precedent value in any of the other decisions that have been made in that respect, albeit I acknowledge that the parliamentary secretary did indicate yesterday that the chairperson will obviously need to still be guided by the common-law definition of "exceptional" reason.

It would be of some assistance to the chamber if the parliamentary secretary could indicate whether an exceptional reason that might justify the chairperson agreeing to the early release of an individual who was linked to terrorism might be if that person had a terminal illness, again recognising, as we already have discussed, the safeguard that the Attorney General of the day will have the final say. I am trying to get some understanding of what an exceptional reason might possibly be. That seems to be one of the highest reasons that I can think of off the cuff. Does the government intend that that type of scenario will be contemplated, or will the government say that not even a terminal illness would satisfy it that that is an exceptional reason?

Hon MATTHEW SWINBOURN: The danger with the term "exceptional" is that it is so unique. The problem in the first place is the term. The term "exceptional" is so rare that it is hard to narrow down what it might be. It is a species of things that is in itself exceptional. The member mentioned terminal illness. There is not a yes or no answer. It could possibly be an exceptional reason, but all the circumstances would have to be taken into consideration. For example, a person who has been convicted of terrorism offences—a terrorist, for want of a better word—might have served their term and be eligible for release, and the chairperson has considered all the matters, and the issue of terminal illness comes up. If, for example, that terrorist was still connected with a terrorist network, the fact that they have a terminal illness will have no significant bearing on whether they are released—they will not be, because they still present a risk, and risk is the determining factor.

Hon Nick Goiran: They might present a higher risk.

Hon MATTHEW SWINBOURN: That is right, because they might be inclined to do any number of things. The member gave the example of terminal illness. I know that the member is straining to find those exceptional reasons. It is hard to think of this, but terrorists also have families and people who are dependent on them, and sometimes an injustice served on them is also an injustice served on someone else, and that might create a circumstance that is exceptional. Again, the key issue is risk, because even if there was an exceptional reason, it could still be refused.

I was looking back over my notes and saw that the member had said, "but for an exceptional reason", and I added the word "but for an 'accepted' exceptional reason". The exceptional reason must be accepted. Terminal illness could be an exceptional reason, but it would still be up to the chairperson to exercise the discretion. It is not mandatory that they accept the exceptional reason. There is still that assurance. As we know, parole and resocialisation and all those things are not rights; they are privileges. A prisoner is not automatically entitled to release. The court sets the term of imprisonment, and the executive can release a prisoner early. All prisoners have to earn the entitlement to early release regardless of their circumstances. It is a privilege. Having said that, within the broader context, there is still the issue of liberty and those sorts of matters. Within the realms of all things that are possible, if we are too rigid, we will potentially create the circumstance that a further injustice will occur.

I suppose that, speaking very broadly, the purpose of this exceptional reason is to potentially avoid another injustice. It is hard to imagine, of course, given the potentially very serious offending that may have occurred, but the member is a lawyer who has represented people and he knows that a lot of complexities go into that.

Clause put and passed.

Clauses 17 to 23 put and passed.

Clause 24: Section 115A amended —

Hon NICK GOIRAN: Clause 24 deals with a list of decisions that have been made by the Prisoners Review Board. I have not yet had the opportunity to digest that tabled document that sets out the circumstances in which the board is constituted by the chair alone, but in the absence of being corrected, I am going to assume that all the decisions here that are said not to be reviewable are chairperson-alone decisions. The document sets out some four categories of decisions made by the board that are not reviewable and, as I say, I assume they are made by the chairperson alone. The fact that the legislation expressly sets out four types of decisions that are not reviewable suggests that a range of decisions are reviewable. Are all the decisions that will be made by the chairperson alone as a result of this bill before us not reviewable or are some of them reviewable?

The DEPUTY CHAIR: The parliamentary secretary has the call.

Hon MATTHEW SWINBOURN: Thank you, Deputy Chair. I am glad that you are paying attention. Hopefully, I will rephrase the member's question correctly. His first question was: are the decisions of the chairperson sitting as the board alone reviewable or not reviewable? I understood the member's question. Essentially, the decisions of the chair constituting the board alone are not reviewable, and that is the specific term used. The normal practice is that when the Prisoners Review Board, for example, makes a decision, that decision is normally reviewable by the chair, but in this instance the chair is making the decision alone. It is odd to use the language "review your own decision". I am sure the member has read ahead to clause 25 and proposed section 115B, which uses the word "reconsider". Apparently, that language was picked up from the Young Offenders Act, in which a similar circumstance arises. Effectively, the word "reconsider" could have been "reviewable" but it seems strange for a person to review their own decision when this part of the legislation says that they are not reviewable decisions. Does that make sense to the member? It is a funny way of doing it. Perhaps in some respects it is a drafting issue affected by the decision to have the chair make the decisions alone rather than the board, and then have the chair perform the reviewing functions.

Hon NICK GOIRAN: This might be one of those circumstances in which we have to try to delve into the mind of the entity that is mentioned often but never present. If I understand this correctly, the parliamentary secretary is saying that not only are the decisions that are set out in clause 24 before us decisions of the chairperson alone, but they are not reviewable. That said, under clause 25, all of those same decisions are able to be reconsidered.

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: That is helpful to know, albeit that, in terms of the drafting, that is not apparent when one compares and contrasts clause 24 with clause 25. In particular, from what I can gather, even though four different provisions are set out in clause 24, proposed subsections (a) to (c) certainly seem to deal with three types of provisions that the parliamentary secretary referred to in the tabled document. There are provisions in the bill in which the board is constituted by the chair alone. They are the resocialisation program decisions under proposed sections 13 and 14, and then the early release order decisions under proposed section 67A. I see those references in proposed section 115A(4)(a), (b) and (c). As I say, we are trying to delve into the mind of the entity that is mentioned often but never present. We then have the reference in clause 25 to proposed section 115B(1).

Hon MATTHEW SWINBOURN: I am advised that it covers the same items. The answer is yes.

Hon NICK GOIRAN: That being the case, where is the like provision to deal with proposed section 115A(4)(d)?

Hon MATTHEW SWINBOURN: Does the member have the blue bill there?

Hon Nick Goiran: Most of it.

Hon MATTHEW SWINBOURN: What has happened to the rest of it?

I take the member to section 115A of the act, "Board may review decisions about release", on page 94 of the blue bill. Clause 24 effectively deals with the new circumstances that this bill deals with, which is terrorism-related matters. Proposed section 115A(4) states "For the purposes of this section, the following 10 decisions are not reviewable decisions" and goes through a list. It will essentially create exclusions for what is reviewable.

Section 115A(8) of the act is the review provision and states —

> When a request is made, the chairperson of the Board must consider any submissions included in it and review the decision concerned and may —
>
> (a) confirm …

If we included a subsection (8) in clause 25, it would not do any work, so it has been excluded. If the member looks at proposed section 115B(3), he will see it states —

> A request must —
>
> (a) be in writing; and
>
> (b) state the grounds …

Proposed section 115B(5) states —

> When a request is made, the Board, as constituted by the chairperson alone, must consider any submissions included in it and reconsider the decision concerned and may —
>
> (a) confirm, amend or cancel the decision; or
>
> (b) make another decision.

Obviously, it does not include the equivalent paragraph (c). Can the member see what is happening there with the drafting? I know on the face of it, when we look at the bill, it is not apparent why paragraph (d) is not there. But when we look at the actual blue bill, we see that the drafting has picked it up later as relevant to these new provisions.

Hon Nick Goiran: Yes, I agree.

Clause put and passed.

Clause 25: Section 115B inserted —

Hon NICK GOIRAN: Having determined that these decisions are not to be reviewed and instead the types of decisions are to be reconsidered, the government has obviously made a decision that the reconsideration approach is superior to the review approach. Has that approach been taken in the other jurisdictions that invest the decision-making authority in the one person able to review, or do they also create this notion of a reconsideration by the original decision-maker?

Hon MATTHEW SWINBOURN: We do not have the information on a comparative level with us at the table. We have given the honourable member the table in which the comparison was done. I am advised that through the development of the bill, the concern was not so much about what the other jurisdictions were doing. It was really about what the current arrangements were with parole decisions, whereby the board made the decision and it was reviewed by the chair, and then how it made sure that a similar process was in place, given the unique circumstances in which the board was constituted by one individual who would normally be the person who would undertake the review. To address that problem, parliamentary counsel looked to the Young Offenders Act 1994 to see how it was dealt with there.

Hon NICK GOIRAN: Yes, I can understand that the decision has been made to be consistent. I think the parliamentary secretary indicated earlier a desirability for it to be consistent with the approach taken under the Young Offenders Act 1994, and that seems reasonable. That said, firstly, will the Attorney General be notified that there is a reconsideration in progress? Secondly, would the Attorney General be advised of the outcome of the reconsideration?

Hon MATTHEW SWINBOURN: The advisers are just checking on whether information would be included in an annual report, but I am advised that if we think about normal parole practices, the Attorney General is not advised about any review. In this instance, it indicates that it is in progress or the outcome, so the Attorney General does not have a part in that at any stage. That would not be the normal process. As I say, we are just trying to establish whether there are any annual reporting obligations that would then be delivered to the Attorney General. But in the normal operation of it, no, it is no different from the current arrangement.

Hon NICK GOIRAN: I understand that that is the case with decisions under review, but what about decisions under reconsideration? If there is a reconsideration under the Young Offenders Act, is the Attorney General notified of that reconsideration in progress and the outcome of it?

Hon MATTHEW SWINBOURN: If I recall correctly, the member's question was whether there is anything in the Young Offenders Act on the Attorney General being advised about the progress or outcome of a reconsideration. I am advised that, no, there is not.

In relation to annual reporting, the bill amends the annual reporting obligations only to provide for excluded information. The existing annual reporting obligations to the minister are found at section 112 of the Sentence Administration Act. Section 112(d) states —

> the number of prisoners who were refused an early release order by the Board or the Governor during the previous financial year;

We can contemplate that within that figure would be those people who may have, as a result of refusal, asked for a review or reconsideration, but it does not prescribe that that level of detail be provided in the annual report; it is just the overall numbers. Someone might have sought early release, had the matter determined and decided not to seek reconsideration of it, but the report will not reflect whether that has happened.

Hon NICK GOIRAN: In that situation, when the chairperson acting alone has rejected one of these applications and the prisoner requests reconsideration but that is also rejected by the chairperson—as the parliamentary secretary has identified, the Attorney General will ordinarily be none the wiser that any of this has occurred—does any other legal avenue remain available to the prisoner such as being able to petition the Attorney General in some way?

Hon MATTHEW SWINBOURN: The first part of the question was whether there was any other legal avenue. Internally, no. However, if a person wishes to further appeal the decision of the Supervised Release Review Board or the Prisoners Review Board, the person can apply to the Supreme Court, which, of course, has its original jurisdiction to engage in judicial review, and such a decision can also be appealed to the Court of Appeal and then to the High Court. That is not an appeal as a matter of right. As the member knows, it is, as I said, the inherent jurisdiction of the Supreme Court and High Court to deal with executive actions, which we cannot exclude, because we cannot.

In answer to the second part of the member's question about whether someone could petition, I think was the word he used, or even write to the Attorney General, they certainly can write to the Attorney General but the Attorney General has no power to compel the Prisoners Review Board, however it is constituted, as a chairperson alone or as the board, to undertake those things. That is not the Attorney General's role. The Attorney General's role is only to the lifers who we previously outlined.

Hon NICK GOIRAN: But for the inclusion of clauses 24 and 25, these decisions would be reviewable if we had not passed them. If that were the case, who would do the review?

Hon MATTHEW SWINBOURN: I outlined before that in ordinary parole circumstances, the board will make the original decision for early release. If the decision is to refuse, a review of that decision will be made by the chairperson, but there will be no further internal review for that person. The avenues through the Supreme Court and on to the High Court, of course, remain open for judicial review, but nothing in the act provides for those things.

Clause put and passed.

Clauses 26 to 28 put and passed.

Clause 29: Act amended —

Hon NICK GOIRAN: Clause 29 brings us to the start of part 3 of the bill, which deals with amendments to the Young Offenders Act 1994. I understand that the government's intention here is to enlarge—essentially mirror—the way in which we deal with what I describe as adult terrorists and to deal with it in the same way with respect to child terrorists, for the lack of a more eloquent expression. To what extent are we diverging from that? In what way does part 3 of the bill take a different—I am talking here about a substantive approach, not an inconsequential or stylistic way—substantive approach to the way in which we will deal with young offenders with links to terrorism from how we will deal with an adult in those circumstances?

Hon MATTHEW SWINBOURN: In the first instance, I think the member's characterisation of the government's attempt to essentially mirror in the Young Offenders Act what was done in the Sentence Administration Act is a proper one. But in terms of the mirroring in the Young Offenders Act, we are using the structure and terminology. I appreciate the member saying that he is interested only in the substantive differences rather than the minor ones, which obviously would apply to the use of terminology. It diverges in that the Young Offenders Act contains, as the member knows, a number of principles that are not contained in the Sentence Administration Act. Other than the two principles that we have previously discussed, the remaining principles in the Young Offenders Act remain relevant to the matters in this bill, so we have not excluded them in their entirety. There is a difference in the definition of "category 1 prisoner" and it relates to the time. In the Sentence Administration Act, it is 10 years, which we spent some time talking about, but in the Young Offenders Act, it is only four years. If the member recalls, the commonwealth control orders apply only from the age of 14 years onwards, so the four years therefore relates to

the age of 14 up to the moment they turn 18. I do not know whether that is substantive; obviously, it exists because it is structural.

The other difference—again, it is just because of the structure—is that we did not need to do the work that we had to do under clauses 24 and 25 because the reconsideration provisions are already in the Young Offenders Act. There was no need to do anything significant on those matters because that structure already exists in the Young Offenders Act. The chair—I think it has a different name, but I cannot recall it—already does the function of reconsidering their own decisions. Those are what we say are the major divergences and significant differences.

Hon NICK GOIRAN: I have one further question that I think is most conveniently dealt with now at the start of part 3. The parliamentary secretary might recall that when we were considering clause 1 of the bill, I asked what the government was doing about the agreement that there be a further three phases to deliver nationally consistent support and treatment referral frameworks. That would seem to be particularly important if there were to be what I have referred to as a child terrorist. Might the parliamentary secretary be in a position to give any further information at his disposal on that point?

Hon MATTHEW SWINBOURN: We did seek some further advice from the Department of the Premier and Cabinet and it has been able to confirm for us that the third phase does not relate to parole or bail; it relates to the establishment of fixated threat assessment centres in each jurisdiction to deliver nationally consistent support and treatment referral frameworks. In Western Australia, a limited FTAC capability was established in 2018 by the WA Police Force and the Department of Health in partnership. The FTAC has been fully operational since early 2020. The FTAC models are accepted as best practice in the management of fixated individuals. There has recently been a recommendation that FTAC capability and models of practice be developed in each state and territory. I hope that gives the member some further context.

Clause put and passed.

Clauses 30 to 35 put and passed.

Clause 36: Part 8 Division 2A inserted —

Hon NICK GOIRAN: As we move to clause 36, which is the substantive provision in part 3 and, if you like, is a close cousin to clause 16 when we dealt with the substantive provision in the Sentence Administration Act 2003, much of what we discussed already in clause 16 could easily apply to clause 36. I have one question under this clause. I note one degree of risk when considering release is set out under section 5A(a) of the Sentence Administration Act, which reads —

> the degree of risk (having regard to any likelihood of the prisoner committing an offence when subject to an early release order and the likely nature and seriousness of any such offence) that the release of the prisoner would appear to present to the personal safety of people in the community or of any individual in the community;

A crucial release consideration in the Sentence Administration Act is that consideration be given to the degree of risk. Is a similar release consideration made under the Young Offenders Act, particularly as we are dealing here with a person with links to terrorism?

Hon MATTHEW SWINBOURN: Member, we are trying to get some more information from the registrar, but there are a couple of points we need to make about this. The Young Offenders Act deals with release in a different structural way from the Sentence Administration Act. Generally, risk is assessed differently for young people than it is for adults, notwithstanding that the people we are talking about could present a very significant and serious risk to the community. I take the member to section 133 of the Young Offenders Act, which provides that a supervised release order can be made only if the following requirements are met: the offender consents to the making of the order; the earliest release day has been released; the Supervised Release Review Board has considered any statement received from a victim of the offence in respect of which the detainee is in custody; there is a responsible adult present, or the board considers that there is sufficient reason for it to make the order, even though a responsible adult is not present; and the offender is not in custody under any other order or serving any other custodial sentence, or the requirements for releasing the offender from custody under that other order or sentence are satisfied.

That has to be read in conjunction with the additional requirements under proposed section 150A, which provides the release considerations.

Hon Nick Goiran: And the six sub-items that are listed there.

Hon MATTHEW SWINBOURN: Yes, paragraphs (a), (b), (c), (d), (e) and (f). Those will have to be taken into consideration.

Hon NICK GOIRAN: I agree with the parliamentary secretary; that is how this is structured. Comparing and contrasting the six matters referred to at proposed section 150A, the release considerations, with how we are dealing with that earlier in the bill under the Sentence Administration Act, I specifically ask the parliamentary secretary and

the advisers to turn back to page 10 of the bill. There we can see the additional release considerations that we have already approved under the Sentence Administration Act, and there are seven additional release considerations. However, under proposed section 150A on page 36, there are only six release considerations. They are virtually word-for-word identical; the one that is missing is proposed section 66F(a), which provides for the degree of risk, having regard to any likelihood of the prisoner committing a terrorism offence if subject to an early release order and the likely nature and seriousness of any such offence, that the release of the prisoner would appear to present to the personal safety of people in the community, or of any individual in the community. It seems a little odd that that is the one provision that seems to be missing, when everything else has been mirrored.

Hon MATTHEW SWINBOURN: There is a difference here but I am advised that it is just structured differently. I take the honourable member to proposed section 150C, "Making supervised release orders", on page 37 of the bill.

Hon Nick Goiran: Is it proposed section 150C(2)(a)?

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

> (1) The Board must not order the release of an offender with links to terrorism unless the Board is satisfied that there are exceptional reasons why the offender should be released.

We have covered that. It continues —

> (2) The Board must, in making any decision for the purposes of subsection (1) —
>
> (a) regard the personal safety of people in the community or of any individual in the community as the paramount consideration; and
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> (b) apply the general principles of juvenile justice in section 7, other than the principles referred to in paragraphs (h) and (k); and
>
> (c) have regard to all of the following —

I will not read them all out. In any event, I think that adds that level the member was talking about.

Hon NICK GOIRAN: I had a feeling that the parliamentary secretary might refer me to proposed section 150C(2)(a). I think the parliamentary secretary will agree with me that proposed section 150C(2)(a) is not the same as proposed section 66F(a). Again, it is not clear why that decision was made. An express decision has been made to essentially mirror proposed sections 66F to 66G and then suddenly remove proposed section 66F(a) and rely on what I would probably describe as at best a shortened version of proposed section 66F(a) in the form of proposed section 150C(2)(a). It was obviously an intentional decision because it really does stand out. Someone has given this some degree of thought and decided that it will be described differently in the Young Offenders Act. It is not an "additional release consideration", as in the definition under proposed section 66F(a). Instead, we are going to say —

> (2) The Board must, in making any decision for the purposes of subsection (1) —
>
> (a) regard the personal safety of people in the community or of any individual in the community as the paramount consideration;

I take it that that paramount consideration will not apply under the Sentence Administration Act? Again, that would mean a decision was made that when the board is considering an adult terrorist, it will not be required to regard the personal safety of people in the community or any individual in the community as the paramount consideration. I find that odd. If there is a terrorist who is an adult and a terrorist who is a child, irrespective of their age, surely we want the board, being the chairperson alone, to regard the personal safety of people in the community or any individual in the community as the paramount consideration. I would think that is an important principle, particularly when we are trying to mirror the two schemes. If that does not appear as a paramount consideration in the Sentence Administration Act, that act that deals with adults will rely on proposed section 66F(a)—that is, the degree of risk that the release of an adult prisoner who is a terrorist will pose to the community. Again, we would want that to be expressly considered with regard to a child.

Hon Matthew Swinbourn: I take the honourable member to section 5(b) of the Sentence Administration Act 2003.

Hon NICK GOIRAN: That is the current act.

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: I refer to section 5B, "Community safety paramount".

Hon Matthew Swinbourn: That's right. That is what we were referring to in the Sentence Administration Act.

Hon NICK GOIRAN: If we are saying that the paramount consideration that will be inserted in the Young Offenders Act by this legislation is already mirrored in the existing Sentence Administration Act, why will the Sentence Administration Act have this additional provision under proposed section 66F(a), dealing with the degree of risk, but it will be expressly excluded from the Young Offenders Act?

Hon MATTHEW SWINBOURN: I can see the point that the member is making about the two things in relation to proposed section 66F(a), in that the first part of (a) is not contained within proposed section 150C(2). Risk is in the first part, but the paramount community safety stuff is dealt with in both this proposed section and the second part of section 66F(a). It states —

> … the release of the prisoner would appear to present to the personal safety of people in the community or of any individual in the community;

I am being told that that has the same effect. It was discussed with—what are we calling that entity that we do not mentioned by name—the Parliamentary Counsel's Office as to having that same effect and that in terms of risk in the Young Offenders Act, it is assessed differently through the structure of the act than it is in the Sentence Administration Act. I hope that has answered the member's question—maybe not to his full satisfaction, I guess. But there are obviously some drafting issues that come when we are trying to mirror the same two things, but different principles continue to apply with young offenders that are not considerations in relation to adults.

Debate interrupted, pursuant to standing orders.

[Continued on page 2209.]