SENTENCE ADMINISTRATION BILL 2002

Consideration in Detail

Resumed from 14 November.

Clause 23: CEO may parole prisoner -

Debate was adjourned after the clause had been partly considered.

Ms S.E. WALKER: For the first time in the State's history, under this clause it is proposed to give the chief executive officer of the Department of Justice the authority to grant parole. Having thought about this over the break, can the Attorney General tell me whether it is usually the court that grants parole in this State; and, if so, under what provision?

Mr J.A. McGinty: No.

Ms S.E. WALKER: Does the court make a person eligible for parole?

Mr J.A. McGinty: Yes.

Ms S.E. WALKER: Under what provision?

Mr J.A. McGinty: Under section 89 of the Sentencing Act.

Ms S.E. WALKER: Is it correct that this provision gives not the judiciary but the chief executive officer of the Department of Justice the right to grant parole eligibility?

Mr J.A. McGINTY: In the past, by statute, sentences of less than 12 months have not been subject to parole orders. There has been a prohibition, in essence, on the judiciary awarding parole in those cases. The statute has also provided certain frameworks within which parole can be considered. This is a continuation of that practice. If the member is trying to paint it as some radical departure from the normal practice, I do not see it in that light.

Ms S.E. WALKER: I am not trying to paint anything as being radical. I am just stating a fact. In the history of this State it has usually been the judiciary that has granted parole eligibility. Whether the judiciary has that power in the case of sentences for less than 12 months is beside the point. The point I am making is that for the first time the Attorney General is giving the power to grant parole eligibility for sentences under 12 months to a non-judicial officer with no experience in the criminal justice system, and that officer can then delegate that power to people whom we do not know about. The Attorney General is giving the CEO that power unilaterally. I suggest that that is a result of the Attorney General not understanding the criminal justice system, having never practised in it.

Mr M.J. Birney interjected.

Ms S.E. WALKER: I could tell the member for Kalgoorlie something about that afterwards in a quiet moment. However, the Attorney General has never been a certificated legal practitioner; he has never been robed and practised in a court. That is fine. Now he is saying that I am saying something radical! I am just putting on record what is happening in relation to this legislation. Judges in this State are being paid enormous amounts of money for their skill and expertise in considering individual cases and determining how and why parole should be granted. That is one of the reasons that the Opposition does not approve of this legislation. The seriousness of changing tack and giving a non-experienced layperson the ability to grant parole eligibility will continue to be raised, because those people will be doing that for people convicted of very serious offences. The member for Kalgoorlie will be able to say something about that when we deal with the Sentencing Legislation Amendment and Repeal Bill, and so will I, because the issue will come up again.

Mr J.N. Hyde: Has he been robed?

Ms S.E. WALKER: A person does not have to be robed to know that people in this State get convicted of very serious offences and get sentenced to six months and less. The member should listen and learn and he might then understand something.

On 14 November 2001 Hon Norman Moore asked Hon Nick Griffiths in the upper House the following question -

(1) In the past financial year - 2000-01 - how many people were imprisoned for a period of six months or less?

(2) Of those sentenced to prison for six months or less -

(a) how many were first time offenders;

(b) how many had previously served a prison sentence;

(c) how many were sentenced for robbery offences;

(d) how many were sentenced for assault offences;

(e) how many were sentenced for burglary offences;

(f) how many were sentenced for car theft;

(g) how many were sentenced for drug trafficking;

(h) how many were sentenced for theft?

Hon Nick Griffiths replied -

(1) A total of 591. The figure excludes fine defaulters and persons imprisoned for breach of a prior early release order.

Members can see why the Opposition is concerned. This legislation potentially deals with people who have indecently assaulted people, stalked people and burgled people's homes and who will go to prison for 12 months or less. My area of concern is that under the Sentencing Act a range of criteria is set out for a judge to determine whether a person should receive parole. A judge has all the facts before him when making this decision; that is, all the submissions of the defence and the prosecution, the psychiatric or psychological reports and the pre-sentence reports. When the chief executive officer grants parole, to what material will he refer to determine whether a person with a sentence of 12 months or less should be given parole eligibility? Why is that power being taken out of the hands of the court?

Mr J.A. McGINTY: The matters listed under what will become section 16 of this Bill, as they are considered by the Parole Board of Western Australia and the court, will also be considered by the CEO.

Ms S.E. WALKER: What documents or materials will the CEO have before him when he makes a determination compared with a judge who has a person standing before him who has just been sentenced to, say, two years imprisonment? Will the CEO hear all the facts? Will he have the opportunity to see the demeanour of the offender in court? How will the CEO make that determination? Will he do it on a piece of paper? Will he visit or look at the prisoner? We are dealing not with release on parole but with parole eligibility. The Attorney General is now allowing prisoners with terms of 12 months or less to be eligible for parole. However, that parole is to be granted by a non-judicial officer. Why is the power to grant parole eligibility being taken away from the court? Parole eligibility is one thing, but release on parole is determined by the Parole Board.

Mr J.A. McGINTY: The information before the person making the CEO parole decision will contain everything that the court has before it and more. For instance, if the court did not call for a pre-sentence report, all of the materials that would otherwise be provided in the pre-sentence report would be before the CEO but they would not be before a judge. Information about prison behaviour and the other matters taken into account when making a decision are not before a judge. The CEO will have more relevant information before him when making that decision than a court would have before it.

Ms S.E. WALKER: The Attorney General is wrong. I respect that his adviser has much experience theoretically, but the Attorney General is quite wrong. We are dealing with the granting of parole and not with release on parole; there is a difference. I will provide an example. An article in *The West Australian* today is headed "Predator gets 24 years jail" and states-

No parole for man who assaulted two women on same day

That judge has the power to say whether an offender - like this man - will be granted parole eligibility. That is what we are dealing with. We are dealing with who will grant parole eligibility for those with sentences of 12 months or less. We are not dealing with a person who has been granted parole. For instance, if this predator were to get 24 years jail with parole eligibility, he would come up before the parole board to determine whether he should be released. That would not happen if he did not get parole eligibility. I think I am correct in saying that the chief executive officer is able to not only order parole release but also grant parole eligibility after the judicial officer has handed down the sentence. That is correct, is it not?

Mr M.J. BIRNEY: I think the member for Nedlands was about to make a very good point, and I would like to hear what it was.

The SPEAKER: Order! Before I give the call to the member for Nedlands, I remind her that if the question that we are considering goes to a vote, none of her amendments will be considered. The member may wish to move to one of her amendments so that that will not be the case.

Ms S.E. WALKER: Thank you, Mr Speaker; I have that in mind. I think I have the Attorneys General stumped, which is not difficult. I have gone back and looked at these Bills that were not proclaimed but were passed by the House. During the second reading debate I referred to the submission that was made by Dr Neil Morgan to the Attorney General on 7 October 2002, in which he was scathingly critical of the Attorney General for not consulting with the judiciary and the Parole Board on these Bills. Dr Morgan states in his submission -

> Before examining the changes in detail, it is important to record some concerns about the processes of sentencing reform. Those who are responsible for policy development seem to have learnt little from the abject failures of the late 1990s -

He is talking about the Attorney General; the Attorney General is responsible. I continue -

> when Bills were developed without any consultation with the courts and the Parole Board. The latest Bills follow the same pattern. They were developed within the Department of Justice, with some consultation with the police.

Mr J.A. McGinty: What is the period that he is complaining about?

Ms S.E. WALKER: He was complaining about the construction of these Bills in the Department of Justice.

Mr J.A. McGinty: When?

Ms S.E. WALKER: As he said in that submission -

Mr J.A. McGinty: You have just read out a date.

Ms S.E. WALKER: It was a submission to the Attorney General on 7 October 2002.

Mr J.A. McGinty: But he was pointing back to an undesirable practice when things were being done without consultation with the judiciary.

Ms S.E. WALKER: I repeat -

> Those who are responsible for policy development seem to have learnt little from the abject failures of the late 1990s -

Mr J.A. McGinty: Do you know who that was? That was Peter Foss; and what an abject failure he was for refusing to consult with the judiciary!

Ms S.E. WALKER: I accept that, but this is my point. I thank the Attorney General very much, because I am about to remind the Attorney General that when he was debating the Bills that Hon Peter Foss had put up, he said -

Mr J.N. Hyde: On what date?

Ms S.E. WALKER: Wednesday, 22 November 2000.

Mr J.N. Hyde: Who was in government?

Ms S.E. WALKER: The member was not, and I do not think he will ever be a minister, so there will be no problem with his ever getting up and saying anything.

Mr J.N. Hyde: I know who will win this vote though, and that is all that matters!

Ms S.E. WALKER: I thank the member for the interjection, because I have lost my place and he has given me time to look for it. Keep going! The member can keep interjecting, and I will keep looking! In that debate on 22 November 2000, the Attorney General referred scathingly to the fact that there had been no consultation with the judiciary. I will find the quote, and when we get to the other Bill I will raise the matter. Dr Morgan states also -

> The first thing that most of the other so-called stakeholders saw was the draft Bills at around the time they were tabled in the Parliament.

It is old silver tongue at work again - getting up in the Parliament and saying in his second reading speech that these Bills largely follow the recommendations of the Hammond report. There is nothing in the Hammond report about CEO parole. Most people would be horrified to learn that serious offenders - people who are convicted of stalking, robbery, drug trafficking and indecent assault and other sexual assaults - will have their parole eligibility determined by the chief executive officer of the Department of Justice.

Mr M.J. BIRNEY: I would like to hear more of what the member for Nedlands has to say.

Several members interjected.

The SPEAKER: Order!

Ms S.E. WALKER: We keep getting quips from people on the other side, but I want to record that I have noticed when I walk past their seats that most of them are playing games on their computer. The member for Girrawheen is often playing games.

Several members interjected.

Ms S.E. WALKER: I never have time! I do not know what game it is; I will take a photo next time. I move -

Page 15, line 7 - To delete "CEO" and substitute "Parole Board".

Mr J.A. McGINTY: This calls for a brief response. A question has been raised about whether Chief Judge Hammond of the District Court made any recommendations about prisoners serving terms of 12 months or less. The member for Nedlands has been suggesting that this matter was not dealt with in the Hammond report. Recommendation No 5 of the Hammond report recommends that offenders serving sentences of less than 12 months be eligible for automatic release, - that is, with no discretion and no judicial involvement whatsoever - either with or without conditions, after serving one-half of the term and remain at risk for the remainder of the term. That is the recommendation from Chief Judge Hammond that we are implementing in this Bill. In fact, the Government has pulled it back a little so that rather than grant every offender automatic release on parole, which was recommended by Chief Judge Hammond, it will be automatic in the case of most prisoners, but if we think that certain prisoners should not be automatically released on parole, then they will not be released on parole. Therefore, if anything we have pulled back a bit from Chief Judge Hammond's recommendation. However, it is still consistent with recommendation No 5 of the Hammond review on remission and parole, and to suggest otherwise is not an accurate description of the circumstances. Whether it should be the Parole Board or the CEO needs to be looked at in this context. The first point I make is about home detention. That is determined administratively by the Department of Justice officers.

Mr M.J. Birney: Are you getting rid of home detention?

Mr J.A. McGINTY: In respect of people serving sentences of 12 months or less, it will no longer be a relevant consideration, because we will allow people to participate in parole. Therefore, all prisoners, unless they are excluded because of their behaviour or the nature of their offending, will be eligible for parole. I think the figures are that approximately one-third of prisoners serving sentences of 12 months or less are granted home leave or home detention. We are saying that home detention is in substance the same as parole. That is currently done administratively within the department.

Mr M.J. Birney: It is not. Home detention still has a significant custodial aspect to it, whereas parole does not.

Mr J.A. McGINTY: There is home leave and home detention. We are talking here about home detention, which means that a person is let out of prison and is imprisoned in his home, generally as part of a prerelease arrangement. That is the same as parole for all practical purposes. The second point is that currently most prisoners who are released on parole come under what is known as auto-parole. It is automatic; it does not even go before the Parole Board of WA. It is dealt with administratively by the secretary of the Parole Board, who simply signs a parole release form. There is a range of criteria. I will address this in more detail later. When the head sentence is three years or less, it is done administratively by the secretary of the Parole Board, based on recommendations from the Department of Justice, and it never goes to the Parole Board.

Mr M.J. Birney: They are not individual recommendations. The Parole Board does not take into consideration the circumstances of the individual who is up for parole and the way he behaved in prison.

Mr J.A. McGINTY: Yes. The Department of Justice provides a report to the secretary of the Parole Board, stating that the person should be released under the following conditions. It is automatic and is never considered by the Parole Board proper.

Mr M.J. Birney: The person gets parole no matter what?

Mr J.A. McGINTY: Yes. That is what occurs currently, and it is done administratively.

Ms S.E. Walker: How do you know that?

Mr J.A. McGINTY: It is in the Act.

Ms S.E. Walker: How do you know what happens?

Mr J.A. McGINTY: Please!

Ms S.E. Walker: Come on; tell us.

Mr J.A. McGINTY: The notion of automatic parole is prescribed in the Act. Perhaps if the member read it, she would become familiar with it.

Ms S.E. WALKER: I inform the member for Kalgoorlie that I am referring to a statement by the Attorney General, when in opposition, on 22 November 2000 and recorded at page 3558 of *Hansard*. He stated -

> I sat on the Parole Board in the 1980s, so my knowledge is somewhat dated.

That was 20-odd years ago. I am just wondering whether the member for Kalgoorlie is getting the right information on this.

Mr M.J. Birney: I suspect I am not.

Ms S.E. WALKER: I suspect - I am fairly sure. I did refer to the Attorney General's comments about the Government of the day not referring legislation to stakeholders. He said about the Bills that the Liberal Government introduced but which were not proclaimed and which he will repeal -

> There is total opposition by the judiciary in Western Australia to the proposed changes before Parliament. Members know, as in any area of endeavour, that a cooperative approach, with both Parliament and the judiciary reserving their rights, is the best way to achieve positive outcomes. A stand off or violent disagreement between two of the three arms of Government - in this case the Legislature and the judiciary - is not conducive to good law making. Wherever possible, it should be avoided.

I raise that because there was strong criticism by the Attorney General of the previous Government for not consulting with the stakeholders. However, what do we have here? Now that Labor has come to power, the Attorney General is roundly and strongly criticised in Dr Neil Morgan's submission. He has given a copy of that submission to all members of the judiciary.

Mr J.A. McGinty: And I gave it to you.

Ms S.E. WALKER: However, the Attorney General has not consulted them. This CEO parole has been trumped up by the Department of Justice and the police. It is not about parole release between the Parole Board and the CEO; it is about eligibility in the first instance - who determines eligibility. The fact that the Hammond report may have stated that it is automatic is beside the point. My point is that the Attorney General suggested that most of the provisions in this Bill were supported in the Hammond report, and that is not right; that is incorrect.

Amendment put and a division taken with the following result -

Ayes (18)

Mr R.A. Ainsworth	Dr E. Constable	Ms K. Hodson-Thomas	Ms S.E. Walker
Mr C.J. Barnett	Mr J.H.D. Day	Mr M.G. House	Dr J.M. Woollard
Mr D.F. Barron-Sullivan	Mrs C.L. Edwardes	Mr P.D. Omodei	Mr J.L. Bradshaw *(Teller)*
Mr M.J. Birney	Mr J.P.D. Edwards	Mr P.G. Pendal	
Mr M.F. Board	Mr B.J. Grylls	Mr T.K. Waldron	

Noes (26)

Mr P.W. Andrews	Dr G.I. Gallop	Mr J.A. McGinty	Mr J.R. Quigley
Mr J.J.M. Bowler	Mrs D.J. Guise	Ms S.M. McHale	Mr D.A. Templeman
Mr C.M. Brown	Mr S.R. Hill	Mr A.D. McRae	Mr P.B. Watson
Mr A.J. Carpenter	Mr J.N. Hyde	Mr N.R. Marlborough	Mr M.P. Whitely
Mr A.J. Dean	Mr J.C. Kobelke	Mrs C.A. Martin	Ms M.M. Quirk *(Teller)*
Mr J.B. D'Orazio	Mr F.M. Logan	Mr M.P. Murray	
Dr J.M. Edwards	Ms A.J. MacTiernan	Mr A.P. O'Gorman	

Pairs

Mr A.D. Marshall	Mr E.S. Ripper
Mr W.J. McNee	Mrs M.H. Roberts
Mr B.K. Masters	Mr R.C. Kucera
Mr M.W. Trenorden	Mr M. McGowan

Amendment thus negatived.

Ms S.E. WALKER: I move -

Page 15, line 13 - To delete "CEO" and substitute "Parole Board".

Mr M.J. BIRNEY: It needs to be said that parole is not and should not be an automatic right; it should be earned. It follows that the Parole Board of WA, which consists of more than one individual with, hopefully, vast experience in the area of justice, would be the appropriate body to determine whether somebody has earned the right to parole. When that power is taken away from a body such as the Parole Board and is given to a solitary individual, that is certainly not in the interests of justice in Western Australia. A particular individual, no matter how good or bad he might be at his job, may have preconceived views about a range of issues. He may well have preconceived views about the particular crime perpetrated by the offender who is up for parole. It might well work in reverse. The point I am trying to make is that a solitary individual should not be charged with making such an important decision. It is an important decision because from time to time we have seen absolute community outrage when serious offenders have been released on parole. There is a view in the community that parole should not exist and that if somebody is sentenced to a particular term, the person should serve that term. With that in mind, it is important, if not vital, that a body consisting of more than one individual be charged with determining whether somebody has earned the right to parole. I say again that people must earn that right to parole. It is not an automatic right. If a person can put his case to a group of individuals such as the Parole Board, and he makes his case well enough, he should be granted parole. A person certainly should not be faced with the prospect of trying to convince just one person, who may well have preconceived views about a whole range of issues.

Ms S.E. WALKER: I am grateful to the member for Kalgoorlie because he has raised an important point. This Parliament has gone to a lot of trouble to provide in the Sentencing Act the circumstances under which the courts or the sentencer can make a person eligible for parole. We are talking about a two-step process: the court makes an offender eligible for parole, and the Parole Board determines whether that person will be released on parole. It must get the board's approval. This Parliament has gone to a great deal of trouble to set out in section 89 of the Sentencing Act the circumstances under which an offender can be eligible for parole.

Often people have been with an organisation for a long time - I am sure many people in here have been on committees - and then a new group of people join an organisation and those people try to do something different from what is established and try to reinvent the wheel. Sometimes the wheel is just right for the job. A lot of time, effort and energy have been spent on the parole system in this State. Parole longer than two years is simply of no use. This Parliament has set out criteria for the judge to consider when deciding whether an offender should be eligible for parole.

I do not know whether the Attorney General or the drafters of this legislation have ever been in court on a day when the people standing in the dock are sentenced. The crown prosecutor reads out the facts and all the circumstances, and the defence counsel speaks in mitigation. The judge then has an opportunity to look at the offender in the dock to gauge his demeanour. It is not just on a plea of guilty; this could occur after trial. The judge, the prosecutor and the defence counsel have the opportunity to study the demeanour of the accused while he is in the witness box. When he is convicted or pleads guilty, he is given a term of imprisonment - people are not considered for parole unless they are sentenced to a term of imprisonment - and then those people look at the criteria. Section 89 of the Act states -

> (1) A court sentencing an offender to one or more fixed terms may, if it considers that it is appropriate to do so, order that the offender be eligible for parole by making a parole eligibility order.

The court determines whether the offender is eligible for parole. However, there is a big step missing here. It continues -

> (2) In determining whether it is appropriate to make a parole eligibility order, a court may have regard to all or any of the following:
>
> (a) the seriousness and nature of the offence;

When the judge determines whether an offender should be eligible for parole, he has a whole bank of wisdom, experience and knowledge behind him about the seriousness and nature of the offence. I ask the Attorney General what experience does the Chief Executive Officer of the Department of Justice have? He was an engineer; there is nothing wrong with that. However, we are talking about crime in this State. We are talking about people who commit serious offences and about victims who were preyed upon by these offenders. We are talking about giving to a former engineer the ability to determine a person's parole eligibility, when currently the role of granting parole eligibility is carried out by people who have legal training and some experience in the law. Besides the seriousness and nature of the offence, the judge must consider the circumstances of the

commission of the offence and the offender's antecedents. He also must consider the circumstances relevant to the offender which, in the court's opinion, might be relevant to the offender at the time. How will the CEO, or the person who will be delegated this authority, determine what is relevant? What sort of training does that person have to determine what is relevant? I can see the Attorney General sitting there with a smug look on his face.

Mr M.J. BIRNEY: I hesitate to say that the Attorney General and I have something in common; that is, neither of us has practised in a court of law.

Mr J.A. McGinty: I was born in Kalgoorlie.

Mr M.J. BIRNEY: There are two things. I hope the list does not get too long! The point I am trying to make is that from a layperson's point of view of the judicial system, I am struggling to understand why the Parole Board would be replaced with a single individual who will determine who may or may not be granted parole. It seems to me that a board that has that wealth of wisdom - and those people can bounce ideas and thoughts off each other - would be the more appropriate body to determine who is eligible for parole. Albeit I do not have a legal background, for the life of me I cannot understand why the Attorney General is seeking to replace that pool of wisdom with a single individual. Hopefully, the Attorney General will explain to me the thinking behind this legislation and, more importantly, the possible benefits of replacing the Parole Board with a single individual.

Mr J.A. McGINTY: It may be of some assistance to the House if I detail the current provisions. Before I do so, I make the quick comment that the question posed is: what would Department of Justice officers know about these matters and what is their expertise in these matters? The person sitting opposite me at the Table has had 32 years of dealing with prisoners, considering their release and compiling reports. There is vast experience in the Department of Justice in dealing with these matters.

Mr M.J. Birney: Where is the advantage in replacing the Parole Board with a single individual?

Mr J.A. McGINTY: This is the point I want to address quickly. At the moment, a system of automatic parole is in operation for most people who are released on parole in any year. In essence, it works this way: people who are sentenced for any particular crime to a term of three years or less -

Ms S.E. Walker: They have to be granted parole eligibility before they get to the Parole Board of WA. Let's be honest about it. If you want truth in sentencing, let's have it.

Mr J.A. McGINTY: I refer to section 19 of the Sentence Administration Act. The automatic parole operates through the Department of Justice - that is, prison and community justice staff - making a report to the Secretary of the Parole Board.

Ms S.E. Walker: Which section?

Mr J.A. McGINTY: I refer to sections 19 and 108(3) of the Sentence Administration Act, and the interaction of the two. Section 19 defines a special term as one in which a parole term of at least three years is imposed for an offence under the Criminal Code. Section 19 then lists all the chapters of the Criminal Code that deal with offences of violence and related matters.

Ms S.E. Walker: Can you just -

Mr J.A. McGINTY: Excuse me!

Ms S.E. Walker: It is talking about people who are eligible for parole.

[Quorum formed.]

Mr M.J. BIRNEY: I still have not received an adequate response to my question. I hope to receive that response, because the point I made earlier was that, from a layperson's point of view, it seems somewhat odd that the Parole Board, whose members have a wealth of experience in determining whether an individual should be granted parole, would be replaced with one person. Notwithstanding the experience of that individual - I am sure the chief executive officer has wide-ranging experience of the judicial system - it is fair to say that a group of individuals, namely the Parole Board, would, for various reasons, be a better option in determining who should be granted parole. The Parole Board comprises more than one individual. Of course, all the people on the Parole Board have different ideas and levels of experience within the justice system. That is why we form committees. If we thought that all these things should and could be determined by one individual, we would never form a committee. Committees are formed so that thoughts and ideas can be bounced between committee members and, hopefully, a majority view can be arrived at. That is what the Parole Board would do. I am yet to understand from the Attorney General why he would want to replace that board with one individual.

Mr J.A. McGINTY: Again, I will endeavour to deal with the current practice in relation to what is known as auto-parole, which is the interaction of sections 19 and 108(3) of the Sentence Administration Act. Section 19 establishes the concept of a special-term offender, which is someone sentenced to a parole term of at least three years for an offence of violence. I can summarise that term briefly in that way - the section goes on at some length to establish that. A person with a sentence greater than three years must be considered by the Parole Board at a formal sitting before being released on parole. If a person is sentenced to a term of less than three years, he is subject to automatic release on parole.

Mr M.J. Birney: Some pretty serious offenders are in jail for three years or less, particularly first offenders, sexual offenders and those who commit serious assault.

Mr J.A. McGINTY: Oh yes. There will also be a number of people in prison for very long terms because their sentences are an amalgam of sentences of three years or less but which collectively might add up to 20 years. They are eligible for automatic release on parole under this auto-parole system. The way in which it works is that people who have a sentence of three years or less, or more than that for other offences that do not fit into those violent offending categories, are firstly made subject to an administrative assessment by the Department of Justice. That is done by the prison and community justice services staff and reviewed by the manager of parole release, who will do one of two things. A large number of people fit into this category and are dealt with administratively. Those people will be referred to the Parole Board secretary, who will simply sign off and release them on parole. The Parole Board secretary, who is a public servant, will not conduct his own investigations into these matters but will accept the recommendation of the Department of Justice and simply sign off on parole. Those prisoners are automatically released on parole through an administrative action, without reference to the Parole Board.

Mr M.J. Birney: What criteria would the Department of Justice take into account?

Mr J.A. McGINTY: I will come to that in a minute. I will just explain this point. The second available option is to refer the matter directly to the Parole Board for consideration. That will occur in cases in which there are unusual circumstances that warrant proper and detailed consideration by the Parole Board. I have the figures for the past financial year. In the 2001-02 financial year, 1 282 auto-parole cases were considered. We are talking about a large number of people. Of those, 25 per cent or 325 people were referred to the Parole Board for further consideration. Some 900 people were released on automatic parole as a result of an administrative process conducted essentially by prison staff in the Department of Justice. These were people whose terms were greater than 12 months but less than three years. I have put that in a very shorthand way, but that is essentially what happens. There are a number of other minor qualifications. There is already an administrative procedure in place to deal with more serious criminals; the Parole Board does not consider those releases. The chief executive officer parole concept, which we are talking about here, is limited to an aggregate sentence of less than 12 months. Therefore, it applies only to the least serious of incarcerated offenders. The Government is introducing an adaptation of the auto-parole concept, which is done administratively within the department. It will not, as recommended by Judge Hammond, apply to everyone who receives a sentence of 12 months or less - certain people will be excluded from that process. It will apply only to the less serious offenders. That hopefully explains that this will apply only to the lowest level of offending, which is reflected in the sentences of those people. The section that applies to middle-ranking offenders will be extended for those people who do not currently go before the Parole Board in any event. In my view, the Government is not substituting anything that is currently done by the Parole Board.

Mr M.J. BIRNEY: The Attorney General said that 1 282 people were eligible for auto-parole in 2001-02. Of those, some 300 were dealt with by the Parole Board, so there is no firm requirement for auto-parole. Who made the decision to refer those 300 people to the Parole Board? I thought the Attorney General said that it was automatic - that it was a rubber stamp by the Parole Board secretary after receiving a recommendation from the Department of Justice.

Mr J.A. McGinty: There were particular factors involved with those 300 people; it may have been the seriousness of their offences. Therefore, the Department of Justice referred them on to the Parole Board for consideration. The other three-quarters of eligible offenders did not end up before the Parole Board.

Mr M.J. BIRNEY: So the Department of Justice did not refer those 300 people to the parole secretary for stamping. They bypassed that process and went straight to the Parole Board.

Mr J.A. McGinty: That is right.

Mr M.J. BIRNEY: The department has the right to do that?

Mr J.A. McGinty: Yes, that is right.

Mr M.J. BIRNEY: So it is not really auto-parole. The good ones are weeded out and the bad ones are not. It is not an automatic right to parole. The Department of Justice can say that even though someone fits the criteria for auto-parole, it will not allow auto-parole for that person but will send him to the Parole Board for consideration.

Mr J.A. McGinty: That is right; it is a fair comment.

Ms S.E. WALKER: I would like some clarification from the minister. He is referring to division 2, which deals with reports about people eligible for parole and their consideration by the Parole Board. Can the minister say whether an offender sentenced to a term of imprisonment who is not granted eligibility for parole by a court gets to the Parole Board?

Mr J.A. McGINTY: If a person is not granted eligibility for parole, he will not be considered by the Parole Board. That is a simple answer to the question. Jack van Tongeren is the most recent public example who springs to mind. He was not granted parole, and served to the end of his sentence. He is now a free man, having done his time to the last day in prison. If a prisoner is not granted eligibility for parole by a court, the Parole Board will not give any consideration.

Ms S.E. WALKER: This is the important point. The member for Kalgoorlie might be being duped here. A prisoner does not get to the Parole Board unless the judge grants a parole eligibility order at the time of sentence. All this nonsense is being spoken now to the member for Kalgoorlie. Let us be honest, and have truth in sentencing; it is important. The Attorney General should tell me if I am wrong, but the only person, at the moment, who can grant parole eligibility in this State is a judicial officer, when sentencing an offender to a term of imprisonment. Is that correct?

Mr J.A. McGINTY: No, it is not. People given a life sentence, or what used to be referred to as a Governor's pleasure sentence, are not given parole eligibility by the court. They are released on parole by the Governor on the recommendation of the Attorney General, acting on the recommendation of the Parole Board. For those people at the extreme end of the scale, the court does not determine parole eligibility; that is done by the executive arm of government, on a recommendation to the Governor. Coming down the scale of seriousness, people who are not granted parole, other than those serving indeterminate or life sentences, will serve their entire sentences in prison. If they are granted eligibility for parole, it will be up to the Parole Board to consider whether to make a recommendation to release them. That will then be considered based on the circumstances at the time. Further down the scale, there are the auto-parole prisoners - in round figures 900 people a year - who are released under the signature of the Parole Board secretary, based on nothing more than an administrative assessment within the Department of Justice. A very large number of people determined by the court to be eligible for parole are released on an administrative basis, based on a Department of Justice assessment. We are talking here about those people who serve sentences of 12 months or less. For them, home detention is currently administered by the Department of Justice without reference to the Parole Board, and that is directly comparable with parole. For people serving sentences of less than 12 months there is a form of administrative parole currently in operation known as home detention. If I can put it in shorthand, with sentences of between 12 months and three years there is auto-parole, which applies in the vast majority of cases. Above that the Parole Board becomes involved in dealing only with the more serious offenders.

Ms S.E. WALKER: The Attorney General is talking about auto-parole release, not auto-parole eligibility. The only people in this State who can order eligibility for parole at the moment are the judiciary. The other formula the Attorney General is talking about, which is cast in stone in the sentencing legislation, has been set down by this Parliament. That is for people who are sentenced to terms at the Governor's pleasure, or lifers. I would like the member for Kalgoorlie to get this clear. There is no auto-parole eligibility; there is only auto-parole release, after a grant of parole eligibility by the court. It is very poor for the Attorney General to stand here in front of his adviser and try, emotively, to say that I do not respect his qualifications and skills. I do; I have worked for Crown Law and know the level of experience of many of the people there. That is not my point. My point is that this has been thought up, according to Dr Neil Morgan, by the Department of Justice and the Police Service, without any input from the judiciary or the Parole Board, and that is why Dr Morgan is scathing about it. The Attorney General is now creating a situation in which very serious offenders come before the court. As an example, I will talk about a domestic violence restraining order. Let us go to the Restraining Orders Act 1997, section 61.

Mr M.J. Birney: It is only a smokescreen.

Ms S.E. WALKER: I know, because under the transitional provisions, a person who breaches a violence restraining order, and can have firearms seized, is exposed to a maximum term of imprisonment of six months. Under the transitional provisions, the court may not impose any more custody on a person after the Bills are passed than it would have before.

Mr M.J. Birney: The Government does not want the stalkers to go to jail.

Ms S.E. WALKER: It does not want them to go to jail, and it does not want people breaching violence restraining orders to go to jail.

If a woman is concerned about her safety, she goes to court and gets a violence restraining order for 72 hours against a person who could have a firearm. We all know that sort of situation; it is dreadful, terrible and appalling. The recommendation by the Department of Justice is to increase the penalty to two years for breach of an order longer than 72 hours. Two years is nowhere near enough for a breach of those orders. I have seen in court breaches of orders by people who are stalking, or who have been bailed and required not to go near a victim. The fear is just dreadful. Under a breach of a violence restraining order, after these Bills are passed, a person may get nine months, and then the person who determines the parole eligibility will be a non-judicial officer. How scary is that for a woman who fronts up to the court because her violence restraining order has been breached, the person who has breached the order gets a nine-month sentence, and then the matter goes into the black hole of the Department of Justice? The woman does not know what will happen to him. Is the Attorney General telling us that, under this legislation, in that situation, that person will be granted parole eligibility, not by the court, but by the Department of Justice? That is the result of this.

Mr M.J. BIRNEY: I think I am beginning to understand what the member for Nedlands is saying, and perhaps the Attorney General might clarify this for me. What the member for Nedlands is saying is that, currently, when an offender fronts up to a court and duly receives his or her sentence from that court, attached to that sentence is eligibility for parole or otherwise. Is it the case that the chief executive officer will now determine that eligibility for parole, or will that eligibility still be determined by the court at the time of sentencing?

Mr J.A. McGINTY: Presently, the court is prohibited by the legislation from determining whether a person sentenced to 12 months or less should be considered for parole. A statutory prohibition prevents the court doing that because there is no parole for sentences of 12 months or less. It must be borne in mind that that is all we are talking about with this provision. The new regime under this legislation would replace home detention, which is the form of parole currently applied administratively to people serving sentences of less than 12 months, with a statutory entitlement to parole, subject to certain exclusions. Chief Judge Hammond of the District Court recommended that parole be automatic for people serving 12 months or less. We have not adopted that recommendation in total. We are saying that, like every other prisoner, a prisoner in that position will be eligible for parole after serving half his sentence unless he has been convicted of a prison offence, in which case he will lose that entitlement and serve the whole term. Secondly, the regulations will cover a range of offences the nature of which will be such that the prisoner should not be considered for automatic parole. Those people would have to undergo the usual assessment. For the lesser range of offenders, which we expect to be about two-thirds, eligibility for parole will be automatic.

Ms S.E. WALKER: Is it not the case that when Judge Hammond was asked to examine remission and parole he had to do it on the basis of a cost-cutting exercise?

Mr J.A. McGinty: Your Government asked him to do it.

Ms S.E. WALKER: The Attorney General should have been considering it for this legislation. It is not acceptable for him to say that the coalition Government did this or that. This Attorney General is in charge now and we are considering his legislation. This Bill is part of this Government's reduction of imprisonment strategy and it is about cutting costs. A woman may obtain a 72-hour violence restraining order against a person. In theory, if it is breached at present and the court sentences the offender to nine months imprisonment, does someone in the Department of Justice have the ability to grant that person eligibility for parole?

Mr J.A. McGinty: Yes; the person can be released on home detention.

Ms S.E. WALKER: The person can be released on home detention, but that is unlikely to occur. The last time we were debating this the Attorney General provided figures, but I am not sure whether they were correct. He said that 30 per cent of people serving 12 months or less are granted home detention. The reality is, as the minister said in his second reading speech, that not many people apply for it because it is costly. The Attorney General has just said that a woman in this State - it is no good him shaking his head and thinking that I am silly; I am not silly. I have got this right.

Mr J.A. McGinty: You are the one asserting that you have got it right.

Ms S.E. WALKER: While the Attorney General is sitting there smugly I am talking about a woman who might seek a violence restraining order. Under this legislation, if the offender were to breach the order, the woman would go to court and the offender might receive a nine-month sentence. The woman would think she was safe. The victim might be a man. People in that situation think they are safe. However, they would not be safe, would

they, Attorney General? Someone would be making a judgment who has no judicial experience, although I accept that he will have other skills. Under the present regime, people who are eligible for parole are assessed by judicial officers who have much experience. They can assess situations. This is a very important area. It is similar to a stalking offence. I have dealt with people who have been stalked. That is why the Opposition will not agree to parole eligibility being granted by an anonymous individual. Although I respect the fact that the chief executive officer is a qualified engineer, he will not have the experience, wisdom and knowledge necessary for assessing whether someone should be eligible for parole. He will not be in court or see the offender. The Attorney General does not seem to understand the impact of this legislation. Under these provisions, the CEO will be able to delegate to anyone he likes. Can the minister or his adviser tell me if this is correct?

Mr J.A. McGinty: He will not, but I might.

Ms S.E. WALKER: He might not be able to tell me, but the Attorney General can. Will this provision give the CEO or his anonymous delegate unilateral power to grant, suspend or cancel parole terms with no external review?

Mr J.A. McGinty: The CEO will not be able to cancel or suspend any order made by the Parole Board. He will be able to vary orders that he himself has made.

Ms S.E. WALKER: That is exactly right. Is it not correct that with cases of a breach of a restraining order he will have unilateral power under the new system of CEO parole to grant, suspend or cancel parole terms with no external review?

Mr J.A. McGinty: Yes.

Ms S.E. WALKER: Yes. Thank you. That is what I said in my press release and the Attorney General called me deceitful and lazy.

Mr J.A. McGinty: Yes.

Ms S.E. WALKER: I do not know whether the Attorney General wrote that, but it reflected more on him than on me.

I want women to know that they should be afraid, because I would be.

Mr M. McGowan interjected.

Points of Order

Ms S.E. WALKER: The member for Rockingham is interjecting, but he is not in his seat. This is a serious issue for women and men in this State who might seek a violence restraining order. That is just an example.

Several members interjected.

Ms S.E. WALKER: I do not want to hear from other members on that side of the House. Rather than cat-calling, they should speak in this place on behalf of the people who have gone to court and who are afraid for their lives and for their children.

Mr A.J. DEAN: Is this a point of order or a tirade against the Attorney General? I notice that the clock has stopped. I wish to know to which standing order the member for Nedlands has referred.

The ACTING SPEAKER (Mr O'Gorman): The point of order was raised because the member for Rockingham was not in his seat.

Mr M.J. Birney interjected.

The ACTING SPEAKER: Member for Kalgoorlie! I remind the member for Rockingham that it is unparliamentary to interject when he is not in his seat and I ask him to refrain from doing that.

Debate Resumed

Ms S.E. WALKER: Thank you, Mr Acting Speaker. I was saying that a person who has been the subject of brutality by a partner or is the victim of someone who has taken a fancy to her and is showing more than normal interest, can go to court and obtain a violence restraining order. Under the Restraining Orders Act firearms can be seized and a situation that warrants a violence restraining order can be granted during a telephone hearing. That is how seriously these matters are taken by this Parliament. Under this legislation a woman will go to court on the basis that the person has breached the order because, although he has been ordered to keep away from the woman's street, she has seen him lurking there. Can the Attorney General imagine the danger and apprehension she would feel? She takes the person to court on the basis of the breach, which results in him being sentenced to nine months imprisonment, and thinks she will be safe for that time, but she will not be. For the very first time

in this State a non-judicial officer - not the Parole Board, which handles prisoners serving life sentences and a very special small category of prisoners; it could be anyone, even the Clerk of the Legislative Assembly; we do not know who - will be able to determine whether the offender who has been sentenced to nine months can go back into the community after serving half the sentence, which would be four and a half months. I take it the 50 per cent rule for parole will be across the board. The CEO might delegate to someone who is a member of a men's confraternity - we will not know that - who might let the prisoner out. We do not know what he will do. That is the danger when a decision is made in the confines of an anonymous department rather than in an open court. Although it is the Department of Justice I know how government departments are perceived by the public. They will not know. If a person seeks to refer an issue back to the court or to the Parole Board, a system is in place to deal with it. The Parole Board is headed by a former Supreme Court judge. People can collectively provide input based on different life experiences and make a decision about whether that person should be given parole. It is highly dangerous to give this sort of power to a big department. I am very concerned about it.

Mr M.J. BIRNEY: Earlier the Attorney General said that many of the recommendations that led to the drafting of this legislation were made by a particular judge. He said that to give this legislation some currency. Judges who have been in courtrooms for a long time - be it 10, 20 or 30 years - have become somewhat coloured in their judgment. It is fair to say that not much shocks them anymore. Some of the more abhorrent crimes that would be absolutely detested by members of our community would be treated by a judge with a degree of ambivalence. The fact that recommendations about legislation are made by a judicial officer does not, in my view, give those recommendations any more currency; it gives them less currency, as nothing any longer shocks those people. They have been around; they have seen it all. That does not lessen the impact that some of these crimes have on our community. As I said, many of the crimes that are treated with a degree of ambivalence by a judge would be detested by the community.

Someone who is sentenced to 12 months or less has a right to home detention. I understand that the Attorney General is replacing that right to home detention with a right to parole. Is that correct?

Mr J.A. McGinty: Yes.

Mr M.J. BIRNEY: I imagine that to a large extent home detention involves a person being locked away in his home. Someone sentenced to home detention could not leave his home. Is that the way it works?

Mr J.A. McGinty: A person is subject to electronic monitoring rather than being locked away in the home. He is subject to restrictions.

Mr M.J. BIRNEY: Does a home detention order essentially mean that a person under a home detention order cannot leave his property?

Mr J.A. McGinty: A person can, with permission, go to work and do things like that. It is regulated.

Mr M.J. BIRNEY: Could a person subject to home detention go to the pub for a beer after work?

Mr J.A. McGinty: The person needs to be home by a particular time. There might be some flexibility. It is more a matter of being home by a certain time. If a person leaves work, sprints to the pub, has a quick beer and sprints home, he might be able to fit within the time constraints. There is no prohibition on that. It is a general time constraint that is placed upon the person.

Mr M.J. BIRNEY: Must a person who has received parole be home by a certain time?

Mr J.A. McGinty: It depends on the conditions of the parole.

Mr M.J. BIRNEY: By and large, parole gives a person his freedom.

Mr J.A. McGinty: That is right.

Mr M.J. BIRNEY: With the passage of this legislation, the Government will effectively take a backward step in the way it addresses such offenders. Under the current system, an offender is sentenced to home detention. A degree of custodial care is involved through the imposition of a curfew, or whatever terminology the Government wants to use. The person still does not have full and complete access to his freedom. On the other hand - this is part of the proposals before us today - someone subject to a parole order has complete freedom. That is definitely a softening of the Government's position on those crimes that result in a jail term of 12 months or less. Home detention involves a semi-custodial sentence, whereas the granting of parole provides a person with his freedom. This proposal is typical of this Labor Government. It has a philosophical bent about not wanting to take from people their freedom. It cites all sorts of reasons for that. One is money and the other is the socialist leaning that the Attorney General displays on many occasions. He would rather wrap those poor offenders in cotton wool and try to teach them the error of their ways than lock them up.

Mr J.A. McGINTY: I thank the member for Kalgoorlie for the compliment with which he finished. I first deal with the "Report of the Review of Remission and Parole", which was prepared by a committee chaired by Chief Judge Hammond of the District Court. Everyone across the spectrum of people associated with justice - the Government, the Opposition, victims groups and lawyers - would single out Chief Judge Kevin Hammond as a most exceptional judge, and praise him.

Mr M.J. Birney: I agree.

Mr J.A. McGINTY: I did not want the member's comments to be interpreted as a suggestion that the judge was other than an excellent contributor.

Ms S.E. Walker: You always do that. He is not.

Mr J.A. McGINTY: Is the member for Nedlands saying he is not an excellent judge?

Ms S.E. Walker interjected.

Mr J.A. McGINTY: This report was initiated by former Attorney General Hon Peter Foss, and it was presented in March 1998. The committee that prepared it was chaired by His Honour Chief Judge Kevin Hammond. A number of other people, such as people from various elements of the Department of Justice, academics and lawyers, including prosecutors, made up that committee. There has until now been a bipartisan approach to the implementation of the thrust of those recommendations. The member's Government, prior to its defeat at the beginning of 2001, introduced and put through the Parliament legislation giving effect to the vast bulk of these recommendations. That was done with our support, particularly for those elements dealing with truth-in-sentencing and things of that nature. This report should form the basis of policy, regardless of which party is in power. We are giving greater effect to some elements of it than the Liberal Government did when it was in power. Nonetheless, I think it is a thoroughly worthwhile document that ought to inform policy for both sides of the House.

The second comment I make is in relation to the member for Kalgoorlie's suggestion that we are somehow going soft because -

Mr M.J. Birney: There is no doubt about that.

Mr J.A. McGINTY: I think there is, and I will explain why. The existing home detention provisions require conditions to be placed on the prisoner. He is monitored while he is at home but he is free to leave. The extent of his freedom to leave depends upon the conditions that are imposed. I refer the member to clause 30 of the Bill, which relates to the parole order that can be made by the chief executive officer. The conditions that can be placed on a parolee include -

(a) a requirement as to where the prisoner must reside;

(b) requirements to protect any victim of an offence committed by the prisoner from coming into contact with the prisoner;

(c) a requirement that the prisoner wear any device for monitoring purposes;

(d) a requirement that the prisoner permit the installation of any device or equipment at the place where the prisoner resides for monitoring purposes;

(e) a requirement that . . . the prisoner -

  (i) wear any device . . .

  (ii) permit the installation of any device . . .

(f) a requirement that the prisoner must not leave Western Australia except with and in accordance with the written permission of the CEO;

(g) requirements to facilitate the prisoner's rehabilitation;

(h) a requirement that the prisoner must, in each period of 7 days, do the prescribed number of hours of community corrections activities;

(i) a requirement that the prisoner must -

  (i) seek or engage in gainful employment or in vocational training; or

  (ii) engage in gratuitous work for an organisation approved by the CEO;

(j) prescribed requirements.

All these conditions can be imposed by the chief executive officer of a prison. The member for Kalgoorlie will see that the restraints placed on a parolee can be exhaustive but necessary.

Mr M.J. BIRNEY: Most of those parole conditions are akin to being flogged by a piece of soggy lettuce! They cannot be compared with the current home detention conditions, under which, by the Attorney General's own admission, prisoners are effectively detained, albeit in their own home, during certain periods. However, under the parole system that the Attorney General would have us vote for today, offenders sentenced to 12 months or less will have their freedom; although they must wear a monitoring bracelet. That is a shame; they must wear a bracelet! The reality is that their freedom will not be impinged on when they are on parole. The Attorney General read out a number of things that they must do, but none will take from parolees their freedom. Under the current home detention system parolees must be locked away in their own home during certain periods.

I will draw perhaps a ridiculous analogy. Under the current system a parolee is locked away at home during certain periods. Under the system that the Attorney General would have us vote for the parolee could be at a nightclub in Northbridge until three o'clock in the morning having a great time, even though he or she must wear a bracelet. In fact, the bracelet might even look good under the disco lights!

Members talk about being soft on crime but I have never observed an Attorney General of this State who has been softer on crime. That softness on crime is reflected in this legislation and in the Sentencing Legislation Amendment and Repeal Bill.

Ms S.E. WALKER: It gets worse, member for Kalgoorlie. Clause 30 refers to a parole order with additional requirements. The Attorney General failed to say that the parole order could be completely unsupervised. There are two types of CEO parole orders: supervised and unsupervised. There are also parole orders with additional requirements.

Mr M.J. Birney: What? He has withheld information?

Ms S.E. WALKER: Indeed, the old silver tongue and artful dodger.

I refer to a press release issued by the Attorney General on a domestic violence blitz. The press release appeared in *The West Australian* on Tuesday, 26 November and referred to tougher penalties for domestic violence. He knew that this Bill was coming up for debate in the Parliament.

Mr M.J. Birney: Old smokey has let one out.

Ms S.E. WALKER: The artful dodger again - Mr McShifty.

The Attorney General referred to how he would improve things for the victims in this State under threat of domestic violence. However, the police stated that last year domestic violence call-outs accounted for half their work.

The point I make is that half the Western Australia Police Service - I think there are about 8 000 in the Police Service -

Mr J.A. McGinty: I think it is about 5 000.

Ms S.E. WALKER: It has been cut even further. It used to be 8 000.

Mr J.A. McGinty: It was never 8 000, and you know that.

Ms S.E. WALKER: In fairness to me, I did think it was 8 000; however, someone could have given me the wrong figure a couple of years ago.

The point I make is that domestic violence is a very serious issue. Half the call-outs for police are for domestic violence offences. Under this system the victim of a perpetrator of domestic violence who has received a prison sentence of nine months will fall into a black hole not knowing when that offender will be released on parole.

The Attorney General referred to the report of the review of remission and parole by Chief Judge Hammond. I will refer to that report because, again, there are some things that the Attorney General has not told us. Appendix 2 contains a summary of public submissions to the review. What did the public have to say about the failures of the current system? It states at page 43 of the report -

> The following issues were raised in the public submissions received by the Committee:
>
> => community confidence in sentencing needs to be restored

I do not believe the men and women in this State who are concerned for their safety will have much confidence in this system. The report continues -

> => accountability of courts and Parole Board

This is interesting because there is no accountability in CEO parole. One of the strongest criticisms made by Dr Neil Morgan is that allows political interference in sentencing matters in this State by the Attorney General of the day and the Department of Justice.

The person who gets parole is not subject to review. The Parole Board will not review it; nobody will review it. There will be no review of parole granted to an offender who is sentenced to nine months imprisonment. In the summary of public submissions to the review the public also said that it wanted mandatory minimum sentences for violent crimes, yet this Attorney General will let people out of prison. The public wants mandatory minimum sentences for violent crimes. The abolition of six-month sentences and parole for sentences of 12 months or less will mean that more offenders will get out of jail sooner.

Mr M.J. Birney: He wants to let the poor peasants out of jail.

Ms S.E. WALKER: That is right.

Mr M.J. Birney: It is not very nice in there.

Ms S.E. WALKER: The member for Kalgoorlie has not been to the Bandyup Women's Prison; it is very nice. The Attorney General should have learnt about the cappuccino machine before he mentioned it.

Parole should be earned. There should be greater sanctions for breaching parole. The public wants greater sanctions for a breach of parole but it appears under the Restraining Orders Act that victims will come unstuck under this system when an offender has a sentence imposed for a breach of a restraining order. It is all very well to quote parts of the Hammond report but we should consider it in full.

Mr J.A. McGINTY: I ask the member for Kalgoorlie a simple question: if we had brought into the Parliament legislation that provided for automatic parole with no discretion to refuse parole and no supervision of parolees who were sentenced to less than 12 months imprisonment, would he not be outraged?

Mr M.J. Birney: I am not sure of the question.

Mr J.A. McGINTY: If we brought in legislation to allow offenders with sentences of less than 12 months to be automatically released on parole with no discretion to refuse parole and no supervision when they were released on parole -

Mr M.J. Birney: What is the point you are trying to make?

Mr J.A. McGINTY: That was the legislation brought into this Parliament by the member for Kalgoorlie's Government. That legislation was very soft on those criminals. I am trying to toughen up the legislation. That is the point I am trying to make. The legislation that the member for Kalgoorlie's Government introduced to give effect to the Hammond recommendations provided for the Parole Board to automatically release all persons serving sentences of less than 12 months under an unsupervised parole order; that is, automatic parole with no supervision and no discretion in the Parole Board to say, "No, you have been playing up in prison, we will not let you out."

Mr M.J. Birney: You have missed the point.

Mr J.A. McGINTY: No, I have not. In that legislation parole was automatic. That legislation was too loose and too generous to prisoners. The member for Kalgoorlie should have a chat with Hon Peter Foss who brought into this Parliament legislation which would have given no discretion to the Parole Board. The parole order would have been automatically signed off by the secretary of the Parole Board with no discretion to refuse parole.

Mr M.J. Birney: Apparently there is no parole for 12 months.

Mr J.A. McGINTY: But Hon Peter Foss brought into the Parliament legislation to give parole to people sentenced to less than 12 months imprisonment.

Mr M.J. Birney: What happened to that legislation?

Mr J.A. McGINTY: It was passed but he did not proclaim it.

Mr M.J. Birney: Why not?

Mr J.A. McGINTY: Because he had made a very big mistake.

Mr M.J. Birney: He decided he did not like it, did he?

Ms S.E. Walker: You haven't proclaimed it.

Mr J.A. McGINTY: Neither did he.

Ms S.E. Walker: I am talking about you and your Government. Come on!

Mr J.A. McGINTY: He did not proclaim it because he would have let wilful murderers and mass rapists out of prison earlier.

Mr M.J. Birney: So he didn't change the law. You are at it again.

Mr J.A. McGINTY: He did. Legislation passed through -

Mr M.J. Birney: You are just trying to convince me that we changed the law.

Mr J.A. McGINTY: I am sorry, I thought the member for Kalgoorlie would have been a bit more sensible today. Hon Peter Foss brought the legislation into the Parliament and had it passed through both Houses of Parliament, but he did not proclaim it because it would have released murderers and rapists from jail a lot earlier. He made a major mistake.

Mr M.J. Birney: So he didn't want to change the law?

Mr J.A. McGINTY: He pleaded with us to proclaim it! Members opposite do one thing in government; they say the opposite in opposition. This is far more sensible than the proposition that Hon Peter Foss brought before the Parliament, which in my view would have been recklessly soft on people, without adequate checks and balances. The adequate checks and balances are contained in this legislation.

Ms S.E. WALKER: We are talking about wilful murderers and mass rapists being let out of jail a lot earlier. An article in the paper today talks about a predator who has been sentenced to 24 years in jail. Under the current system, if a predator were to get a 24-year jail term with parole, would he serve two years on parole and 14 years inside; or would he serve 14 years in custody and two years on parole, with eight years' remission? Is that the current system?

Mr J.A. McGinty: That is right.

Ms S.E. WALKER: Under the system that is proposed to come in - the 50 per cent system - would he serve only 12 years?

Mr J.A. McGinty: No.

Ms S.E. WALKER: Why not?

Mr J.A. McGinty: Because there is a direction that the person will spend no less time in prison. That was the provision that we brought in.

Ms S.E. WALKER: That is not what I am asking. I am asking if a person were to get a 24-year sentence -

Mr J.A. McGinty: The same person would not get a 24-year sentence, and you know it.

Ms S.E. WALKER: I am asking for the formula. If a person was sentenced to 24 years in jail with parole, he would be out in 12 years, would he not?

Mr J.A. McGinty: No, because he would not get 24 years.

Ms S.E. WALKER: If a person was sentenced to 24 years -

Mr J.A. McGinty: I am not going to play your silly games.

Ms S.E. WALKER: It is not silly games.

Mr J.A. McGinty: You are being highly dishonest.

Ms S.E. WALKER: I am not being dishonest.

Mr J.A. McGinty: You are being absolutely dishonest.

Withdrawal of Remark

Ms S.E. WALKER: Mr Acting Speaker, the Attorney General has called me dishonest, and I ask him to withdraw, because he knows that under this formula -

Mr J.A. McGinty: You are not telling the truth. That is dishonest, and you know it.

Ms S.E. WALKER: The Attorney General has called me dishonest and has launched an attack on my integrity when I am asking about a factual mathematical formula, and I ask him to withdraw.

The ACTING SPEAKER (Mr A.P. O'Gorman): There is no point of order. The member for Nedlands still has the call.

Debate Resumed

Ms S.E. WALKER: If there is no point of order, then that means that I can then call the Attorney General totally dishonest. However, that is nothing new. He is the artful dodger. He is making no bones about this whatsoever. A person who is sentenced under these Bills to a 24-year term of imprisonment will serve only 12 years in custody if he gets parole. Currently he would serve 14 years. The Attorney General has the hide to say that wilful murderers and mass rapists would have been let out of jail a lot earlier under our system. The reason I raise this - and I am being truthful - is that I am talking about a 24-year jail term. A person who is sentenced to 24 years in jail will get a windfall under this new system, because he will serve two years less in custody. We are talking about mass rapists, paedophiles and men who prey on physically immature young people. They will get out of jail sooner. That is what I do not like about this legislation.

Let us look at the Hammond report. The Attorney General has deliberately not followed the Hammond recommendation about sentences of 12 years and over. Let us go back to a 24-year jail term. Judge Hammond's committee said that people who are convicted to long terms of imprisonment at the higher end of the scale - over 12 years - should serve two-thirds of their time in custody. That means that under his recommendations -

Point of Order

Mr J.A. McGINTY: Mr Acting Speaker, there is a general requirement that when we are dealing with matters in consideration in detail they have some relevance to the matter before the House. The member is currently addressing a matter that is not before the House.

The ACTING SPEAKER (Mr A.P. O'Gorman): I remind the member that we are addressing the question that the words to be deleted be deleted, and I ask her to keep her comments close to that.

Debate Resumed

Ms S.E. WALKER: I am responding to the assertion that the Attorney General made. If it was relevant for him to raise it, it must be relevant for me to respond. I am coming to a close. The point is that under the Hammond report recommendation, a person who is sentenced for 24 years -

Point of Order

Mr J.A. McGINTY: Mr Acting Speaker, the member for Nedlands is blatantly disregarding your direction to her to make her comments relevant. She is continuing to debate matters that are not before the House.

The ACTING SPEAKER: The member for Nedlands still has the call, but I ask her to come back to the question that the words to be deleted be deleted.

Debate Resumed

Ms S.E. WALKER: I have made my point. My point is that the Attorney General is not just a wet lettuce. It is like being hit with a blancmange; and the public needs to know about it. What a blancmange! The artful dodger is at it again!

Several members interjected.

The ACTING SPEAKER: Order! Will the members on my right please let the member on her feet make her points.

Ms S.E. WALKER: Thank you, Mr Acting Speaker. I am very passionate about this subject, because I have seen the victims of these people whom the Attorney General is proposing to let out of jail early. I have spoken to these people and I have taken them through the court system. The Attorney General has not. The Attorney General pontificates a lot about it, but when it gets down to the nitty-gritty he has not done that. The Attorney General has been in this Parliament for years and he has never had to experience the suffering that these people go through. However, I am passionate about it. I am not sure what the Attorney General would describe it as, because I am not sure what he is calling me today - and I do not know whether he speaks to all women in the way that he sometimes speaks to me - but I am passionate about it.

Mr M.J. BIRNEY: We are dealing with the member for Nedlands' amendment, which will ensure that the Parole Board is the appropriate body to determine whether an offender is eligible for parole. I thought I had concluded my comments, but I now feel the need to respond to a couple of the points made by the Attorney General. I will conclude my comments on this amendment on this note. The Attorney General tried to tell me that the Liberal Party and Hon Peter Foss had changed the law with regard to parole - we are, of course, dealing with the issue of parole - to ensure that automatic parole would be granted to offenders who were sentenced for 12 months or less. In a style that is characteristic of the Attorney General, he did not tell the whole truth. The

Attorney General had me half on the back foot, because I was not here for the last term of this Parliament, and if the Attorney General of this State tells me one thing I guess I have to believe it. However, it became evident towards the conclusion of the Attorney General's last remarks to me that that was not the case at all. The Liberal Party did not change the law to ensure that people who were given a sentence of 12 months or less were granted automatic parole without any conditions attached. That was not the case, yet the Attorney General, with his particular style - I hesitate to say he was being dishonest, but he was certainly not completely forthcoming - tried to tell me that the Liberal Party had softened that law when that was not the case.

Secondly, the Attorney General said that I had somehow reflected negatively on Judge Hammond when I had done no such thing. Judge Hammond is an eminent judge and has considerable standing in our community. What I said was that just because certain recommendations are made by the judiciary, that should not necessarily give them any more currency. We as representatives of the community should at all times take our responsibilities seriously and ensure that the decisions that we make in this place are in sync with what the community wants and not necessarily in sync only with what the judiciary wants. The judiciary has seen it all; nothing tends to shock it any more. However, some of those crimes that may not necessarily shock a member of our judiciary would certainly shock the members of the community who have put us in this place. The Attorney General knows full well that was the point I was trying to make, yet he tried to twist my words to say that I was somehow reflecting negatively on Judge Hammond when that could not be further from the truth. On two occasions in the past few minutes, the Attorney General has reverted to his old self - not telling the truth, laying out the odd smokescreen and hoping that people will swallow it. I have not swallowed it, and I do not think anybody else in the Chamber has swallowed it either.

Amendment put and a division taken with the following result -

Ayes (17)

Mr R.A. Ainsworth	Mr J.H.D. Day	Mr R.F. Johnson	Dr J.M. Woollard
Mr C.J. Barnett	Mrs C.L. Edwardes	Mr B.K. Masters	Mr J.L. Bradshaw *(Teller)*
Mr M.J. Birney	Mr J.P.D. Edwards	Mr P.D. Omodei	
Mr M.F. Board	Mr B.J. Grylls	Mr P.G. Pendal	
Dr E. Constable	Ms K. Hodson-Thomas	Ms S.E. Walker	

Noes (23)

Mr P.W. Andrews	Dr G.I. Gallop	Mr M. McGowan	Mr J.R. Quigley
Mr J.J.M. Bowler	Mrs D.J. Guise	Ms S.M. McHale	Mr D.A. Templeman
Mr C.M. Brown	Mr S.R. Hill	Mr A.D. McRae	Mr P.B. Watson
Mr A.J. Dean	Mr J.N. Hyde	Mr N.R. Marlborough	Mr M.P. Whitely
Mr J.B. D'Orazio	Ms A.J. MacTiernan	Mrs C.A. Martin	Ms M.M. Quirk *(Teller)*
Dr J.M. Edwards	Mr J.A. McGinty	Mr M.P. Murray	

Pairs

Mr A.D. Marshall	Mr E.S. Ripper
Mr R.N. Sweetman	Mrs M.H. Roberts
Mr D.F. Barron-Sullivan	Mr R.C. Kucera
Mr M.W. Trenorden	Mr F.M. Logan

Amendment thus negatived.

Ms S.E. WALKER: I move -

Page 15, line 24 - To delete "CEO" and substitute "Parole Board".

Amendment put and a division taken with the following result -

Ayes (17)

Mr R.A. Ainsworth	Mr J.H.D. Day	Mr R.F. Johnson	Dr J.M. Woollard
Mr C.J. Barnett	Mrs C.L. Edwardes	Mr B.K. Masters	Mr J.L. Bradshaw *(Teller)*
Mr M.J. Birney	Mr J.P.D. Edwards	Mr P.D. Omodei	
Mr M.F. Board	Mr B.J. Grylls	Mr P.G. Pendal	
Dr E. Constable	Ms K. Hodson-Thomas	Ms S.E. Walker	

Noes (25)

Mr P.W. Andrews	Dr G.I. Gallop	Mr M. McGowan	Mr D.A. Templeman
Mr J.J.M. Bowler	Mrs D.J. Guise	Ms S.M. McHale	Mr P.B. Watson
Mr C.M. Brown	Mr S.R. Hill	Mr A.D. McRae	Mr M.P. Whitely
Mr A.J. Carpenter	Mr J.N. Hyde	Mr N.R. Marlborough	Ms M.M. Quirk *(Teller)*
Mr A.J. Dean	Mr J.C. Kobelke	Mrs C.A. Martin	
Mr J.B. D'Orazio	Ms A.J. MacTiernan	Mr M.P. Murray	
Dr J.M. Edwards	Mr J.A. McGinty	Mr J.R. Quigley	

Pairs

Mr A.D. Marshall	Mr E.S. Ripper
Mr R.N. Sweetman	Mrs M.H. Roberts
Mr D.F. Barron-Sullivan	Mr R.C. Kucera
Mr M.W. Trenorden	Mr F.M. Logan

Amendment thus negatived.

Ms S.E. WALKER: I move -

Page 15, line 27 to page 16, line 5 - To delete the lines.

This subclause refers to the unsupervised parole order that the chief executive officer can grant and specifies certain sections of the soon to be Sentence Administration Act. Will the Attorney General explain why these provisions are not included in the Bill, or are applicable to an unsupervised chief executive officer parole order?

Mr J.A. McGINTY: The standard obligations and additional requirements that are spelt out in clauses 29 and 30 of the Bill do not apply to an unsupervised release order; they are simply not applicable unless a supervised order comes into effect. Accordingly, the CEO parole order, unsupervised, will not attract the provisions of clause 28(1)(b) and (3), clauses 29, 30, 31 and 37, and division 9 of this legislation. They will only be relevant when there is a supervised order; they are not relevant to an unsupervised order.

Ms S.E. WALKER: The CEO or his nominee can release a person unsupervised or supervised on parole.

Mr J.A. McGinty: That is right.

Ms S.E. WALKER: When the minister read out the requirements for the member for Kalgoorlie and referred to clause 30, he was really talking about a supervised order. The minister did not make that clear.

Mr J.A. McGinty: That is right. It only related to the conditions of supervision.

Ms S.E. WALKER: How does the CEO determine whether to grant the supervised or unsupervised order?

Mr J.A. McGINTY: The CEO must take into account the parole considerations that are enumerated in clause 16 of the Bill in determining whether supervision is appropriate or inappropriate for that prisoner.

Ms S.E. WALKER: That was not my question. Where does it say how the CEO or his nominee determines whether a parole order will be supervised or unsupervised?

Mr J.A. McGinty: Clause 23(7).

Ms S.E. WALKER: In relation to the additional requirements under clause 30, which will not be imposed on an unsupervised parole order but only on a supervised one, will the minister explain what criteria the CEO or his nominee take into account when imposing those additional requirements?

Mr J.A. McGINTY: Clause 23(7) states -

The CEO is to have regard to the parole considerations relating to the prisoner in deciding whether the parole order is to be supervised or unsupervised.

Clause 16 then lists those considerations. If anything in those considerations indicates to the staff doing the assessment of the prisoner that supervision is warranted, they would obviously recommend and direct that parole be served subject to a supervised order, in which case the provisions of clause 30 could apply, depending upon the circumstances.

Ms S.E. WALKER: In relation to clause 31, which is also excluded from an unsupervised CEO parole order, how does a CEO or his nominee determine that they are satisfied that the offender should be placed on an unsupervised parole order? What level of satisfaction is required? Clause 31 states -

CEO to ensure parolee is supervised during supervised period

(1) The CEO must ensure that during the supervised period of a parole order a CCO -

I suppose that is a community correction officer.

is assigned to supervise the prisoner.

(2) However, if at any time the CEO is satisfied that -

(a) the prisoner is complying with his or her undertaking in a satisfactory manner; and

(b) the risk of the prisoner reoffending if not subject to supervision by a CCO is minimal,

the CEO may -

(c) in the case of a CEO parole order (supervised), cease the supervision of the prisoner;

How will that work? How is that set up? I think the minister said he had 400 new people coming into the Department of Justice as a result of this new system.

Mr J.A. McGinty: There are 33 new people.

Ms S.E. WALKER: How will that work?

Mr J.A. McGINTY: Very rarely is a supervision order lifted, but in the same way that a community correction officer arrives at a view that a particular parolee is travelling well and all of the indications from the supervision of this person are that he no longer needs to be supervised, that recommendation would be made to the Parole Board to vary the conditions. That is in respect of a paroled person; exactly the same process applies in respect of a CEO paroled person. The community correction officers would make a recommendation to lift the supervision requirement of the CEO parolee; it would be exactly the same process, with the same people making the recommendation.

Ms S.E. WALKER: Is it currently the case that prisoners can serve only two years maximum parole; it does not matter how many offences they have committed, it does not matter whether they have committed six offences, it does not matter whether they accumulate 24 years, at the end of it they cannot serve any more than two years on parole? The reason for that is that it was found, not so long ago, that there is no benefit in serving longer than two years on parole. The concept of supervised and unsupervised parole in the legislation is new to me. That may be because it has been passed and I am not aware of it. Is there anything in the current proclaimed legislation that refers to supervised and unsupervised parole?

Mr J.A. McGINTY: The changes will be these: a person is currently released on parole, generally speaking, for a period of two years. The supervision is therefore capped at that level. This is under the current regime. Under the new regime people will remain on parole for the balance of the other half of their sentence in the normal case, but the level of supervision will remain capped at two years. That is not the case for life sentence prisoners for whom a parole order can last for five years; but, interestingly, it is still two years for indeterminate or Governor's pleasure sentences. As part of this package of amendments to the legislation we will extend to Governor's pleasure offenders a parole order that can last for five years to equate with a parole order for life sentences. However, in a general sense, the cap of two years on the supervision will not change.

Ms S.E. WALKER: My question was: is there anything in the legislation now that allows for that two years to be supervised or unsupervised? If so, where is it?

Mr J.A. McGinty: Section 34 of the current Act.

Ms S.E. WALKER: Which current Act?

Mr J.A. McGinty: Section 34 of the Sentence Administration Act contains that provision.

Ms S.E. WALKER: I accept that. I thank the Attorney General for pointing that out. In relation to clause 37, how can the CEO amend a "CEO parole order (supervised)". What does it mean?

Mr J.A. McGINTY: The CEO makes the CEO parole order. He can also vary it. It might be that more onerous requirements should be placed on the offender, in which case they will be placed. It might mean that if the prisoner is coping particularly well, a requirement such as supervision could be relaxed or removed completely. It involves a variation to that order.

Ms S.E. Walker: If a prisoner is aggrieved, how will he deal with it under these provisions?

Mr J.A. McGINTY: The process will be very similar to that which currently applies to a prisoner who is aggrieved by a decision that affects his parole. Section 38 of the Sentence Administration Act provides power for the board to amend a parole order during its currency. The same aggrieved prisoner would have to go back to Caesar to review that. He would have to appeal to the original decision-making body; namely, the Parole Board. In the same way, a prisoner released on parole by the CEO would need to make a submission to the relevant director in the Department of Justice. In discussions I have had with officers of the Department of Justice, they have indicated their intention to provide a mechanism for a prisoner to appeal to a different person from the person who made the original decision on the review. In the same way as there is no right of appeal to an independent body over the variation of a parole order, we are not proposing that one be available in this Bill to a CEO decision, although we will make administrative arrangements to ensure that a different person deals with the review of a decision if a prisoner is not happy with it. When the Parole Board is involved, a prisoner is not able to do that. An appeal in that case would be to the Parole Board itself.

Ms S.E. WALKER: One of the difficulties that the Opposition has with this provision is that it will be handled in-house. When a person is aggrieved - some people have written to me about Parole Board decisions - the decision not to grant parole is referred back to a group of people headed by a former Supreme Court judge. We are talking about a fair analysis of the facts and circumstances of each case. I am not sure what training the CEO will have. The people who will make those decisions will be untrained. At the end of a jury trial the prosecutor, the defence counsel and the judge always ask that the people put their biases, sympathies and prejudices to one side and make a decision based solely on the facts. I am talking about fairness to prisoners. The difficulty I have is that if for some reason the superintendent does not like a prisoner and decides not to recommend parole eligibility or release to someone in the Department of Justice, and the prisoner feels aggrieved, he cannot seek an independent review of that decision outside the Department of Justice. One of the benefits of the Parole Board's reviewing an aggrieved person's case is that it is considered by a group of people, including someone who has sat on the bench for a while and is used to all the ins and outs. There are many things to look for.

In setting up an appeal for an aggrieved prisoner, what sort of training will the 33 people who will be involved receive? Will they undertake the appeal process?

Mr J.A. McGinty: No. They will be doing the assessment, not making decisions.

Ms S.E. WALKER: Who will make decisions?

Mr J.A. McGinty: As I said, it will be CEO parole.

Ms S.E. WALKER: Who will make the decision?

Mr J.A. McGinty: The CEO.

Ms S.E. WALKER: The chief executive officer himself?

Mr J.A. McGinty: That is what it says.

Ms S.E. WALKER: Does it not say in other clauses "the CEO or his nominee"? Has the Attorney General not worked out the range of people who will deal with parole eligibility? Has he not set any criteria or standards?

Mr J.A. McGinty: Yes, we have.

Ms S.E. WALKER: What are they?

Mr J.A. McGinty: In relation to what element?

Ms S.E. WALKER: In relation to who will determine who will carry out the regime of the CEO parole.

The DEPUTY SPEAKER: Members, the Hansard reporter is clearly having problems hearing the member. Can we have some audio assistance for the member for Nedlands' microphone? If other members keep their discussions to the minimum we would all appreciate it, thank you.

Ms S.E. WALKER: I was asking the Attorney General to let me know -

The DEPUTY SPEAKER: I might have to ask the member to speak up.

Ms S.E. WALKER: If I move the microphone, Madam Deputy Speaker, it might be better. I have asked the Attorney General to let me know to whom the power of the CEO is to be delegated. At the moment, the people

involved are anonymous. Has the Attorney General or the department given any thought to that? Does he have the names, experience and qualifications of the people who will make determinations that are usually made by a judicial officer with experience? Will those people have training in the same way that judicial officers are trained in how to make decisions based on fairness?

Mr J.A. McGINTY: In relation to non-discretional release, the Bill refers to the CEO. However, there is a general power in the Act for the CEO to delegate functions. It is intended that the initial assessment will be made by prison staff; the case will be reviewed and checked by parole release staff to ensure the eligibility criteria are met; additional assessment of information by the community justice staff will be requested if supervision is contemplated; the parole order will be issued by the manager of parole release; and the manager of parole release will decide whether the parole is to be supervised or unsupervised. The second category is that of the more serious offenders, who are subject to a discretionary release. The initial assessment is to be done by prison staff; the case is to be reviewed and assessed by parole release staff in the sentence management directorate -

Ms S.E. Walker: Are serious offenders assessed by the prison staff?

Mr J.A. McGINTY: I mean the more serious offenders among those who have been given sentences of 12 months or less. The initial assessment is to be done by prison staff; the case will be reviewed and assessed by parole release staff from the sentence management directorate; additional assessment by the community justice staff will be requested if necessary; and a decision will be made by the manager of parole release about whether release on parole is to be supervised or unsupervised, and, if it is to be supervised, what conditions will be imposed. In the event that a decision is made to not release a prisoner on parole, the prisoner will be notified of his right to have the decision reviewed by the director of sentence management within the Department of Justice. That process is identical to the current automatic parole provisions, which I have already mentioned.

Ms S.E. WALKER: They are not identical. Currently, the Parole Board assesses automatic parole release, as opposed to determination of eligibility.

Mr J.A. McGinty: It is done by the secretary of the Parole Board, who signs off on the recommendations contained here.

Ms S.E. WALKER: It is done under the canopy of the Parole Board?

Mr J.A. McGinty: I have already explained that.

Ms S.E. WALKER: Yes. That cannot happen unless a judicial officer has determined that someone is eligible for parole. Let us be truthful about this. This is important. I will have to deal with these issues when someone writes to me about them, and I would like to get the information on record. Is there currently a manager of parole release?

Mr J.A. McGinty: Yes.

Ms S.E. WALKER: What does he currently do?

Mr J.A. McGinty: She.

Ms S.E. WALKER: Well done!

Mr J.A. McGinty: She coordinates all parole orders and is the person who makes the recommendations to either the secretary of the Parole Board or the Parole Board. She will also assume that function for CEO paroles.

Ms S.E. WALKER: According to the Attorney General, the onus for recommending parole eligibility will start way down the line with prison staff.

Mr J.A. McGinty: That is right.

Ms S.E. WALKER: How long has the manager of parole release been in that job?

Mr J.A. McGinty: It is years; certainly before my time. I do not know how long she was in that role before that.

Ms S.E. WALKER: What level is that position?

Mr J.A. McGinty: Level 7.

Ms S.E. WALKER: If I understand correctly, these parole provisions are for serious offenders. Does the recommendation for parole eligibility originate from prison officers?

Mr J.A. McGINTY: The process begins with the prison officers sending in reports about prisoner behaviour. They are not the ones who determine release or otherwise, but they have input into that process.

Ms S.E. WALKER: What do they put in their reports?

Mr J.A. McGinty: Information about prisoner behaviour.

Ms S.E. WALKER: Do they start the process? Are they the triggers for determining parole eligibility?

Mr J.A. McGinty: It is a factor that is taken into account.

Ms S.E. WALKER: Let us find out what is the trigger. The prison officers will write reports. What will happen then? They will trigger a parole. Will someone who wants parole go to a prison officer and ask to be considered for parole? How will it work?

Mr J.A. McGINTY: The sentence management directorate coordinates the pulling together of all the reports, including those prepared by the prison officers.

Ms S.E. WALKER: When a person who has been sentenced to 12 months or less goes into prison, he does not have parole. That would be the first thing he would want. He would want to get out as quickly as he can. How will the parole determination process be triggered within the department? What will that prisoner have to do? What will be the process?

Mr J.A. McGinty: The prisoner will need to serve half his sentence before he is eligible for parole.

Mrs C.L. Edwardes: Is it an automatic administrative process? As soon as the prisoner gets to halftime, somebody waves a flag and the file is picked up. Is that how it will work?

Mr J.A. McGINTY: There are two exceptions to the general rule that parole is automatic after half the sentence has been served: first, if there has been a conviction for a prison offence; and second, if certain classified offences have been committed. In those cases parole will be discretionary. Those offences will, generally speaking, be of a nature for which it is considered that parole would not be desirable. Those prisoners will undergo the same assessment for eligibility as is undertaken for prisoners who receive a sentence of longer than 12 months.

Mrs C.L. Edwardes: The prisoners' files will be at the prison. When the time for consideration of parole arrives, will a note be shown on the computer database and somebody will pull the file and double-check it? Is it an administrative process?

Mr J.A. McGINTY: It is more a process of matching the material on an ongoing basis. Staff are employed specifically to make sure that relevant reports are obtained and that all that needs to be brought together to make those decisions is brought together.

Mrs C.L. Edwardes: At the prison?

Mr J.A. McGINTY: Community justice people might also have an involvement.

Ms S.E. WALKER: How does a person who is currently sentenced to 12 months or less apply for parole?

Mr J.A. McGinty: He does not.

Ms S.E. WALKER: How does it work? If a prisoner wrote to me and said that he applied for parole but did not get it, what would he mean? What happens at the beginning of the process? How would he get the parole consideration cranked up?

Mr J.A. McGINTY: The prisoner will not apply for parole. Under the provisions of this Bill, unless the prisoner is excluded by the two criteria to which I have already referred, parole will be automatic at the halfway point of the sentence. The prisoner will know that that is when he is entitled to it. The only question is whether the parole will be supervised or unsupervised. That will be the process for the vast bulk of people with sentences of less than 12 months. Those people who have been convicted of certain prison offences will not be eligible. An assessment will be made about whether someone who fits into the discretionary category should be released. That assessment will need to take into account the factors that are listed in the legislation. If a prisoner is to be released on a CEO parole order, an additional decision must be made about whether that parole is to be supervised.

Ms S.E. WALKER: There is an exclusion if a prison offence is committed, and the Attorney General mentioned another exclusion. He is saying that people serving sentences of 12 months or less will have an automatic entitlement to supervised or unsupervised parole.

Mr J.A. McGinty: Not all.

Ms S.E. WALKER: Apart from those who fall into the two areas the Attorney General mentioned.

Mr J.A. McGinty: That is right.

Ms S.E. WALKER: Is this an automatic entitlement?

Mr J.A. McGinty: Yes.

Ms S.E. WALKER: What was the discretionary area?

Mr J.A. McGinty: Clause 23(2)(a) of the Bill.

Ms S.E. WALKER: What is that prescribed class?

Mr J.A. McGinty: I dealt with that matter extensively when we last dealt with the matter.

Ms S.E. WALKER: Does it include serious offences?

Mr J.A. McGinty: It includes offences of a particular character. Generally speaking -

Ms S.E. WALKER: Are they victim related?

Mr J.A. McGinty: They are victim related and they also involve a measure of violence in a general sense.

Ms S.E. WALKER: How would a prisoner in that prescribed class go about being granted parole ?

Mr J.A. McGinty: There is an automatic trigger within the system. An assessment and a decision would be based on all the facts about which we have been talking.

Ms S.E. WALKER: Let us consider that. The Attorney General said that a prison officer makes the assessment.

Mr J.A. McGinty: No.

Ms S.E. WALKER: The Bill says that for the more serious offenders a prison staff officer then a parole release officer then a community corrections officer and then the manager of parole release will assess the prisoner.

Mr J.A. McGinty: A variety of people make an assessment and provide that to the area of sentence management.

Ms S.E. WALKER: All right. Will those people make an assessment of the prisoner while he is in the prison?

Mr J.A. McGinty: That might include psychiatrists, psychologists, social workers and a variety of professional people who were involved in dealings with the offender.

Ms S.E. WALKER: I accept that. Will those people have been involved with the prisoner while he was in prison?

Mr J.A. McGinty: Yes.

Ms S.E. WALKER: Do prisoners have a prison file when they first go to prison? Tell me about the prison file. What is contained in it?

Mr J.A. McGinty: There are two files; one is kept at head office, which generally deals with it, and the other is kept in the prison.

The DEPUTY SPEAKER: Would members please seek the call. We are not in a legislation committee; we are in consideration in detail in the Chamber. Therefore, rather than members having a discussion across the floor, I would prefer members to seek the call so that these proceedings can be conducted appropriately. The member for Nedlands has sat down. If the Attorney General seeks the call, I will give it to him.

Mr J.A. McGinty: I have answered the question.

The DEPUTY SPEAKER: Thank you. The member for Nedlands has the call.

Ms S.E. Walker: I did not hear the Attorney General's answer.

Mrs C.L. EDWARDES: There has been some miscommunication. The Attorney General answered the question but the Deputy Speaker was talking at the same time and I did not hear his answer.

Mr J.A. McGINTY: Two files are kept; one is kept in the prison in the unit and the other is a general file relating to the prisoner. All of that material is collated to give consideration to whether it is appropriate for a prisoner in the discretionary category to be granted parole.

Ms S.E. WALKER: One file is collated while the prisoner is kept in prison and another is a general prisoner file. What information is contained in the general prisoner file? I do not want details.

Mr J.A. McGinty: All of the usual reports.

Ms S.E. WALKER: I cannot help it if the Attorney General introduces difficult and convoluted Bills. I would let down my constituents and the people of Western Australia if I did not ask these questions. I want to know on what criteria this new ability to assess prisoners for parole are based, given that this responsibility will be taken away from judicial officers. One file of information is collated about what has happened in the prison since the prisoner arrived. What type of information about the prisoner before he or she went to prison is contained in the other file? The Attorney General said it contains all the ordinary reports. What are they?

Mr J.A. McGinty: It includes the judge's sentencing comments, the prisoner's criminal record and other issues that one would expect to find in a file of that nature.

Ms S.E. WALKER: It is not a matter of what I expect; I want to know. The file will contain the judge's sentencing comments, which is fair enough. What else will it contain?

Mr J.A. McGinty: It will contain psychiatric reports, psychological reports, pre-sentence reports, criminal records, the judge's sentencing comments - anything that is relevant to the prisoner.

Mrs C.L. Edwardes: Will it contain information on the prisoner's previous behaviour and anything that has occurred since he has been in prison?

Mr J.A. McGinty: The other file that is kept on the unit relates to the prisoner at that time and to anything that transpires at the prison, including misbehaviour and things of that nature.

Ms S.E. WALKER: The court has a file, the defence counsel has a file of his client and the Director of Public Prosecutions has a file. Where is all that information that goes to the prison stored?

Mr J.A. McGinty: The Department of Justice maintains a file on prisoners. It might have similar material to what appears on the various other files.

Mrs C.L. Edwardes: Is the computer system integrated between the criminal courts and the Department of Justice's data system?

Mr J.A. McGinty: Not yet.

Ms S.E. WALKER: How does that happen? How does the Department of Justice get the relevant material that a judge would see, which is also on the DPP's file? That material will include the brief of evidence and what the victim had to say. The prisoner might have pleaded guilty and the victim might have given a victim impact statement. The material might also include the statement of evidence. Does that information go to the prison? It is important to know whether the victim impact statement and the victim's evidence go to the prison, are kept on file at the prison and are then used to determine a prisoner's eligibility for parole.

Mr J.A. McGinty: The victim impact statements do not go to the prison. The pre-sentence and psychological reports are kept on file because the Department of Justice prepares them. That type of material is kept, but no matters are kept that have no connection back to the prison system, such as victim impact statements.

Ms S.E. WALKER: What about the victim's statement of evidence?

Mr J.A. McGinty: A transcript of the evidence can be and is obtained from time to time if it is relevant. Sentencing comments from the judge are obtained and put onto that file.

Ms S.E. WALKER: What happened to the victim is relevant to the decision to grant a prisoner parole. A prisoner makes a determination to apply for a parole eligibility grant. Usually when a court is considering granting parole, it considers what happened to the victim. It also looks at the victim impact statement and the witness statements to determine what happened. Will the parole officers take that information into account when assessing whether prisoners who have committed serious offences are eligible for parole?

Mr J.A. McGINTY: Yes, those matters will be taken into account.

Ms S.E. WALKER: The Attorney General is on record as saying that the prison file will contain the brief of evidence.

Mr J.A. McGinty: I did not say that.

Ms S.E. WALKER: That is what we are talking about.

Mr J.A. McGinty: You are "quoting" things that I did not say.

Ms S.E. WALKER: I will start again. According to the Attorney General, an offender who was sentenced to 11 months imprisonment for sexually assaulting a woman might be eligible for parole because he would come within the prescribed class of offences. On behalf of the victims, I want to know on what documents this new parole officer - not a judicial officer - will base a prisoner's eligibility for parole. We all know the criteria. When the judge makes a decision based on those criteria, he has a whole brief of evidence before him. It is not always clear what a victim went through just by looking at the facts sheet. The parole officers would not have the victim impact statement before them.

Mr J.A. McGinty: No.

Ms S.E. WALKER: Will the people assessing parole eligibility have a copy of the victim's statement of evidence?

Mr J.A. McGinty: They could have a transcript of the evidence, depending on the circumstances. They also need to take into account from the victim's perspective the role of the victim support service and any input it makes into the system, it being a division of the Department of Justice. There is also a victim notification register on which victims must register their desire to make submissions in a matter, and they will be heard on current matters rather than on the basis of old documents.

Ms S.E. WALKER: Let us get back to what will happen to the victim.

Mr J.A. McGinty: That is what I was talking about.

Ms S.E. WALKER: No, I am talking from my own experience. There may not be a transcript of the evidence because the offender pleaded guilty. In that case there will be only a statement of evidence by the victim. I want to know whether the people who assess parole eligibility for a person who pleaded guilty, received a sentence of 11 months and went to jail will be able to see the victim's statement of evidence?

Mr J.A. McGinty: No.

Ms S.E. WALKER: I find that incredible. Those people making the assessment of parole eligibility will not know what happened. They will have only a cursory and shallow overview in the statement of material facts about what happened to the victim. I will give an example. A statement of material facts may state that an offender broke through a window, touched a woman on her left breast and left after 15 minutes. However, the statement of the witness could be much more profound than that statement of facts. This is the difficulty I have with this legislation. Currently, trained judicial officers are making parole eligibility orders and they have before them all of the relevant facts and material. The Attorney General is now asking new people, whom we do not know, to make parole decisions.

Before I sit down - so that I can come back to it - I ask the Attorney General what are the levels of experience of those people making an initial assessment?

Mr J.A. McGinty: I do not have that information with me.

Ms S.E. WALKER: Will the Attorney General tell me about the parole release officer who will make decisions about serious offenders?

Mr J.A. McGinty: No, I cannot. I do not have that information with me.

Mrs C.L. EDWARDES: I rise to allow the member for Nedlands to be able to continue.

Mr J.A. McGinty: I don't know why.

Ms S.E. WALKER: This is important. It might not be important to the Attorney General and he might laugh, but it is a serious matter to a victim of burglary and indecent assault when an offender gets a sentence of 11 months imprisonment. We are talking about truth in sentencing. Parole eligibility, according to the Attorney General, will now be assessed without looking at all the relevant facts and circumstances.

Mr J.A. McGinty: No, that is not what I have said.

Ms S.E. WALKER: Yes, it will; that is what will happen. The Attorney General is saying that when the determination is made for parole eligibility at the base level, those people assessing that eligibility may not have the witness statements of what happened to the victim. Is the Attorney General telling me differently and that he will ensure they have those statements?

Mr J.A. McGinty: You make the points and I will address them.

Ms S.E. WALKER: That is the point I am making.

Mr J.A. McGINTY: The information about the nature of the offence and the circumstances of the victim will all be available, as they currently are. The member is trying to create the impression that particular information that is before the court in the form of a statement of evidence will not be on the file but the transcript of evidence will. To me nothing turns on that. There will be greater input from the victims themselves, and reports will be submitted through the victim support service. Of course the relevant officers making a decision of this nature will investigate any matters relevant to the victim and will deal properly with those matters. It is absurd to suggest otherwise.

Ms S.E. WALKER: Actually, it is not absurd.

Mr J.A. McGinty: Yes it is.

Ms S.E. WALKER: No it is not, because I have worked in the system and I know the system. I can tell the Attorney General now that if the hypothetical woman I have talked about had been a victim and the case went to

court, the prosecutor would tell the judge about the important matters in the victim's statement. The Attorney General is saying that those assessing parole eligibility will not have that brief of evidence. The Attorney General is suggesting in this place that the decision on parole eligibility by the CEO, or an anonymous person, will be made on the same basis and criteria on which a judge currently makes such a decision. However, in fact, there will be a different set of material. That is the factual basis and I want that basis established. Someone sentenced to less than 12 months for a serious sexual assault charge will be assessed first by prison staff. At the stage when he becomes theoretically eligible for parole, can the prison staff recommend whether he is eligible for parole? What is the point of the prison staff involvement at that stage?

Mr J.A. McGinty: Yes, we would expect them to make comments along those lines.

Mr C.J. BARNETT: These are important points. I say to the Attorney General, although I have not been following this debate, that the member for Nedlands is raising issues quite properly. It is complex legislation. The Attorney General should endeavour, if necessary with the help of his advisers, to answer them as properly as possible. We are not wanting to delay this legislation.

Mr J.A. McGinty: To be fair, Leader of the Opposition, we have answered them over and over again. You are wanting to delay the legislation.

Mr C.J. BARNETT: We are not wanting to delay the legislation. We want to progress the legislation through the Parliament. I implore the Attorney General to consider that perhaps there has been a miscommunication and he should try -

Mr J.N. Hyde: No, we have been sitting here listening to the same questions and answers.

Mr C.J. BARNETT: I do not think we need to hear from the fool from Perth. It is important that the Attorney General address the issue.

Mr J.N. Hyde: No, you have been swanning outside and you have just come into the Chamber like Johnny-come-lately.

Mr C.J. BARNETT: I have been in my office working, you clown.

The DEPUTY SPEAKER: Order, members!

Ms S.E. WALKER: I will say something to the member for Perth. I am standing in this place for victims' rights and he is just languishing as usual.

The DEPUTY SPEAKER: Order, members! I would very much like members to deal with the amendment at hand and I ask that the member for Nedlands continue in that vein.

Ms S.E. WALKER: Thank you, Madam Deputy Speaker. Contrary to what the member for Perth said, this is the first time I have explored what will happen at the base level of parole eligibility for people sentenced to less than 12 months. I want to know what documents the anonymous person will rely on.

Mr J.N. Hyde: It is not an anonymous person.

Ms S.E. WALKER: All right, give me the name.

Mr J.N. Hyde: You have used a hypothetical victim five times.

Mr A.D. McRae: It is an officer.

Ms S.E. WALKER: What is the name? What level?

Mr A.D. McRae: It is a person who holds an office.

Ms S.E. WALKER: Go back to sleep.

Mr C.J. Barnett: Do you know about the two old Muppets in the theatre box? Isn't that them; the two old fools in the theatre box?

Ms S.E. WALKER: That is right.

Mr J.N. Hyde: We are here listening.

Ms S.E. WALKER: There is nothing between the member for Perth's ears, so it has obviously made no indent on him.

Mr J.N. Hyde: Dear, dear! Come on, tell us about your robe. You are the great expert on law.

Ms S.E. WALKER: No, I know about victims.

Ms M.M. Quirk: So do I.

Ms S.E. WALKER: The member for Girrawheen should get on her feet and say something about them instead of laughing.

The DEPUTY SPEAKER: Order, members!

Ms S.E. WALKER: The member for Girrawheen sits constantly in the Chamber playing games on her computer. That is what she does; I have seen her. They are little orange-coloured games. I do not have time to do that. The member for Girrawheen interrupts and talks garbage. I am trying to work out -

The DEPUTY SPEAKER: Order! The question is that the words to be deleted be deleted, and I would like members to address themselves to that amendment.

Ms S.E. WALKER: I want to know, and I think I am entitled to know, and the Western Australian public is entitled to know, and the victims are entitled to know, and the people who go to the trouble of having witness statements taken to support and assist victims are entitled to know, on what basis these people will make decisions about parole eligibility. I know on what basis they make these decisions in the courts. What I am trying to get out of the Attorney General - and he is evading the question - is what will happen. Has that level of detail been thought out in this crummy regime? Can the Attorney General confirm for me that the brief of evidence will be available to determine parole eligibility, as it is for judicial officers, when people are making assessments about CEO parole?

Mr J.A. McGinty: I have answered that question three times and I have told you no on each occasion.

Ms S.E. WALKER: The Attorney General has not answered it.

Mr J.A. McGinty: Do you want me to put it to you a fourth time? The answer is still no. How many times do you want me to say it?

Ms S.E. WALKER: So they will not have any aspects of the brief of evidence? Is that what the Attorney General is saying?

Mr C.J. Barnett: I think the Attorney General is saying no, they will not have the brief of evidence. Is that the case?

Mr J.A. McGinty: It is not normally put on the prison file. I have said that five times now.

Ms S.E. WALKER: If these people will not have any input, as they normally have, from victim impact statements and from witness statements from people who support the victim, how will the victim be able to have a greater input?

Mr J.A. McGinty: Through the victim notification register, by having the transcript that was adduced in the hearing, by having the judge's sentencing comments - all of which are immediately relevant to the victim - and by having submissions from the victims themselves if need be.

Ms S.E. WALKER: The Attorney General is kidding himself. What information will we get from the victim notification register? I would like to know.

Mr J.A. McGinty: I do not think you really want to know at all.

Ms S.E. WALKER: I do want to know. What information will the Attorney General get from the victim notification register that will support parole eligibility?

Mr J.A. McGinty: We will give them an opportunity to make a submission.

Mrs C.L. EDWARDES: I rise again to let the member for Nedlands continue her remarks.

Ms S.E. WALKER: It is fairly trite for the Attorney General to say that he will get information from the victim notification register, because do all victims know about the victim notification register? Can the Attorney General confirm that they know about it? I do not think he can. What will go on the victim notification register? Will the telephone number of the victim go on the victim notification register? Will the phone number be automatically sent to the prison? Silence is golden! I am concerned, on behalf of victims, about this matter, and I put on record that the Attorney General has not answered me with regard to the role of -

Mr J.A. McGinty: It is a question of how many times you can expect to get exactly the same answer.

Ms S.E. WALKER: I am asking the Attorney General -

Mr J.N. Hyde interjected.

Ms S.E. WALKER: That is the member's side of the Parliament, not this side. I am asking the Attorney General what will go on the victim notification register. That was a new question, and the Attorney General has not answered that.

Mr J.A. McGinty: The victim notification register is an initiative to involve victims so that as the offenders progress through the system the victims are advised at each stage of their right to make submissions and of any change affecting the status of the prisoners in the system. That is a trigger for victims to provide input into the decision making. I have said that five times already. I can say it a sixth time but it will not really take it any further.

Ms S.E. WALKER: No, it will not, because there is nothing more to say; they will not be doing it in that way at all. Will the Attorney General be ringing up victims and asking them what they think about his putting someone on parole eligibility? No, he will not. This is just a reducing-imprisonment strategy.

Mr J.A. McGinty: The answer is yes, if the victims have been asked to be kept informed. The member simply does not want to hear the answer.

Ms S.E. WALKER: I am happy to hear the answer.

Ms M.M. Quirk: She is shooting the messenger!

Ms S.E. WALKER: The member for Girrawheen should go back to her game on the computer!

Ms M.M. Quirk: I am actually writing a letter.

Mr J.N. Hyde: You are both very good members. Why attack the member for Girrawheen?

The DEPUTY SPEAKER: Order! The Chair has shown a lot of forbearance, but that is about to expire. I remind members that we are dealing with the amendment on the Notice Paper, and I ask all members to address themselves absolutely to that amendment and not stray from it.

Amendment put and a division taken with the following result -

Ayes (18)

Mr R.A. Ainsworth	Mr J.H.D. Day	Mr R.F. Johnson	Ms S.E. Walker
Mr C.J. Barnett	Mrs C.L. Edwardes	Mr W.J. McNee	Dr J.M. Woollard
Mr M.J. Birney	Mr J.P.D. Edwards	Mr B.K. Masters	Mr J.L. Bradshaw *(Teller)*
Mr M.F. Board	Mr B.J. Grylls	Mr P.D. Omodei	
Dr E. Constable	Ms K. Hodson-Thomas	Mr P.G. Pendal	

Noes (24)

Mr P.W. Andrews	Dr G.I. Gallop	Mr M. McGowan	Mr A.P. O'Gorman
Mr J.J.M. Bowler	Mr S.R. Hill	Ms S.M. McHale	Mr J.R. Quigley
Mr A.J. Carpenter	Mr J.N. Hyde	Mr A.D. McRae	Mr D.A. Templeman
Mr A.J. Dean	Mr J.C. Kobelke	Mr N.R. Marlborough	Mr P.B. Watson
Mr J.B. D'Orazio	Ms A.J. MacTiernan	Mrs C.A. Martin	Mr M.P. Whitely
Dr J.M. Edwards	Mr J.A. McGinty	Mr M.P. Murray	Ms M.M. Quirk *(Teller)*

Pairs

Mr A.D. Marshall	Mr E.S. Ripper
Mr R.N. Sweetman	Mrs M.H. Roberts
Mr D.F. Barron-Sullivan	Mr R.C. Kucera
Mr M.W. Trenorden	Mr F.M. Logan
Mr T.K. Waldron	Mr C.M. Brown

Amendment thus negatived.

Ms S.E. WALKER: I move -

Page 16, line 6 - To delete "CEO" and substitute "Parole Board".

Amendment put and a division taken with the following result -

Ayes (17)

Mr R.A. Ainsworth	Mr J.H.D. Day	Mr R.F. Johnson	Dr J.M. Woollard
Mr C.J. Barnett	Mrs C.L. Edwardes	Mr B.K. Masters	Mr J.L. Bradshaw *(Teller)*
Mr M.J. Birney	Mr J.P.D. Edwards	Mr P.D. Omodei	
Mr M.F. Board	Ms K. Hodson-Thomas	Mr P.G. Pendal	
Dr E. Constable	Mr M.G. House	Ms S.E. Walker	

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Mr A.J. Dean	Mr J.C. Kobelke	Mr N.R. Marlborough	Mr P.B. Watson
Mr J.B. D'Orazio	Ms A.J. MacTiernan	Mrs C.A. Martin	Mr M.P. Whitely
Dr J.M. Edwards	Mr J.A. McGinty	Mr M.P. Murray	Ms M.M. Quirk *(Teller)*

Pairs

Mr A.D. Marshall	Mr E.S. Ripper
Mr R.N. Sweetman	Mrs M.H. Roberts
Mr D.F. Barron-Sullivan	Mr R.C. Kucera
Mr M.W. Trenorden	Mr F.M. Logan
Mr T.K. Waldron	Mr C.M. Brown

Amendment thus negatived.

Ms S.E. WALKER: I move -

Page 16, line 7 - To delete "CEO" and substitute "Parole Board".

This is the last amendment I will move to clause 23; it is not the last amendment for the day. It is appropriate that we go through all these amendments so that the Opposition can register its opposition to this regime and its disappointment with establishing a clandestine regime for prisoners in this State and the inability for any decisions on their parole eligibility to be reviewed. This regime does not follow the recommendations in the Hammond "Report of the Review of Remission and Parole". It does not follow public sentiment in relation to the review of parole.

As I have said, the public submissions in the Hammond report indicate that confidence in sentencing must be restored. Let us not forget that parole is part of a sentence. Most people think that the sentence is only the custodial part. In fact, a person remains on sentence until the end of his parole date. I strongly register my disappointment and can only reflect the words of Dr Neil Morgan and his concern about the dangerousness of this legislation.

Amendment put and a division taken with the following result -

Ayes (16)

Mr R.A. Ainsworth	Dr E. Constable	Mr M.G. House	Mr P.G. Pendal
Mr C.J. Barnett	Mr J.H.D. Day	Mr R.F. Johnson	Ms S.E. Walker
Mr M.J. Birney	Mrs C.L. Edwardes	Mr B.K. Masters	Dr J.M. Woollard
Mr M.F. Board	Ms K. Hodson-Thomas	Mr P.D. Omodei	Mr J.L. Bradshaw *(Teller)*

Noes (24)

Mr P.W. Andrews	Mrs D.J. Guise	Mr M. McGowan	Mr A.P. O'Gorman
Mr J.J.M. Bowler	Mr S.R. Hill	Ms S.M. McHale	Mr J.R. Quigley
Mr A.J. Carpenter	Mr J.N. Hyde	Mr A.D. McRae	Mr D.A. Templeman
Mr A.J. Dean	Mr J.C. Kobelke	Mr N.R. Marlborough	Mr P.B. Watson
Dr J.M. Edwards	Ms A.J. MacTiernan	Mrs C.A. Martin	Mr M.P. Whitely
Dr G.I. Gallop	Mr J.A. McGinty	Mr M.P. Murray	Ms M.M. Quirk *(Teller)*

Pairs

Mr A.D. Marshall	Mr E.S. Ripper
Mr R.N. Sweetman	Mrs M.H. Roberts
Mr D.F. Barron-Sullivan	Mr R.C. Kucera
Mr M.W. Trenorden	Mr F.M. Logan
Mr T.K. Waldron	Mr C.M. Brown

Amendment thus negatived.

Clause put and passed.

Clause 24: Prisoner to be notified of postponement or refusal of parole -

Ms S.E. WALKER: I have a different issue in relation to this legislation. The other Bill repeals the unproclaimed Sentence Administration Act 1999. The minister said that in large part this Bill reflected the old Bill. I will not be seeking to move my amendment on page 16, line 11. I move -

Page 16, line 21 - To delete "CEO" and substitute "Parole Board".

Clause 24 refers to a prisoner being notified of postponement or refusal of parole. It states -

(1) If under section 23(2)(a) the CEO does not make a parole order in which the release date is the day when, under section 23(1), the prisoner is eligible to be released on parole, written notice of the decision must be given to the prisoner as soon as practicable.

It states what the written notice must contain. It continues -

(3) The prisoner may make written submissions to the CEO about the CEO's decision and reasons . . .

The written submissions should be made to the Parole Board, for the reasons already outlined. I will move that amendment only, and not the other two, before I move on to clause 25.

Mr J.A. McGINTY: I can understand the point of view that a prisoner who is given a right to appeal, if I can loosely describe it that way, against a refusal of parole should be able to appeal to a person other than the decision maker. That is a fundamental precept of natural justice. Within the judicial system we would not tolerate the concept of a judge who made the original decision then sitting in judgment on his own decision. I can understand the point being made by the member for Nedlands. The argument is about appealing a decision of Caesar to Caesar. We had turned our minds to that matter when drafting this Bill. I do not feel passionately about the provision that is contained in the legislation. We opted to replicate the existing provisions as they related to parole and the Parole Board. Section 27 of the Sentence Administration Act contains a provision which is in all relevant senses in identical terms to what is before us. It states -

(1) If . . . the Board postpones, defers or refuses parole, written notice of the decision must be given to the prisoner as soon as practicable.

It specifies what that written notice must contain and, under subsection (2)(b), that it must -

inform the prisoner of his or her right to make submissions under subsection (3).

This is a prisoner who is unhappy with the decision of the Parole Board. It continues -

> (3) A prisoner whose release on parole has been postponed, deferred or refused may make written submissions to the Board about the Board's decision and reasons . . .

For the purposes of internal consistency, we have continued the existing provisions that apply to the Parole Board sitting in judgment on its own decisions. In respect of CEO parole, the Act makes provision for submissions to be made to the department that rejected parole or imposed conditions that were not acceptable. In principle that is not a desirable situation. That is why I will happily entertain some mechanism that enables prisoners who are unhappy with the decision of either the CEO or the Parole Board to appeal to someone else. It is a bit difficult to think to whom they might appeal, other than to the Parole Board, to review a decision to reject parole.

Mrs C.L. Edwardes: The minister?

Mr J.A. McGINTY: They could appeal to the minister. I do not think that is such a good idea. It is difficult to think of to whom they would go, particularly given that separation. A court might immediately appeal; but should a court be determining the release of a prisoner when it is the court's job to send the prisoner to prison in the first place? I do not know. It is not without difficulty. We have set in train an administrative arrangement under which the person within the Department of Justice who made the original decision will not be reviewing it. The original decision will be effectively made by the manager of parole release on receipt of reports from prison and community justice staff. If a decision is made not to release, the prisoner will be notified of the right to have the decision reviewed by a different officer in the Department of Justice, and that is by the director of sentence management, who is a more senior officer within the department. We have tried to accommodate what is obviously a difficult issue involving questions of natural justice and to recognise that it is important that any review be done by a different body from the body that made the original decision. We cannot do that for the Parole Board. The only option for more serious offenders is to appeal to the body that made the initial decision and ask it to reconsider and review that decision. In recognition of the problem, we can have this matter reviewed by a more senior officer in the department. If someone can come up with a global solution for all prisoners, both those before the Parole Board and those under CEO parole, I for one, as a matter of principle, would like to see it accommodated.

Mrs C.L. EDWARDES: I pick up the point the minister has raised about the Parole Board and the fact that a prisoner who is unhappy with a decision can make submissions to the Parole Board. When we look at the legislation, it is only when a point like this is raised that we think about what the Parole Board does. The minister and I both know what it does administratively; but what does the Parole Board really do? The Act does not require it to do anything - unless it is in another section I have not picked up. The prisoner can make submissions, but the Parole Board is not required to do anything. I return to clause 24. It is not satisfactory to have another officer in the same division dealing with an appeal. It is probably the boss - the director - so a more senior officer is doing it, but it is within the same division. The minister and I both know that the file goes through the department and it will be looked at in a processed form to make sure that everything has been ticked off and will probably just be repeated. With WorkSafe, when investigations are carried out and notices are issued, there is a right to appeal against those notices. Those appeals are adjudicated upon by the Director General of WorkSafe. In this instance, the director general would probably be more removed than the person in WorkSafe, because the new arrangement of the previous Department of Productivity and Labour Relations and the Ministry of Fair Trading operating as part of the Department of Employment and Consumer Protection has removed the close association of the inspectorate division. The director general is a possibility. I still believe that the amendment we have moved provides an appropriate mechanism for the Parole Board.

Mr J.A. McGinty: I will not deny that it has merit.

Mrs C.L. EDWARDES: Which group of people is the Attorney General considering?

Mr J.A. McGinty: People who might appeal.

Mrs C.L. EDWARDES: What happens now?

Mr J.A. McGINTY: It is difficult to estimate because many people do not apply for home detention, which is the only option available to these people. It is difficult to tell. I am not unsympathetic to the in-principle argument on this amendment. It is a matter of choosing a mechanism. The director general would take it a step away from the division that will deal with it. The ability to appeal to the Parole Board has significant merit. The problem is that greater appeal rights would be given to lesser offenders than to people whose liberty is seriously affected by the justice system. There is an internal inconsistency.

Mrs C.L. EDWARDES: The prisoners' rights are already constrained by the very environment in which they are detained. As such, it is important, here probably more so than in any other area, to make sure not only that their

rights are seen to be protected but also that they have the right of appeal. If the appeal mechanism is kept within the same departmental structure, it will cause more serious problems in the long term for no other reason than the perception that prisoners' rights are being diminished considerably. My strong recommendation is to accept the amendment, because it would provide the Attorney General with a legitimate, independent agency outside the department when prisoners want to appeal a decision made on their release.

Mr J.A. McGINTY: I have had the opportunity to take some advice on this. The best estimate - it can be nothing more than that - is that somewhere between 50 and 100 prisoners a year will have their parole rejected. In answer to the question on how many will appeal, knowing prisoners, it will be 50 to 100.

Mrs C.L. Edwardes: You are not talking big numbers. In any event, it will not impact greatly on the workload of the Parole Board, given the changes taking place now. It could therefore be easily accommodated within the same budgetary processes.

Mr J.A. McGINTY: The Parole Board is under enormous strain at the moment. Numerous submissions have been made recently. We have even arranged for Peter Frizzell, formerly of the Department of Education and with whom the member for Kingsley might be familiar, to conduct a review of these matters within the Parole Board to come to grips with the massive workload it has now.

Mrs C.L. Edwardes: Why does it have that problem? Is it the timing? Is there a glitch in the system whereby a number of cases are dealt with at a certain time?

Mr J.A. McGINTY: I have the report, which I am happy to make available. It recommends a number of changes that might alleviate some of the pressures. I am also acutely aware, having been a member of the Parole Board myself, that the members are particularly burdened through having to read the files. Two meetings a week take place, given that some people are not available on a full-time basis. There are obvious difficulties there. I am reluctant to consider an additional workload in that context, although I am sympathetic to the argument. However, I am not sure how we can resolve it.

Mrs C.L. Edwardes: Are you saying that you will not accept the amendment today but you will consider it between the passage of the Bill through this House and its consideration in the other place?

Mr J.A. McGINTY: I am happy to do that. However, we considered the matter earlier and this is where we ended up for the sake of the internal consistency argument. If someone has a good solution, I will happily embrace it, but I do not know what it is. I would like my other adviser to join me at the table.

Mrs C.L. EDWARDES: I would like the Attorney General to further respond to my queries.

Mr J.A. McGINTY: I have been advised that another issue to be considered here is that, given the Parole Board was not given the matter initially, it might have some resistance to being effectively created as an appeal tribunal sitting over at the Department of Justice. Conceptually, there are issues that must be considered. That is why I cannot see a straightforward solution. I would prefer to acknowledge the problem and look for a mechanism to deal with this matter for both Parole Board parolees and CEO parolees. The department can examine it with the aim of finding a solution rather than my agreeing to the amendment now. The amendment has a certain attraction, but, at the same time, it is not without its difficulties.

Ms S.E. WALKER: The Attorney General drew the analogy of the effect of this amendment and internal consistency of the Parole Board. If people who are granted parole release after being granted parole eligibility by a judicial officer are aggrieved, they must refer the matter back to the same Parole Board. We know that the Parole Board is not one person. It is a collection or group of individuals. I suspect - I do not know whether the Attorney General can tell me - the board comprises different people when it comes to considering an aggrieved person's appeal.

The Attorney General's statement that he has considered appeals to the Parole Board as provided in the Sentence Administration Act and reflected that in this Bill for CEO parole does not justify it or make it just or fair. It is not just or fair.

Often justice costs money. When it is all boiled down, only 50 to 100 prisoners will be involved. However, the Attorney General has said that the Parole Board is under strain. That is because it does not have the resources or sufficient staff. He is creating a whole new regime for the sake of a cost-cutting benefit through the strategy for the reduction of imprisonment. Did the department or the Attorney General give directions to determine how much it would cost for the Parole Board to carry out this exercise?

Mr J.A. McGinty: We did not do that study.

Ms S.E. WALKER: Once the CEO or his nominee decides against parole eligibility and therefore release, another colleague in the same department can deal with the issue. I am not casting aspersions, but the point is - I will say it again - that the Parole Board has as its head a former Supreme Court judge who is trained to put bias,

sympathies and prejudices to one side and to examine issues analytically and clearly. Now the Attorney General is creating a regime that will involve a person who has not trained for this role, albeit he has trained in another area. There is not even anyone in the department, such as a former Supreme Court judge, who can pass on some of the skills involved in considering issues. That is what concerns me about this legislation. How much would it cost to send those 50 or 100 prisoners to the Parole Board? The Attorney General will employ an extra 33 people to implement this regime.

This amendment should be accepted by the Government in the interests of justice. The provision as it stands is unfair. A prison officer might for some reason have a grudge against a prisoner and decide that he will submit an adverse report. That prisoner may feel that another prisoner who has been granted parole has behaved in the same way or manner as him. The prisoner might feel that he has behaved in an exemplary manner. There will be no independent review or assessment; nor will anyone be trained to do that. Members can again see that there is potential for the dangers outlined by Dr Morgan to occur. There could be interference and unfairness in the system. It is for that reason that the Opposition has moved this amendment.

Amendment put and a division taken with the following result -

Ayes (15)

Mr R.A. Ainsworth	Mr J.H.D. Day	Mr R.F. Johnson	Ms S.E. Walker
Mr C.J. Barnett	Mrs C.L. Edwardes	Mr B.K. Masters	Dr J.M. Woollard
Mr M.J. Birney	Ms K. Hodson-Thomas	Mr P.D. Omodei	Mr J.L. Bradshaw *(Teller)*
Mr M.F. Board	Mr M.G. House	Mr P.G. Pendal	

Noes (25)

Mr P.W. Andrews	Dr G.I. Gallop	Mr M. McGowan	Mr D.A. Templeman
Mr J.J.M. Bowler	Mrs D.J. Guise	Ms S.M. McHale	Mr P.B. Watson
Mr C.M. Brown	Mr S.R. Hill	Mr A.D. McRae	Mr M.P. Whitely
Mr A.J. Carpenter	Mr J.N. Hyde	Mr N.R. Marlborough	Ms M.M. Quirk *(Teller)*
Mr A.J. Dean	Mr J.C. Kobelke	Mrs C.A. Martin	
Mr J.B. D'Orazio	Ms A.J. MacTiernan	Mr A.P. O'Gorman	
Dr J.M. Edwards	Mr J.A. McGinty	Mr J.R. Quigley	

Pairs

Mr A.D. Marshall	Mr E.S. Ripper
Mr R.N. Sweetman	Mrs M.H. Roberts
Mr W.J. McNee	Mr R.C. Kucera
Mr M.W. Trenorden	Mr F.M. Logan
Mr T.K. Waldron	Mr M.P. Murray

Amendment thus negatived.

Clause put and passed.

Clause 25: Life imprisonment, Governor may parole prisoner -

Ms S.E. WALKER: The double legislation we are dealing with repeals several Bills, including the Sentence Administration Act 1999, which was introduced by a Liberal Government but not proclaimed. I could be wrong, but I am a little concerned about this. The explanatory memorandum states -

> Clause 25 replicates the existing section 23 of the current Act, in providing for the paroling of the people serving life imprisonment.

The "current Act" is the Sentence Administration Act 1995. The amendments in my name on the Notice Paper dealing with clauses 26 and 27 also relate to parole for people convicted of certain categories of offences; that is, parole for people sentenced to a life term or indefinite imprisonment. Clause 25 relates to when the Governor may parole a prisoner sentenced to life imprisonment. It is true that this section replicates section 23 of the Sentence Administration Act 1995, which is being repealed. However, the Sentence Administration Act 1999 is also being repealed. The relevant provision in that Act is section 24, subsection (4) of which says that the parole order must be a supervised parole order. I wonder why that criterion has not been included in this legislation. I raise this matter because clause 25 of the Sentence Administration Bill states -

(1) The Governor may make a parole order in respect of a prisoner serving life imprisonment but only if -

(a) the prisoner has served the minimum period set by the court under section 90 of the *Sentencing Act 1995*; and

(b) a report about the prisoner has been given by the Board to the Minister under section 12 or 18.

(2) The release date in the order is that set by the Governor.

(3) The parole period in the order is to be set by the Governor and must be at least 6 months and not more than 5 years.

That is reflected in the current Sentence Administration Act 1995 and in the Bill before this Parliament. The Liberal Government ensured that the parole order must be a supervised parole order. However, that is not included in this legislation. That provision does not apply to prisoners paroled by the Governor who are serving an indefinite term or imprisonment, strict security life imprisonment or life imprisonment. We are talking about people such as Yorkshire. I know that case well because it occurred just before I joined the Crown. I am very familiar with the facts and circumstances of the despicable rape of the young woman. I think he is serving a term of indefinite imprisonment. People who commit murder will be sentenced to strict security imprisonment. I am referring to those prisoners who are sentenced to strict security life imprisonment - including murderers - and prisoners who have been sentenced to serve life imprisonment. Not many people realise that when a person is sentenced to life, he is sentenced for life. Those prisoners are not eligible for parole, but that decision is reviewed based on the formula in the Act. The Governor can set a term of parole of between six months and five years, but there is no indication that the prisoner will be supervised during the time he is released on parole. Is there a theoretical possibility that the Governor could issue an unsupervised parole order?

Mr J.A. McGINTY: I agree with the member that it would be totally inappropriate for people who have been sentenced either to life imprisonment, strict security life imprisonment or at the term of the Governor's pleasure not to be supervised while they are on parole.

Mrs C.L. Edwardes: For the full five years that you are talking about?

Mr J.A. McGINTY: Yes. Frankly, I was not aware of this point until I just spoke to my advisers.

Ms S.E. Walker: It may be solved in the legislation, I do not know.

Mr J.A. McGINTY: It is. I refer the member to clause 28(3), which states -

> The supervised period of a parole order that is not made in respect of a parole term is the whole of the parole period.

On first reading, that does not make a great deal of sense. The key term is "parole term", which is defined under section 85 of the Sentencing Act as -

> . . . a term to which a parole eligibility order applies;

In other words, for all the indefinite sentences, including sentences served at the Governor's pleasure, strict security and life imprisonment, no parole term is attached, because prisoners are not eligible for parole in those cases.

Ms S.E. Walker: They become eligible under the formula.

Mr J.A. McGINTY: The Parole Board can recommend that a prisoner be released on parole after a certain time. Usually, a judge would determine when a prisoner would be eligible for release after a certain number of years. That is not the case in what I will collectively refer to as indeterminate sentences. As I have said, "parole term" means a term to which a parole eligibility order applies. I am advised that none of these three categories of indeterminate sentences involves a parole term. Therefore, the effect of clause 28(3) is that people who are released on parole while serving a life sentence or a strict security life sentence or are held at the Governor's pleasure are supervised for the entire length of their parole period, which, under this legislation, would be up to five years.

Mrs C.L. Edwardes: The wording of this would have been better had it said "other than in respect of a parole term".

Mr J.A. McGINTY: What is meant is not apparent on the face of it.

Mrs C.L. Edwardes: It needs to be read several times. If it said "other than", it would mean the whole of the parole period.

Mr J.A. McGINTY: I would have preferred the legislation to be explicit and to make it clear that prisoners who were serving sentences for any of those three categories for those most serious offences would be supervised when released on parole. The same result will be achieved, because the people who work with us every day know exactly what it means.