

## DOMESTIC HOMICIDE

### *Statement*

**HON MICHAEL MISCHIN (North Metropolitan — Attorney General)** [9.51 pm]: Yesterday I commenced correcting certain misinformation that had been provided to the house in respect of two prisoners serving terms of life imprisonment for the wilful murder of their former partners. I dealt with one of them, and I move on to the second one, who is identified as Robyn Buller, or Robyn Westgate as she was formerly known. Hon Sally Talbot had referred to the contents of a so-called “Background” document that had been distributed by a group called Social Justice Alliance. This is what Hon Sally Talbot said was contained in that document about that particular case —

Robyn Buller was the victim of family and domestic violence including sexual assault at the hands of her husband Dave Buller. This was perpetrated over a period of many years. After a particularly horrific assault, Robyn decided to end her own life. The gun she intended to use accidentally fired killing Dave Buller who was asleep in the bedroom. Robyn concealed the crime from Police.

The facts as established at the trial—because those facts, by no means, could ever establish a conviction for murder, and so are simply incorrect or at least a version that those in support of this prisoner would prefer were the facts rather than the ones that were proven at trial and established the elements of the offence—were as follows. This lady was convicted of wilfully murdering her husband on 26 June 1999. It was committed while her husband was sleeping, and according to the sentencing comments made by His Honour Justice Scott at the original trial—because there was a retrial—the offence involved a significant degree of planning. Her evidence that the gun used to shoot her husband was discharged accidentally following a failed —

### *Point of Order*

**Hon SALLY TALBOT:** May ask I Hon Michael Mischin to identify the document he is reading from, and to table it?

**The PRESIDENT:** You can ask, yes.

**Hon MICHAEL MISCHIN:** These are notes that have been prepared for my benefit so that I can make the remarks I am making. What I am saying will be produced in *Hansard*.

**Hon SALLY TALBOT:** Could I ask Hon Michael Mischin to table the document?

**The PRESIDENT:** You can ask, but the Attorney General has identified the document that he is quoting from. It is at the minister’s discretion whether he tables that document.

**Hon MICHAEL MISCHIN:** I will give consideration to that, but as I say these are notes that have been prepared from other documents.

**Hon KEN TRAVERS:** On the point of order, my recollection of the standing orders is that the member needs to identify whether they are confidential or not; it is not whether he gives consideration. He needs to state clearly whether they are or are not confidential documents, and if they are not confidential he would be required to table them.

**The PRESIDENT:** Let us have a look at standing order 59(1), which reads —

- (1) A Member must identify any document quoted from by the Member in debate, including an uncorrected version of *Hansard*.
- (2) At the conclusion of a speech in which a Member has quoted from a document, the document shall be tabled upon the request of any other Member, unless the Member states the document is a confidential document.

The position is that it is in the Attorney General’s hands as to whether or not he claims confidentiality.

**Hon Ken Travers:** Yes, but he needs to make that claim.

**Hon NICK GOIRAN:** Mr President, on this point of order, can I say a couple of things? First of all, as per usual we have Hon Ken Travers trying to interject when you are making an order from the chair. This happens repeatedly with members opposite and it needs to stop. The second thing, Mr President, is that with regard to this matter, before we start creating a dangerous precedent, I have witnessed over the last five years members on the other side in particular reading ad nauseam from their speech notes and I have never once taken them to task on it. If we want to make a dangerous precedent today and suggest that someone reading from their speech notes needs to table them, then I am going to ensure that I do that every time I see it from members opposite. I believe

that if a member has some speech notes, they are confidential by their very nature; they are notes for the member for their own confidential purposes and they ought never to be tabled.

**The PRESIDENT:** That is a point of view, not a point of order, and we are not going to have a debate on that issue now. If members want to have a debate on that, we can have a debate on standing orders. The standing orders are quite clear. A request has been made for the member to identify the document first and to table that document. The member has identified his document and he has reserved his judgement as to whether he is going to table it at the end. So, let us wait until he has finished his comments and see what his position is.

**Hon SALLY TALBOT:** A point of order.

**The PRESIDENT:** Another point of order?

**Hon SALLY TALBOT:** Yes. I thank you, Mr President, for that ruling but point out to Hon Nick Goiran that it is a completely different standing order that covers —

**Hon Nick Goiran:** Is this a point of order or are you giving a point of view again? You were just asking —

**The PRESIDENT:** Order! I cannot hear, I am sorry. I will have to ask the member to say that again and make sure it is a point of order and not a point of view.

**Hon SALLY TALBOT:** I just make the point, Mr President, to Hon Nick Goiran that the standing order covering members not reading their speeches is completely different from the standing order requiring them to identify the document and then to table it. I made that distinction and I would expect Hon Nick Goiran to. I am not accusing Hon Michael Mischin of reading his speech. I want to know what he is reading from and I want him to table the document.

**The PRESIDENT:** Order! That is also a point of view and, as I said, we are not going to enter into a debate on various points of view.

*Statement Resumed*

**Hon MICHAEL MISCHIN:** From the sentencing comments made by His Honour Justice Scott in the original trial, the event involved a significant degree of planning. Her evidence that the gun used to shoot her husband was discharged accidentally following a failed attempt to kill herself was rejected both at the original trial and at the retrial that was held following her successful appeal against the first hearing. During his sentencing remarks following the retrial, Justice Scott provided comment on Ms Buller's role in the offence, and I quote, according to my notes —

... the crown case against you was absolutely overwhelming. I don't accept that you attempted to commit suicide at all. I find that you put the rifle within five centimetres of the head of your late husband and discharged the rifle with the intention of killing him ... I have read the three additional victim impact statements and taken them into account. They tell of the additional anguish caused to the members of your late husband's family by reason of the fact that there has been a retrial and they have had to sit through the turmoil and the horror of a retrial and to have seen on a television screen, as the jury saw, the representations of what happened to Mr Buller's head when you fired the rifle into it ...

She was sentenced on the basis that she intended to kill her husband and, having done so, had taken considerable effort to conceal her involvement in the crime, including an attempt to dispose of his body, destroying evidence and lying to the police. A petition for the exercise of the royal prerogative of mercy was presented. I notified Ms Buller in December 2012 that I was not persuaded, after an analysis of the evidence and the material that had been put forward on her behalf, that there had been any miscarriage of justice that would lead to reconsider the case by way of a further appeal, and my view remains the same. It is on the basis of those two utterly wrong summaries of the circumstances of those two serious cases of murder that Hon Sally Talbot put forward an argument that the law had changed and that somehow the results would have been different and that there were defences available to these two women that were not available at the time of their trial, and that they had served their time. I remind Hon Sally Talbot that the service of a term of life imprisonment is life—not somewhere in between. Although there may be an eligibility for consideration for release on parole, that is a matter that is dealt with after that minimum term is completed and upon satisfactory behaviour in prison, and upon an assessment that they pose no further danger to the community. That is a separate issue. The argument that has been advanced is that there was a miscarriage of justice in each case. What has been put to this place has been an erroneous, if not to say misleading, set of circumstances that do not reflect the matters proved at trial. Hon Sally Talbot concluded —

It seems very clear—I am sure there will not be anyone in this chamber who will disagree with me when I say this—that there is a very real sense in which it is unjust to keep these two women in prison.

She does that on the basis of two sets of circumstances that are not reflected by the evidence that was presented at trial and that would not have resulted in a conviction for the charges for which these ladies are serving a term of imprisonment for wilful murder, and she has attempted to persuade this place that something is fundamentally wrong with the way that the administration of justice has been exercised.

I accept that both these women have used their time in prison to make changes to their lives, and for the better. That is commendable. That is not unusual in many cases. However, that is not a sufficient basis to relieve a person from the consequences of their convictions after due trial, after those convictions have been tested on appeal, and there has been a request for the exercise of the prerogative of mercy to interfere in the due process that has already been carried out.

The mischief in this case, and the reason that I felt compelled to say something about this, is that domestic violence is of course a most serious issue for this community. I am proud to say that this government has made considerable efforts over several years to address that. There is currently a reference with the Law Reform Commission of Western Australia into domestic violence and how that may be addressed by legislative changes. I am awaiting a report on that. There have also been expansions in funding to family violence services and the like. It is too important an issue to become a political plaything of pressure groups that advocate for particular prisoners and put distorted versions of the facts to members of Parliament, who are prepared to repeat those uncritically, without analysis and without trying to find out what the true story is, in order to persuade this house to a particular view. It is not acceptable, no matter what the circumstances, to have a self-help scheme of committing homicide against others. The law, which has been in place for some time, has been refined, but is nevertheless one that attempts to maintain a sense of standard in the community where murders are not committed and then attempted to be justified after the event.

The debate on this very important issue has been cheapened and a disservice has been done to the issue of domestic violence in this case. It is simply deplorable that a member should come along and make these statements on behalf of pressure groups without even making an attempt to find out whether those versions of events are what actually happened and the basis for a conviction, rather than the version that people would like to have been the case. I think Hon Sally Talbot has done this place a considerable disservice.

It also may not have worked to the advantage of these two ladies, because things have been said on their behalf by those advocates that may very well differ from their own views. They will put up material that will go to the Prisoners Review Board and, in due course, form the basis of a recommendation to me. I will now have to compare what these pressure groups have said on their behalf and have claimed that they have put forward, against the material that is provided to me by the Prisoners Review Board. An important element in considering whether someone is ready for release into the community after serving a period in custody for a serious offence is their level of remorse, contrition and a recognition of their responsibility for a serious crime.

*Tabling of Papers*

**Hon SALLY TALBOT:** I request that Hon Michael Mischin table the document he was reading from.

**Hon MICHAEL MISCHIN:** I am happy to do so. Not all of it has been referred to.

**The PRESIDENT:** Let me make the point that standing order 59 refers to documents quoted in debate. Notes compiled and used by a member as an aide-mémoire to a speech do not really constitute a document. What we are talking about here is newspaper articles or reports used by members in making a speech, so I think it would be wise for members to keep that in mind for future reference.

**Hon MICHAEL MISCHIN:** One thing that I was quoting and am happy to table is the two pages of *Hansard* of Hon Sally Talbot from a previous occasion.

[See paper 1450.]