HIGH RISK OFFENDERS BILL 2019

Committee

Resumed from 24 September 2019. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 14: Board established —

Progress was reported after the clause had been partly considered.

Hon SUE ELLERY: I remind the chamber that when this bill was last before us and debate was adjourned on 24 September, we were considering clause 14. We had postponed consideration of clauses 1 to 13 to enable me to get some further information from the advisers on an issue raised by Hon Nick Goiran. I have that information available now and, in addition, other information has been circulated. I indicated this to members behind the Chair in discussions seeking agreement for me to move to effectively take us back to clause 1 so that we can continue where we left off. Therefore, I move without notice —

That consideration of part 2 of the bill be postponed until after consideration of part 1 of the bill.

The CHAIR: Hon Michael Mischin.

Hon MICHAEL MISCHIN: Thank you, Mr Deputy Chair—apologies—Mr Chair.

The CHAIR: Thank you very much. I do not want to be demoted in everything!

Hon MICHAEL MISCHIN: I know the feeling and sympathise!

The minister alerted me yesterday to what she proposed to do and, as far as I am concerned, I am content with that course being taken. However, I have not yet had the opportunity of seeing the information that has been acquired and there were a few outstanding queries on the last occasion that had not yet been addressed. It would be helpful if we had that material to see whether we can go back and consider clauses 1 to 13 or whether we will find that the information is deficient or inadequate in some respect and might impede our progress on those clauses. Also on the last occasion, as I recall, deferral of consideration of part 1 of the bill was occasioned during the course of my moving an amendment to clause 1, which I withdrew at that stage to facilitate an adjournment of the consideration of those clauses. Perhaps we can take a minute to see whether the minister can provide the information she has so that we know that we have it. I am not suggesting she is trying to conceal it or not provide it; I am simply wondering whether that will interfere with us being able to expeditiously, efficiently and comprehensively deal with clauses 1 to 13.

Hon SUE ELLERY: What I had thought was the sensible way to proceed was to go back to clause 1 and for me to provide the chamber with all the answers to the issues raised, including those from Hon Nick Goiran about Mr Dodd. I have that in the notes that I will read out to the chamber. It seems to me that the most sensible way is to go back and provide all that information and people can then make a judgement accordingly. I would still like to proceed with my motion, if that is agreeable.

Hon ALISON XAMON: I am just indicating that I cannot hear very well. I was really struggling to hear a lot of what was said just then.

Hon Sue Ellery: Do you want me to say it again?

Hon ALISON XAMON: No, I think I followed what the minister said. I am just pointing out that I am finding it very difficult to hear in the chamber.

Further consideration of the clause postponed, on motion by Hon Sue Ellery (Leader of the House).

Postponed clause 1: Short title —

The clause was postponed on 24 September 2019 after it had been partly considered.

Hon NICK GOIRAN: Can I get clarification? I think we have moved that part 2 be considered after part 1.

The CHAIR: Yes.

Hon NICK GOIRAN: Does that then necessarily take us to clause 1 or are we then considering clause 24?

The CHAIR: For the sake of clarity, I indicate that we will now return to clause 1 and all the following clauses ad seriatum, as would normally be the case. We have postponed our consideration of part 2, which was underway, and now we will go through parts 1, 2 and 3, which is where clause 24 resides. That is what the member was referring to. I hope that has clarified the situation. We are basically going back to the start of the bill.

Hon SUE ELLERY: At the time we were dealing with clause 1, Hon Nick Goiran asked whether an offender, Mr Laurie Dodd's circumstances would be captured under this bill. At the time the question was asked, Mr Dodd's

charges were not known to the advisers I had with me at the table but I am now in a position to respond to that question. If I may, I will also take the opportunity to answer several other questions that were asked during consideration of clause 1 to which I was not able to provide an answer at the time.

Laurie John Junior Dodd has a long history of offending, going back to 1994. In 2004, he was sentenced to 14 years' imprisonment for a number of offences, including aggravated burglary, attempted robbery whilst armed, robbery whilst armed, robbery whilst armed and in company, assault police officer, and escaping legal custody. He was not granted parole and was released in November 2018 after serving his full sentence. As Mr Dodd was not convicted of a sexual offence, he was not eligible to be considered a serious danger to the community under the Dangerous Sexual Offenders Act 2006. However, if this bill had been in force in the year preceding Mr Dodd's release, he would have been the subject of a restriction order application, because robbery is an offence contained in schedule 1. His risk profile would then have been assessed by the review committee, and if his risk profile warranted doing so, he would have been referred to the Director of Public Prosecutions or the State Solicitor's Office for consideration in accordance with the provisions contained in this bill. If an application for a restriction order had been made to the Supreme Court, it would have been up to the court to determine whether a restriction order should have been imposed in accordance with the terms of the bill.

Dodd's case illustrates another advantage of the bill. In 2019, Dodd once again came to the attention of the courts. From 27 August 2019, he was an unsentenced prisoner for four days. He was again received into prison as an unsentenced prisoner on 20 September 2019. He then escaped legal custody on 21 September 2019. Dodd is currently in custody facing a number of charges, including two counts of burglary and commit offence in dwelling, stealing, stealing a motor vehicle, trespass, reckless driving, reckless driving to escape pursuit, and failure to stop. These offences are not automatically serious offences; however, if this bill is enacted and in force and Dodd is convicted of one or more of those offences that are indictable offences and the court sentences him to imprisonment, those offences may be able to be declared as serious offences under the amendments to section 97A of the Sentencing Act 1995, which are proposed to be made by clause 118 of the bill before us. Such a declaration would enable consideration to be given in due course to applying for a restriction order against Dodd under the proposed provisions of the bill. At present, a declaration under section 97A of the Sentencing Act creates only the possibility of a post-sentence supervision order being made against an offender, rather than a restriction order under the provisions of this bill.

During consideration of clause 1, Hon Nick Goiran sought detail on which clauses in the bill fully preserve the provisions in the Dangerous Sexual Offenders Act 2006. Following his request, I asked the advisers to work with the Parliamentary Counsel's Office to develop a document comparing the Dangerous Sexual Offenders Act 2006 and the High Risk Offenders Bill 2019. The Parliamentary Counsel's Office prepared such a document, which advisers provided to Hon Nick Goiran and Hon Michael Mischin on 25 September 2019, together with answers to other questions I had taken on notice. This document was circulated to other members yesterday. I hereby table the document titled "Dangerous Sexual Offenders Act 2006 and High Risk Offenders Bill 2019: Comparison of provisions".

[See paper 3586.]

Hon SUE ELLERY: I do not propose to take the chamber through the document in its entirety, but I will take members to each of the sections in which the Parliamentary Counsel's Office designated the change as significant and offer some explanation of these changes. Firstly, there are significant differences between the terms used in section 3 of the Dangerous Sexual Offenders Act 2006 and those in the bill. Numerous concepts have been replaced, often with expanded concepts, including "offender", which has been expanded to include not only a person who is under custodial sentence, as it is at present, but also a person who is subject to restriction under this legislation. The concept of "serious danger to the community" is dropped; instead, it is wrapped up in the new concept of "high risk offender", as I have previously outlined. "Serious sexual offence" is replaced with the wider "serious offence". This has a corresponding broadening effect on concepts like "serious offender under custodial sentence", "victim" and "high risk offender", and it of course has an indirect effect on all provisions employing these terms.

Sections 6 and 7A of the act will be amended to reflect the change of policy to enable the State Solicitor's Office to bring proceedings. The serious danger to the community test in section 7 of the act will be replaced by a high-risk offender test, which is the same in effect. The disclosure provisions in sections 9 and 10A of the act will be expanded to include the applying agency's disclosure obligations under the bill, rather than, as section 9 of the act currently does, simply imposing the same disclosure obligations on the DPP as it has when prosecuting in a criminal proceeding. In each case, the disclosure obligations are analogous to those in the Criminal Procedure Act 2004. Section 17A of the act, which deals with victims' submissions, has been redrafted into several provisions. Under clause 61 of the bill, the court must always make a victim submission available if the victim consents to it being made available and has been afforded the opportunity to amend the submission before it is made available.

Section 21 of the act will be expanded to add the entry search power under clause 51(6) and the power to allow for the publication of an offender's photograph under clause 52. Section 34 of the act will be changed by virtue of clause 69(3) of the bill, which specifies certain decisions against which no appeal lies. Clause 77(3) of the bill will make a material change to section 38 of the act, by restating in broader terms the protection given to persons who supply information required by the CEO. This provision parallels the analogous protection given to persons who share information between supporting agencies under clause 25. The material change to section 46A of the act is in the list of protected persons in clause 88, which has been revised to reflect the establishment and role of the High Risk (Sexual and Violent) Offenders Board and the new concept of supporting agency. Section 46B of the act will be replaced by a rewritten provision at clause 25, which employs the new supporting agency concept and provides fuller protection to those exchanging information under the provisions of the bill. Finally, the transitional provisions and associated schedule contained in the Dangerous Sexual Offenders Act 2006 relate to amendments effected in 2012, which are now exhausted. The new transitional provisions at clauses 120 to 123 will provide, in general terms, for a smooth transition of current matters, including proceedings in being and orders already made, from the Dangerous Sexual Offenders Act 2006 to the new act.

I was also asked about the dates on which Parliamentary Counsel received instructions to draft and instructions to print. The response to these questions are 3 January 2019 and 25 June 2019 respectively.

I was also asked what assessment was undertaken of the cost or burden on the legal system in the preparation of the bill. As I explained last year, modelling of the impact of this bill was conducted. However, I am now in a position to advise that as part of the midyear review process, the government has committed $12.5 million over the period 2019–20 to 2022–23 to implement this commitment. The figure of $12.5 million includes $12 million in recurrent funding to cover the cost of staff in the adult community corrections and offender management areas of the Department of Justice, the provision of psychiatric reports, accommodation costs, staffing in the State Solicitor's Office, and additional resources to support victims of crime.

The CHAIR: The minister.

Hon SUE ELLERY: Over the period 2019–20 to 2022–23, the funding will be allocated as follows: $1.1 million in 2019–20, $2.5 million in 2020–21, $3.5 million in 2021–22, and $4.9 million in 2022–23, with $0.5 million to be spent on capital investment in 2021–22. Furthermore, Legal Aid WA will receive an additional $1 million from 2019–20 to 2022–23 to provide additional legal services.

Questions were also asked about a situation in which a high-risk offender may apply to the Registrar of Births, Deaths and Marriages to register a change of name. The government is aware—I can recall saying this at the time—of the relationship between the bill before us now and the Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2018, which will require restricted persons to seek the permission of the relevant supervisory authority prior to applying to register and change name. That bill will require a declaration to be signed by the applicant to disclose if they are a restricted person. The failure by a restricted person to seek the consent of the relevant supervisory authority is a criminal offence. The need to make amendments to the bills in question will be determined by which bill is passed by the Parliament first. The Department of Justice, as the agency with carriage of these bills, will monitor the situation and liaise with the Parliamentary Counsel's Office to ensure that an amendment is made to the relevant bill in due course.

I trust that information assists the chamber.

The CHAIR: Members, the minister has tabled the document, and copies have been made available to members in the chamber.

Minister, has the document you have just read from been made available?

Hon SUE ELLERY: I do not mind tabling it.

The CHAIR: I was not going to suggest that you table it, but, if you have no objection, it might be helpful if a couple of copies were made so that certain members will have that information at their fingertips, without waiting for the *Hansard*.

Hon SUE ELLERY: I am happy to do that.

Hon MICHAEL MISCHIN: I thank the minister for that comprehensive response and the provision of information. There are one or two bits that I want to clarify. The instructions to print were given on 23 June 2019, I think. Is that what the minister said?

Hon Sue Ellery: If you will take it by interjection, instruction to draft was 30 January 2019, and instruction to print was 25 June 2019. Sorry; that was 3 January.

Hon MICHAEL MISCHIN: That $25 million is over a four-year budgetary period. Is that right?

Hon Sue Ellery: Yes.

Hon MICHAEL MISCHIN: As far as Mr Dodd is concerned, I think we will get to that when we get closer to clause 118, which deals with declarations and the like. However, as I understand it, none of the offences with which he is currently charged are serious offences within the meaning of the bill that would on their own make him subject to consideration for the measures proposed in the bill, such as either indefinite detention or a supervision or restriction order. Is that correct?

Hon SUE ELLERY: Yes, that is correct.

Hon MICHAEL MISCHIN: Unless any other members have any issues to explore, I propose to pick up where we left off and move the amendment standing in my name at serial 12/1 on supplementary notice paper 137, issue 5. I explained the rationale for my proposal to change the title of the bill when I moved the earlier amendment, which, as I recall, achieved some considerable, but not quite enough, support of the chamber. The purpose of changing the title is to more accurately reflect the sort of offender who will be the subject of this, shall we say, exceptional regime. In the past, we have had the Dangerous Sexual Offenders Act. That act is aimed at sexual offenders who are, within the meaning of that act, dangerous—that is, they continue to pose a clear and present danger and will do so indefinitely in the future unless some restrictions are placed upon them that the authorities think will keep them under control and enable their behaviour in the community to be adequately monitored should they be released at the end of their sentence, or keep them in detention until such a circumstance arises.

Originally, I had intended—in order that the bill will accurately reflect its purpose—that the title be amended to the "High Risk (Sexual and Violent) Offenders Act 2019". The rationale for that was that we have a specific board, which the government had promised when in opposition that it would establish, called the High Risk (Sexual and Violent) Offenders Board. Therefore, it seemed sensible to me that that be reflected in the title of the bill, because that would be descriptive of the sorts of offenders at which this regime is aimed. In my submission, the words "high risk" on their own are relatively meaningless. The person could be at high risk of petty offending, or at high risk of antisocial behaviour that is not criminal. This bill deals with high-risk offenders of a particular class. The title "High Risk (Sexual and Violent) Offenders Act" did not find favour with the government. I understand the government is content with the title of the bill as it stands, and so be it. However, given that the government has said that this bill will merely extend the regime under the Dangerous Sexual Offenders Act, I think that a more descriptive title would be appropriate. The title should also be as short and as pithy as possible. The amendment standing in my name, which seeks to rename the bill the "High Risk Dangerous Offenders Act 2019", will adequately describe that sort of offender. They can be both sexual offenders and violent offenders but they are not the common or garden low-level sexual or violent offenders; they are dangerous, to use common parlance. I believe that would be the appropriate way of describing the act that will bring them under control.

To refresh members' memory, the argument that was put against the proposed change of name was that Parliamentary Counsel tends to choose the name of bills. The government is happy with the name that was chosen by Parliamentary Counsel; therefore, the current title ought to stand. I do not find that a compelling or convincing argument. When I was Attorney General, there were a number of occasions on which Parliamentary Counsel put forward a working title to a bill. I was always in favour of something shorter rather than longer, hence the restraining orders bill was not renamed with the addition of several other words. I am in favour of short titles, because if a bill does not have a short short title, we will shorten it anyway when we refer to it. However, I also believe that the title of a bill ought to be readily descriptive of the subject of the legislation. The proposal in this bill is extraordinary. It involves the maintenance in custody or close supervision of offenders who have completed their sentence and served their time and would otherwise be discharged from any control by the state, but for good reasons need to have some extra measures fixed around them to ensure that they do not continue to offend when they have a demonstrable propensity to do that. Had the Attorney General given some consideration to it—I am not aware whether he has other than to think that that title would do—and had he turned his mind to it, perhaps the minister would be able to say whether he had had any input at all into the title of the bill that he has sponsored in the other place and here. However, I advocate that there ought to be some change to the short title to properly reflect the purpose and mischief that is being solved. Members would notice that there are two other proposals that they might prefer should this one not appeal to them. The second proposal would be "High Risk Violent Offenders Act", which again turns on the question of violent offending, and the last option, which is "High Risk Serious Offenders Act", serious offending being one of the terms that is defined in clause 3 of the legislation and is referred to in clause 7, which also defines what a "high risk offender" is for the purposes of the act. There are a number of options there. Should any one of them be passed, we will need to make some consequential amendments throughout the course of the bill, and we can get to those. But at this stage, I move the motion standing in my name —

Page 2, line 3 — To delete "*High Risk Offenders Act 2019*" and substitute —

High Risk Dangerous Offenders Act 2019

Hon SUE ELLERY: Members will recall that we had a version of this debate, although around slightly different words, when we were last debating this bill and that beyond this amendment in the name of Hon Michael Mischin there are a couple of others that go to the same point, with different variations. The government's position remains unchanged—that is, we do not support a change to the title of the bill for the reasons that I have described previously. Also, advice from the Parliamentary Counsel's Office is that inclusion of terms such as "dangerous" offenders, "violent" offenders and "serious" offenders may be misleading, as the bill does not define any of those terms. Instead, it uses the term "high risk" offender. That having been said, I note that Hon Michael Mischin has further amendments on the supplementary notice paper to introduce and define those terms he intends to include in the title of the bill, but that is for the purpose of changing the title of the bill. We do not see a need to change the title of the bill. There are important matters of public policy contained within this bill and we think our time is better spent discussing those rather than changing the title of the bill.

Hon MICHAEL MISCHIN: I will not take up much more time on this. I agree that there are more important things to get on with, which is why I am surprised the government is not prepared to entertain something that seems self-evident to me. We are dealing with a regime that was called the "Dangerous Sexual Offenders Act" and expanding that by focusing on "danger". In terms of "violent" and "serious" not appearing anywhere in the legislation, I beg to differ. The definition in clause 3, at line 31 on page 3, states —

> ***serious offence*** has the meaning given in section 5;

There is a schedule that refers to what are regarded as "serious" offences for the purposes of the act. As I say, if the word "dangerous" does not appeal, some other term could be used to indicate the gravity of the sort of conduct that would make a prisoner who has served their debt to society in accordance with a sentence of the court to be brought under the control, or to remain under the control, of the authorities of the state. For "violent" offenders, I think that it is self-evident if one looks at the sorts of offences that are contained in "Schedule 1 — Serious offences", in which it states that there are "Offences that are serious offences in all circumstances" and some that are serious if committed in specified circumstances. They all tend to be offences that have some danger to members of the community that take them above and beyond the routine assaults and the like. We are dealing with very serious offences—dangerous offences and violent offences. Therefore, I maintain the motion standing in my name. As I say, there may be a more appropriate term—perhaps "Serious Offenders Act" would fit more comfortably with the bill—but at this stage let us work our way through the options.

Hon NICK GOIRAN: On the last occasion—it was a very long time ago, according to my notes on 24 September 2019—when the government decided that this was a priority piece of legislation, the minister indicated at the time that the government's objection was that the former Chief Justice had some problems with the language in the current act. What are those problems that the former Chief Justice had with the wording in the former act that would continue to exist if we were to agree to this amendment at 12/1 on the supplementary notice paper?

Hon SUE ELLERY: The honourable member is right. I pointed out when I started this debate that we last considered this matter on 24 September. I did, indeed, draw the chamber's attention to the views of the Chief Justice then. They are laid out in *Hansard*. I do not think I need to repeat those.

Hon NICK GOIRAN: If I understand the objection of the government correctly, it was the use of the words "sexual" and "dangerous" that it had problems with as at 24 September 2019. The amendment before us at 12/1 of the supplementary notice paper continues to use that word "dangerous". Why does the government have a problem with the use of the word "violent" or "serious"? The minister has indicated that none of the proposals before us are satisfactory to the government. I do not share the government's view that the use of the words "sexual" and/or "dangerous" are a problem. But it is not clear to me what the problem is with regard to "violent" and "serious".

Hon SUE ELLERY: We had a version of this debate back on 24 September. I indicated in my formal response to the mover of the amendment that I would not be agreeing to this, nor to any of the other variations. The essence of the policy of this bill from the government's point of view is high risk. We think that is adequately covered in the title of the bill.

Hon MICHAEL MISCHIN: I have to say that the minister's justification today—I have already dealt with part of it, that somehow it is inconsistent with the terminology in the bill—does surprise me. It was not an argument that was raised on the last occasion or even before that, during the second reading reply. But I point out for the minister's assistance that the word "violent" does appear in the bill. It appears in the name of the board that is being set up under the bill. In part 2, the High Risk (Sexual and Violent) Offenders Board appears. Not only do we have "serious" in clause 3, but it is one of the thresholds in clause 7(1), which states —

> An offender is a ***high risk offender*** if the court dealing with an application under this Act finds that it is satisfied, by acceptable and cogent evidence and to a high degree of probability, that it is necessary to make a restriction order in relation to the offender to ensure adequate protection of the community against an unacceptable risk that the offender will commit a serious offence.

It is not just any old offence; not a "high risk" offence or high risk of committing any offence, but a "serious" offence. Clause 5 also states —

> An offence against the law of the Commonwealth is a ***serious offence*** if —
>
> (a) the offence is of a sexual or violent nature; …

Therefore, for reasons best known to the government—I can only assume that it is for political reasons—we are trying to keep the title of this bill as anodyne as possible. The government exploited, when in opposition, the fact that dangerous sexual offenders were being released into the community. It loved to do that to unsettle the public. The Chief Justice expressed concern about it because it was hard to explain to the public why the Supreme Court was releasing dangerous sexual offenders under supervision. The government has gone the other way now and is trying to remove the heat and misinform the public to hide the fact that we are dealing with serious offenders, violent offenders, sexual and violent offenders, or dangerous offenders. I think that if members of the public are looking for the law in respect of these high-level offenders who are being kept in custody or under control well after their sentence has been completed, they need to be able to know which bill to look up. The term "high risk offenders" could mean anything, so I maintain the second of my four options and have moved the amendment standing in my name.

Hon AARON STONEHOUSE: I thought I would comment for a moment on the amendment moved just to clarify my views for the sake of the mover. I have some sympathy to amending the name of the bill, although I must admit a certain degree of apathy, as I am not sure what difference it would make at the end of the day. I indicate to the mover of the amendment that I was much more partial to amendment 11/1 on the supplementary notice paper, which was to amend the short title to "High Risk (Sexual and Violent) Offenders Act 2019", for the reasons the member just laid out. It is consistent with the name of the board and consistent with the description of a high-risk offender—that is, someone who commits a serious offence, which is described as an offence that has an element of violence or is of a sexual nature. However, I am racking my brains trying to think whether we had an opportunity to debate that amendment fully many months ago when this bill was brought on initially. If that is the case, it was obviously defeated. I do not see that the term "high risk dangerous offenders" adds anything really substantial to the title of the bill, so I am not inclined to support the revised version of an amendment to the short title, although I am very sympathetic to the original intent and the amendment that was defeated many months ago.

Hon MICHAEL MISCHIN: By way of offering Hon Aaron Stonehouse assistance, the amendment was debated on 24 September 2019 and the honourable member in fact voted in favour of it in the division.

Hon Aaron Stonehouse: It was a much better amendment then!

Hon MICHAEL MISCHIN: Yes, and *Hansard* reveals that the vote was evenly balanced at 13–13, so one short! Anyway, this is the second best and it is still better than nothing.

Division

Amendment put and a division taken, the Chair casting his vote with the ayes, with the following result —

Ayes (16)

Hon Martin Aldridge	Hon Donna Faragher	Hon Michael Mischin	Hon Charles Smith
Hon Jacqui Boydell	Hon Nick Goiran	Hon Simon O'Brien	Hon Dr Steve Thomas
Hon Peter Collier	Hon Colin Holt	Hon Robin Scott	Hon Colin Tincknell
Hon Colin de Grussa	Hon Rick Mazza	Hon Tjorn Sibma	Hon Ken Baston *(Teller)*

Noes (16)

Hon Robin Chapple	Hon Sue Ellery	Hon Alannah MacTiernan	Hon Matthew Swinbourn
Hon Tim Clifford	Hon Diane Evers	Hon Kyle McGinn	Hon Darren West
Hon Alanna Clohesy	Hon Adele Farina	Hon Martin Pritchard	Hon Alison Xamon
Hon Stephen Dawson	Hon Laurie Graham	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*

Pair

Hon Jim Chown	Hon Dr Sally Talbot

Amendment thus negatived.

Hon MICHAEL MISCHIN: Heartened by the last result, Mr Chair, I think we are making progress. We certainly attracted more people into the chamber than on the last occasion. I move —

> Page 2, line 3 — To delete "*High Risk Offenders Act 2019*" and substitute —
>
> *High Risk Violent Offenders Act 2019*

It is not quite as satisfactory as "Sexual and Violent Offenders" but it has that element of violence in it that is reflected in the nature of the sexual offending that will fall within the scope of the operation of the proposed act. This term is reflected in various places throughout the legislation and indeed, once again, in the title of the board that will advise, garner information and assist in the coordination of the authority's supervision and management of these sorts of offenders. I have already been through the argument on earlier occasions and do not need to repeat it.

Hon SUE ELLERY: For the reasons that I have already outlined—I will say this about the next amendment standing in Hon Michael Mischin's name as well—the government will not be supporting this amendment.

Hon ALISON XAMON: I rise to indicate that I will not be supporting this amendment and I will not support the following amendment, both of which seek to amend the title. I will make clear my reasons why, because I have significant sympathy for some of Hon Michael Mischin's arguments as to why it may be desirable to narrow potentially the scope of people who could be captured under the provisions of this legislation. I agree with Hon Aaron Stonehouse that had we been looking to change the title, of the four options presented to the chamber for its consideration, the first amendment, which proposed "High Risk Sexual and Violent Offenders Act 2019" would have been the most desirable and probably the most consistent with the intent of the legislation. I have decided that it is probably fine to stay with High Risk Offenders Bill 2019 because of the way that "high risk offender" is specifically defined under clause 7. It makes reference to a high degree of probability, refers to adequate protection of the community against unacceptable risk and makes specific reference to a serious offence. Taking into account the fact that "high risk offender" is defined specifically in those terms within the bill, I am satisfied that maintaining the current title of the bill will still ensure that those whom the provisions of the bill intend to capture will be maintained. Having said that, I reflect that I have some sympathy for the desire to change the name of the bill, but if that were to occur, the first option that was originally voted on five months ago is the preferred option of the four.

Hon NICK GOIRAN: Will violent offenders be captured by this legislation?

Hon SUE ELLERY: High-risk ones.

Hon NICK GOIRAN: So, high-risk violent offenders will be captured by this legislation but the government does not want the short title of the bill to be the "High Risk Violent Offenders Act 2019"?

Hon Sue Ellery: I have already made my position clear.

Hon MICHAEL MISCHIN: Will nonviolent offenders be captured by this legislation?

Hon SUE ELLERY: Offences that may be deemed nonviolent—for example, sexual offences—will be captured by this legislation. It is arguable whether, by their very nature, they are violent. The issue is not that the bill does not capture violent or sexual offences; rather, the policy at the heart of this bill is around high risk. The government appreciates that people might have a different point of view about the appropriate name for the bill, but it is satisfied with the advice provided that "high risk" best captures the policy of the bill. I am not sure how I can say it in any other way.

Hon NICK GOIRAN: What sexual offences will be captured by the legislation that are not violent?

Hon SUE ELLERY: I just made the point that it is arguable—I take this view—that any sexual offence is a violent offence. It is arguable depending on the nature of the offence. This debate is about the title of the bill and whether it properly captures the broad policy intent that sits behind it. I have made the government's position clear.

Hon NICK GOIRAN: Is it the case that the bill captures certain, but not all, offences in the Criminal Code?

Hon SUE ELLERY: The member well knows that that is the case.

Hon NICK GOIRAN: Of the offences that the bill captures, is it the view of the government that some of those are sexual offences and some are violent offences?

Hon SUE ELLERY: It is made up of sexual and violent offences. I am not sure that this line of questioning takes us any further on what is the appropriate title of the bill.

Hon NICK GOIRAN: Does the government have in its possession a list of the offences that will be captured by the bill that are sexual and those that are violent?

Hon SUE ELLERY: No, they are not separated in a separate schedule.

Hon NICK GOIRAN: Is there a combined schedule that is available?

Hon SUE ELLERY: I draw the member's attention to schedule 1 of the bill.

Hon NICK GOIRAN: The first item of schedule 1 on page 77 refers to "Lighting or attempting to light fire likely to injure". Does the government consider that to be a violent or a sexual offence?

Hon SUE ELLERY: Chair, I am trying to think if there is a way that I can provide an answer to the honourable member that can perhaps be expressed in a different way from what I expressed back on 24 September, or from what I have expressed in the hour we have spent debating the title of this bill so far. I am not sure that there is. The schedule sets out the offences that are captured; those offences fall into a variety of categories. It is the case that violent offences are captured in this bill and it is the case that sexual offences are captured in this bill. It is the case that there are violent sexual offences captured in this bill as well. I think the provisions of the bill are quite clear. I am happy to get into a debate further along in the clauses about any technical aspects that are not clear, but with regard to the schedule as it relates to the title of the bill, the government's position is that the term "high risk" best captures the policy of the bill.

Hon NICK GOIRAN: I do not understand why the minister will not tell us whether "Lighting or attempting to light fire likely to injure" is a violent or a sexual offence. I do not know why that needs to be kept secret from the people of Western Australia before we pass this bill. Nevertheless, since the minister will not tell us if she thinks "Lighting or attempting to light fire likely to injure" is a sexual or a violent offence, can she indicate if it is the government's position that that is a serious offence?

Hon SUE ELLERY: Yes, it is, and that is why it is included in the schedule of serious offences.

Hon NICK GOIRAN: So all the offences that are captured by this bill are serious offences?

Hon SUE ELLERY: By virtue of the definition in the bill.

Hon NICK GOIRAN: Therefore the government will have no problem whatsoever with the amendment at 13/1.

Hon MICHAEL MISCHIN: I have listened with interest to the exchange between Hon Nick Goiran and the minister. I accept that the term "violent" may not be an adequate description, even in short form, of the sorts of offenders who are captured by the bill. I maintain that "high risk" means nothing; they have to be at high risk of something, and this is not a bill about retaining in custody or supervising in the community by stringent orders offenders who are just at a high risk of offending. As Hon Aaron Stonehouse pointed out, the best description would have been "high risk sexual and violent offenders", but that never achieved sufficient favour in the chamber. However, I accept for the purposes of accuracy and precision that "violent" may not embrace the range of offences that might be categorised as serious enough to be included in the schedule of serious offences that the bill is concerned with. With the leave of the chamber, if leave is necessary, I propose to not proceed with the amendment I have moved in my name at 13/1, but I do propose to proceed with the amendment at 14/1, which picks up precisely the terminology used in the legislation. That is the definition that is found in the threshold for being a high-risk offender and is used on numerous occasions in the bill and is, in fact, defined under clause 6 of the bill and reinforced under clauses 3 and 5. However the government might categorise it currently or in the future by inclusion in the schedule, it is the sort of offence that is a serious offence, and I see absolutely no harm in pursuing that amendment and changing the name of the bill to reflect the purpose of the bill—that it deals with high-risk serious offenders and not simply high-risk offenders at large.

With the leave of the chamber I will not proceed with amendment 13/1, but I will be moving amendment 14/1.

Amendment, by leave, withdrawn.

Hon MICHAEL MISCHIN: I move —

> Page 2, line 3 — To delete "*High Risk Offenders Act 2019*" and substitute —
>
> *High Risk Serious Offenders Act 2019*

I point out that although the minister is saying that it is only the title of the bill and that she does not understand what the problem is, the long title of the bill is an aid to interpretation by the courts and states, in part —

> **An Act to provide for the detention in custody or the supervision of persons of a particular class, —**

That tells us nothing—"a particular class" —

> **to repeal the *Dangerous Sexual Offenders Act 2006* and to make consequential and other amendments to various Acts.**

That tells us nothing other than that it is looking at custody or supervision of a particular class of people. We will not find out what particular class of people that is through reference to the short title, either. If we go to the operative clause, clause 7, and the definition under clause 6, supported by the definition under clause 5 and the reference under clause 3, which covers the whole proposed act, we see that we are talking about serious offenders and serious offences. It seems to me that the public ought to be informed—indeed, the offenders themselves ought to know—that they are not simply at "high risk" of burglary, like Mr Dodd, but of serious offending. That is what this is all about; this is an extraordinary regime. It is an unusual regime that is out of the ordinary and, until the

passage of the Dangerous Sexual Offenders Act, it was one that was unknown to the criminal law in this state or in any other jurisdiction in Australia. It was preceded in Queensland, and even then it was subject to challenge. It is important that we differentiate simply "high risk offenders" at large, and specify the sorts of people that we consider ought to be the subject of this regime.

Hon SUE ELLERY: I rely on the remarks I made previously about why the government will not support this amendment. There is an additional issue: "serious offence" is defined differently in different pieces of legislation, and does not have a meaning without definition. There is the very real possibility that this amendment will just add further confusion and potentially be misleading. The substantive argument is that which I have already relied upon. The essence that lies behind this policy is around offenders being high risk, and we believe that the short title covers that.

Hon RICK MAZZA: I rise to say that I will support this amendment. I think the short title of the bill should adequately describe what the bill is about. Schedule 1 is clear in saying that this bill refers to serious offenders. A high-risk offender could refer to a low-level offence that someone is at high risk of repeating. To me, inserting the word "serious" better describes what the bill is about. The amendment before us to alter the short title of the bill to the "High Risk Serious Offenders Act" is a much better description of the bill and anyone at first glance could see that the bill covered serious offences and not just low-level offences that an offender may repeat many times. I will support the amendment.

Hon NICK GOIRAN: I most certainly will support this amendment based on the answers provided by the Leader of the House moments ago. It is clear that the bill captures serious offences. It is also clear that the government has no reason to not support the inclusion of the word "serious". The appropriate short title of the bill is the "High Risk Serious Offenders Act 2019" in all the circumstances, particularly if one is not going to call it the "High Risk (Sexual and Violent Offenders) Act 2019". Earlier when I asked the minister to indicate whether the offences that are captured by this bill are either sexual or violent, the minister refused to do so. She said that there is no schedule available but took me to schedule 1, which, interestingly, is entitled "Serious offences". For all those reasons it is plain that this amendment at 14/1 should be supported.

Hon AARON STONEHOUSE: I am more inclined to support this amendment moved by Hon Michael Mischin, as it seems to better reflect the intent of the bill. As I discussed before, I was not comfortable with amending the short title of the bill to include the word "dangerous" but I was more inclined to support amending it to "High Risk (Sexual and Violent) Offenders". Amending it to "High Risk Serious Offenders" addresses my concern and it is consistent with the bill, as a high-risk offender is someone who poses an unacceptable risk that they will commit a serious offence. It seems entirely consistent and does not diminish the bill in any way. If anything, it provides further clarity and therefore I am happy to support the amendment.

Division

Amendment put and a division taken, the Chair casting his vote with the ayes, with the following result —

Ayes (18)

Hon Martin Aldridge	Hon Donna Faragher	Hon Simon O'Brien	Hon Dr Steve Thomas
Hon Jacqui Boydell	Hon Nick Goiran	Hon Robin Scott	Hon Colin Tincknell
Hon Jim Chown	Hon Colin Holt	Hon Tjorn Sibma	Hon Ken Baston *(Teller)*
Hon Peter Collier	Hon Rick Mazza	Hon Charles Smith	
Hon Colin de Grussa	Hon Michael Mischin	Hon Aaron Stonehouse	

Noes (17)

Hon Robin Chapple	Hon Diane Evers	Hon Martin Pritchard	Hon Alison Xamon
Hon Tim Clifford	Hon Adele Farina	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*
Hon Alanna Clohesy	Hon Laurie Graham	Hon Matthew Swinbourn	
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Dr Sally Talbot	
Hon Sue Ellery	Hon Kyle McGinn	Hon Darren West	

Amendment thus passed.

Postponed clause, as amended, put and passed.

Postponed clause 2: Commencement —

The clause was postponed on 24 September 2019.

Hon NICK GOIRAN: Clause 2(b) allows sections other than part 1 to become operative upon proclamation. What is the intended date of proclamation for each of the parts 2 to 10?

Hon SUE ELLERY: It is intended that the provisions of the bill will all come into play at the same time. There is a need to address some key operational matters such as the board and, prior to the provisions of the bill coming into operation, regulations need to be drafted to designate public sector bodies as either a relevant agency for the purpose of the board or a supporting agency for the purposes of sharing information about high-risk offenders, and prescribed commonwealth section 1 violent offences as serious offences for the purposes of this regime. There will be a short period between royal assent and the provisions of this bill coming into operation. The provisions of the Dangerous Sexual Offenders Act and the Sentence Administration Act in relation to post-sentence supervision orders will continue to apply in the meantime and the government will ensure that the high-risk offenders regime is set up as expeditiously as possible.

Hon NICK GOIRAN: Clause 2(b) states —

> the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

The minister just indicated that the government wants it all to happen at the same time, so why is it necessary to allow for different days to be fixed for different provisions?

Hon SUE ELLERY: The clause was drafted in that way to give maximum flexibility in the event that there was some particular part that we thought we needed to continue to work on but the rest of the bill could come into play. However, work has progressed well and it is the government's intention that the whole bill will now come into operation at the same time.

Hon NICK GOIRAN: Given that this bill was last before us on 24 September and it is now 11 February, what is the expected time frame between assent and proclamation?

Hon SUE ELLERY: As quick as possible. We are aiming for the middle of the year.

Hon NICK GOIRAN: Will the government proclaim the operative provisions prior to the passage of the Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2018?

Hon SUE ELLERY: It is our intention to proceed with this bill. It is our hope that the births, deaths and marriages bill will pass quickly as well and that the government can make the required amendment that we talked about when we last debated this bill back in September last year. It is our intention and hope that we can do that quickly as well, but we will proceed with this bill and aim for the time line of the middle of the year.

Hon NICK GOIRAN: In the event that the births, deaths and marriages bill is not in a position to commence, will that in any way delay the proclamation period for this bill?

Hon SUE ELLERY: No.

Hon AARON STONEHOUSE: I indicate for the benefit of members that I do not intend to move the amendment standing in my name on the supplementary notice paper, as an amendment with preferable wording and a similar outcome is on the supplementary notice paper under the name of Hon Michael Mischin, so I will leave it for him to move his amendment.

The DEPUTY CHAIR (Hon Adele Farina): Thank you very much, honourable member.

Hon MICHAEL MISCHIN: I move —

> Page 2, after line 7 — To insert —
>
> (ab) section 90A — on the day after that day;

The point of this amendment is to require a review to commence within a period after the legislation comes into effect, albeit that all parts of it may not be operating at that time. The bill does not currently provide for a review. Members will see an amendment further down on the supplementary notice paper that intends to insert clause 90A into part 8 of the bill, under the general provisions. This review clause will ensure that the legislation is considered and that its operation can be adjusted at some appropriate time in the future. I will not get into the terms of the proposed review clause, but essentially it will operate five years after the commencement of the operation of the act in order to check its progress and see whether it needs to be improved in a variety of ways and so forth. We can argue about the length of time and the precise terms of that review clause when we get to it. The important thing in my view, and I think Hon Aaron Stonehouse probably supports this, is that the legislation should be reviewed at a certain time in the future, even if elements of it are not operative, to determine why that might be the case and whether any changes to the regime may be necessary. The countdown obviously should not be from the time the bill is proclaimed but from the day after that, so that we can see in five years or whatever time is agreed by the chamber whether the legislation is doing what it was intended to do or whether any changes are necessary to enable it to achieve the purpose proposed by the government.

Hon SUE ELLERY: The government has every intention of ensuring that all the provisions come into operation as quickly as possible. I just outlined to Hon Nick Goiran some of the issues around the timing. We do not think there is any need for the amendment; however, we do not think it does any harm, so we will not oppose it.

Amendment put and passed.

Postponed clause, as amended, put and passed.

Postponed clause 3: Terms used —

The clause was postponed on 24 September 2019.

Hon MICHAEL MISCHIN: There are amendments standing in my name on the supplementary notice paper at 16/3, 17/3 and 18/3, which I foreshadowed should the amendments to clause 1 and the short title of the bill be effected. Plainly, amendment 16/3 is now inappropriate, as is amendment 17/3. The purpose of amendment 18/3 is to now reflect, once again in the definitions, the fact that this bill proposes to deal with "high risk serious offenders". At the moment, clause 3 has a definition of "high risk offender", which reflects the original title of the bill and states that it has the meaning given in clause 7 of the bill. Clause 7 explains the term "high risk offender", which then ties in with other references in the bill. As a matter of consistency, I will move that we amend the description to ensure that the reference to any offender that falls within this legislation is to a "high risk serious offender". I move —

> Page 2, line 26 — To delete "***high risk offender***" and substitute —
>
> ***high risk serious offender***

Consequential amendments will need to be made throughout the bill to that effect.

Hon SUE ELLERY: It makes sense to agree to this amendment, so the government will not oppose it.

Amendment put and passed.

Hon NICK GOIRAN: I have an amendment standing in my name, and I will get to that in due course. I draw to the attention of the chamber that earlier today, the minister tabled a document entitled "Dangerous Sexual Offenders Act 2006 and High Risk Offenders Bill 2019". The subtitle is "Comparison of provisions: Prepared by Parliamentary Counsel's Office". That document sets out the government's view about which clauses of this bill will make either minor or significant changes to the Dangerous Sexual Offenders Act 2006.

The first significant change that is listed is the change to clause 3, "Terms used". The minister also took the opportunity to provide some information about clause 3. I am grateful that the minister has made available to us her notes. I will read from those notes the government's remarks with regard to clause 3 —

> Firstly, there are significant differences between section 3 of the *Dangerous Sexual Offenders Act 2004* and the Bill.

I pause there for a moment. Maybe someone can correct me if I am wrong, but I was of the view that the correct date is 2006, not 2004. It might just be a typographical error. It continues —

> Numerous concepts have been replaced, often with expanded concepts, including:
>
> - **Offender**, which has been expanded to include not only a person who is under custodial sentence (as at present) but also a person who is subject to restriction under this Act.
> - **Serious danger to the community** is dropped; instead it is "wrapped up" in the new concept of **high risk offender** as I have previously discussed.

That will now be "high risk serious offender". It continues —

> - **Serious sexual offence** is replaced with the (wider) **serious offence**. This has a corresponding broadening effect on concepts like **serious offender under custodial sentence**, **victim** and **high risk offender**, and of course indirectly on all provisions employing these terms.

I thank the government for providing that useful explanation about the extent to which clause 3 will make significant changes to section 3 of the Dangerous Sexual Offenders Act 2006.

I now move to that part of clause 3 that has caused me some concern and is the genesis of the amendment that stands in my name, which I propose to move shortly—namely, "relevant agency". It states —

> ***relevant agency*** means any of the following —
>
> (a) the Department;

I presume that is the Department of Justice —

(b) the department of the Public Service principally assisting in the administration of the *Health Services Act 2016*;

I presume that is the Department of Health —

(c) the department of the Public Service principally assisting in the administration of the *Housing Act 1980*;

I gather that nowadays that would be the massive Department of Communities, but I stand to be corrected if that is not right —

(d) the department designated as the Police Service;

I assume that would be the Western Australia Police Force —

(e) the Police Force of Western Australia provided for by the *Police Act 1892*;

(f) any other public sector body designated by the regulations as a relevant agency;

My questions to the minister are, first, what is the difference between paragraphs (d) and (e); and, secondly, what other public sector bodies are intended to be noted by the regulations?

Hon SUE ELLERY: In my response I will canvass the breadth of the issues that I think go to the heart of the member's proposed amendment. First, I draw the chamber's attention to what is indeed a typographical error in the notes that I handed out earlier. The date of the Dangerous Sexual Offenders Act should be 2006, not 2004.

The reason that we want to include "any other public sector body designated by the regulations as a relevant agency" is that we want to be able to capture any other agency that might be from time to time deemed to be relevant. It is also important to take note of the machinery-of-government-type changes that happen from time to time. The drafting view was that it is preferable to allow for prescription of those bodies rather than to legislate. To give the member an example, the Attorney General has given an undertaking to appoint the Commissioner for Victims of Crime to the High Risk (Sexual and Violent) Offenders Board, and that would be achieved through regulations.

With respect to paragraphs (d) and (e), the difference is between uniformed and non-uniformed employees of the police force. The government desires to have both represented on the board.

Hon NICK GOIRAN: I understand that the intention is to include the Commissioner for Victims of Crime. Therefore, why not include the commissioner under the definition of "relevant agency"?

Hon SUE ELLERY: The Commissioner for Victims of Crime is not established by statute anywhere. The position exists, and people are in that position. It is a public service position. As I said earlier, the drafting will enable the government to make decisions from time to time such as that and establish a position that would provide relevant information and assistance in making the deliberations. It is important that we are able to capture those sorts of positions.

Hon NICK GOIRAN: Would the Commissioner for Victims of Crime be captured by paragraph (f), "any other public sector body designated by the regulations as a relevant agency"?

Hon SUE ELLERY: That position would be captured by creating, through the regulations, an extra seat at the table, if you like, for the Department of Justice. The government's undertaking is that that seat will be filled by the Commissioner for Victims of Crime.

Hon NICK GOIRAN: Who will be considered for inclusion in the regulations as specified in paragraph (f)? We know it is not the Commissioner for Victims of Crime, because, as the minister has indicated, the commissioner is not an agency per se or a public sector body, and another mechanism is available—namely, the other bodies or agencies that are set out in lines 14 to 23 at page 3 of the bill. Who does the government intend to capture in paragraph (f); and, if it is nobody, why not just delete lines 24 and 25?

Hon SUE ELLERY: I thought I explained this before. Paragraph (f) is a catch-all in the event that another body such as the Commissioner for Victims of Crime is considered to be appropriately represented. However, I am not sure whether I properly understood the member's question because I had said that before. Perhaps I will get the member to repeat his question.

Hon NICK GOIRAN: Perhaps the confusion arose because when I asked last time about paragraph (f), the Commissioner for Victims of Crime was mentioned. A further exchange took place and it became clear that the Commissioner for Victims of Crime is neither a relevant agency nor a public sector body, so we were not helped by that. The Commissioner for Victims of Crime is not an example of why paragraph (f) is required. Somebody else, something else or some other public sector body must be being thought of for why we need paragraph (f).

Hon SUE ELLERY: I need to be absolutely clear whether the honourable member's question is about the Commissioner for Victims of Crime. I am advised that one way that that could be considered—bear in mind that the regulations have not been drafted yet and that Parliamentary Counsel is still considering how they might be

drafted—and one way of drafting it and relying on paragraph (f) to capture the Commissioner for Victims of Crime would be to refer to the public sector body designated to principally assist in the administration of the Victims of Crime Act. However, I hasten to put this caveat around it: Parliamentary Counsel has not landed on whether that is in fact the best way to capture it. But the advice and thinking right now is that the department sits at the top, as in paragraph (a), and the role of the department is with respect to this piece of legislation. The way to bring on board the Commissioner for Victims of Crime would be to specifically talk about that department, which in this case is still the same department but in its capacity of responsibility for administering the victims of crime legislation.

Hon MICHAEL MISCHIN: I did not intend to engage in this particular issue, but I want to understand how that will work. Relevant agencies—correct me if I am wrong—are those that participate, essentially, to provide membership on the board; is that right?

Hon Sue Ellery: I am sorry; I was getting advice.

Hon MICHAEL MISCHIN: The term "relevant agency" is material to the membership of the High Risk (Sexual and Violent) Offenders Board; is that right?

Hon SUE ELLERY: That is correct.

Hon MICHAEL MISCHIN: Further down is another set of agencies, which are supporting agencies, and those are the ones that will need to exchange information; is that right?

Hon SUE ELLERY: That is correct.

Hon MICHAEL MISCHIN: In terms of the membership of the board, clause 17 states —

> (1) The Board is to consist of —
>
> (a) for each relevant agency —
>
> (i) the chief executive officer or chief employee; or
>
> (ii) a member of staff …

The department is already a relevant agency, so, to me, there is no need to have paragraph (f) for "other public sector bodies". I do not know whether I have missed something—I am sorry—or whether the Commissioner of Victims of Crime is the most apposite example. I believe that she has been the acting victims of crime commissioner—a very experienced one—for the last two or three years, but that she would be able to be appointed to the board because she is a member of staff of the relevant agency. I accept that circumstances change and that someone, or some other agency, a public sector body, may need to be part of the board, but what other contribution would the government need in addition to the department administering health services, the Department of Justice with its corrective services and Attorney General responsibilities, the department dealing with the administration of the Housing Act, and the department designated as the police service and the police force, to select those agencies and what would we look at for the purpose of prescribing regulations so they could be included as members of the board as opposed to simply supporting agencies?

Hon SUE ELLERY: There are a couple of things at play here. Firstly, there is a catch-all provision in paragraph (f) that gives the government of the day the flexibility to deal with, for example, any machinery-of-government changes that might split departments or create new departments to deal with something that is relevant to the consideration of the board. Secondly, in a more practical sense, subsequent to the commitment given by the Attorney General that the Commissioner for Victims of Crime should also sit on the board, it is the government's intention—and it is entirely appropriate—that paragraph (a) under "relevant agency" should capture the Department of Justice. The appropriate officer to represent that department on this board is the Commissioner of Corrective Services. If we were to just use paragraph (a) to put the Commissioner for Victims of Crime there, we would essentially be bumping off the Commissioner of Corrective Services. Therefore, in a practical sense, paragraph (f) could also be used. I hasten to reiterate the caveat I gave Hon Nick Goiran: this is Parliamentary Counsel's thinking right now, but that might change when it gives it greater consideration. Right now they are thinking that in practical effect to get the Commissioner of Victims of Crime onto the board we must rely on paragraph (f) and specifically designate the person who has responsibility for the victims of crime legislation. We are actually talking about paragraph (f) as a general catch-all provision. I gave a specific example about how we might use it to give practical effect to getting the Commissioner of Victims of Crime on the board.

Hon NICK GOIRAN: Could the Commissioner for Victims of Crime be appointed as a community member?

Hon SUE ELLERY: I think it is an interesting question, and perhaps the answer is theoretically yes, but in clause 18, which sets out the community members on the board, we are looking for specific circumstances. In a policy sense, I think members of the community would perhaps feel a bit aggrieved that a senior public servant with responsibility for very important legislation was representing the community and not the legislation for victims of crime. Although

it is an interesting question and theoretically its premise might be possible, I am not sure it would be desirable. A better way to proceed would be to have the Commissioner for Victims of Crime present in their own right. That would go to the status and functions of the position and it would be appropriate that that person be on a board of this nature. That would then not diminish any of the characteristics we are looking to make sure are represented by community members.

Hon NICK GOIRAN: I agree with the minister. I think it is technically possible to appoint the commissioner as a community member, but I do not think it would be good practice to use that provision. I wonder whether consideration has been given to the form of clause 17, which is about the membership of the board. If that clause had been drafted in a different way, we would not need paragraph (f) under "relevant agency" on page 3. By way of explanation, paragraph (f) of "relevant agency" on page 3 is, as the minister says, the catch-all definition of "relevant agency", giving the power to the government to designate any other public sector body by way of regulation, even though none have been necessarily identified at this stage other than with regards to this issue of the Commissioner for Victims of Crime. Clause 17(1)(a) states that the board is to consist of relevant agencies, and those relevant agencies will be represented by the chief executive officer, the chief employee or a member of staff from the agency. It seems to me that at clauses 17(1)(a) and (2) there is a way of ensuring that the relevant agency can have its chief executive officer on the board and/or a member of staff; it does not necessarily need to be either the chief executive officer or the member of staff. Clause 17 could be crafted in such a way that it gives the government of the day the flexibility, as the minister says, to have one or both people there as it deems fit. That could be done quite simply at clause 17, and we would then not need paragraph (f) of "relevant agency". I think that would be a better piece of lawmaking as it would provide all the flexibility the government says it needs for the formation of the board, but it would also make sure that we are very clear about who can be involved as a relevant agency. I have pointed out to the minister that this is not just an issue of the membership of the board, because I understand that the bill also refers elsewhere to information that can be exchanged between relevant agencies. I wonder whether that is something the government might look at—in other words, to delete lines 24 and 25 at page 3 and in lieu of them adding the flexibility in clause 17.

Hon SUE ELLERY: I thank the honourable member for his consideration of those relevant clauses. It achieves part of what we might need to do. If we took the course of action that the member is suggesting, it would give capacity to appoint multiple people from one agency, but it would not address when machinery-of-government changes create new agencies that the government of the day deems are appropriate to be on the board. It does not give us that, so our view is that paragraph (f) as currently drafted gives us the most flexibility to deal with the issues the member has just talked about—that is, the issue of the victims of crime, if that is the path parliamentary counsel thinks is the best way to proceed—and it also gives us flexibility in the event that new agencies are created through further mergers in what essentially would be more machinery-of-government changes. This is the best way to capture all of those elements.

Hon MICHAEL MISCHIN: While we are on the subject of these relevant agencies, I asked a question before, and we did not quite get to the answer. These are agencies that are essentially concerned with directly assisting the functions of the board, the most material ones being the gathering of information, expertise in the assessment and management of offenders, coordinating the exchange of information and things of that nature, because the board does not have any power to do anything itself in respect of offenders. We are looking at the Department of Justice, which is fair enough, and whatever hat it is wearing, whether it is corrective services, justice administration, health services, housing, police and others. There is a specific requirement that the Chief Psychiatrist or a representative be on that board as a member, not as a relevant agency. There is also paragraph (b) of "relevant agency", which is "the department of the public service principally assisting in the ministration of the Health Services Act 2016". I can understand why that might be the case, because offenders have a variety of health issues or substance abuse problems that may flip-flop or overlap between being mental health and general physical health, but the Health Services Act would not include mental health services, would it?

Hon SUE ELLERY: The Department of Health is responsible for, for example, the Frankland Centre, which is the secure facility at Graylands Hospital. The Mental Health Commission might come to mind but it is a policy arm, not a service delivery arm, but the Chief Psychiatrist is there to provide professional advice about service delivery and all other matters related to mental health.

Committee interrupted, pursuant to standing orders.

[Continued on page 28.]