

STANDING COMMITTEE ON LEGISLATION

SENTENCE ADMINISTRATION AMENDMENT BILL 2017



TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 11 OCTOBER 2017

Members

Hon Dr Sally Talbot (Chair)
Hon Nick Goiran (Deputy Chair)
Hon Colin de Grussa
Hon Simon O'Brien
Hon Pierre Yang

Hearing commenced at 10.11 am

Mr STEPHEN ARTHUR BROWN

Deputy Commissioner, Specialist Services, Western Australia Police, sworn and examined:

Mr PRYCE SCANLAN

Commander, State Crime, Western Australia Police, sworn and examined:

Mr RICHARD SIMS

Principal Legislative Project Manager, Western Australia Police, sworn and examined:

The CHAIR: As you are probably very well aware, we have some formalities to go through before we kick off. Bear with me while I go through this. On behalf of the committee, I would like to welcome you all to the meeting. Before we begin, I must ask you to take the oath or the affirmation.

[Witnesses took the oath.]

The CHAIR: You will have all signed a document entitled "Information for Witnesses". Have you read and understood that document?

The WITNESSES: Yes, we have.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, would you please quote the full title of any document you refer to during the course of this hearing for the record and please be aware of the microphones and try to talk into them. Make sure you do not cover them with papers or make noises near them. I am sure you will be very disciplined about this, but please try to speak in turn. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Let me start by asking whether all or one of you would like to make an opening statement to the committee.

Mr BROWN: Chair, maybe I could take that opportunity and make a brief opening statement on behalf of the Western Australia Police. It is the WA police force view that the Sentence Administration Amendment Bill 2017 is in the interest of the achievement of justice, and we support its enactment. I also note that the WA police force was consulted in the drafting of the proposed amendments. The WA police force recognises this bill as being of the greatest significance for a victim's family. It will go some way to enable these families to achieve a greater degree of closure by knowing the final location of their loved one and even potentially being able to have their remains recovered and be able to lay them to rest. It should be noted that this legislation will apply to only a very limited number of cases. In the overwhelming majority of homicide cases, the body of the victim has been located. On average at any one time, there are approximately 10 cases where a person has been convicted of homicide or a homicide-related offence and the whereabouts of the body of the victim remains unknown. Nevertheless, it is believed that this legislation will improve

the potential for the recovery of a victim's remains or for the identification of the last known location of the victim. That is our opening statement. Thank you for the opportunity.

The CHAIR: Thank you very much. We do note your submission to us and we thank you for that, and particularly the details about some of those points that you have just made. Deputy commissioner, I know that one of the things that interested the committee was the role of the police commissioner in the existing parole framework, particularly in the light of the fact that the report from the commissioner is part of the board's process, and yet it may be a person with whom you have not had conduct for many years since they were sentenced. Would you like to start by giving us an outline of the police commissioner's role in the existing parole framework?

Mr BROWN: Maybe I could look to my left or my right. They might be able to speak to that.

Mr SIMS: No, sorry; I have no background with the Sentencing Act I am afraid.

Mr BROWN: Are you the same?

Mr SCANLAN: No, not in relation to parole.

The CHAIR: Is a report provided to the board by the police?

Mr BROWN: I am unsure.

Mr SCANLAN: I would be unaware in relation to the Sentencing Act and the role of the commissioner. It is not something I have been involved in.

The CHAIR: Okay. We might come back to that. The bill that we have under consideration proposes a new role for the police commissioner under new section 66C, providing a report on the prisoner to the board under four separate criteria. Should I go through those four separate criteria?

Mr BROWN: Yes.

The CHAIR: The first is the nature and extent of the prisoner's cooperation; the second is the timeliness of the prisoner's cooperation; the third is the truthfulness, completeness and reliability of any information or evidence provided to the prisoner; and the final one is the significance and usefulness of the prisoner's cooperation. Can all or one of you talk about how it is envisaged that that evaluation of the cooperation will be carried out?

Mr BROWN: Pryce?

Mr SCANLAN: We would envisage that the majority of the work done in relation to the report prepared for the commissioner would be done by our homicide squad and also our cold case homicide squad. They are predominantly involved in the investigations. Investigators would provide the information up through to the district or divisional management teams, where we would be able to take on notice what the offender or the accused people have actually told us and how much information they have actually provided that has enabled us to either locate the victim, or their efforts. I can talk about one case recently. We do have a body that is missing down in the forest area south of the metropolitan area. The person has taken us out there twice to try and locate the body. However, due to the passage of time, we have been unable to locate that body. So in those circumstances, where we have those people coming forward and making great effort to provide us with the information we require, that would be provided in the report. Predominantly the information would be coming from our senior investigating officers in charge of the investigation, up through to our divisional management teams, and provided to the commissioner in a report format in respect of each of the accused persons.

[10.20 am]

Hon NICK GOIRAN: How do you know that the location that they are taking you to is the right one?

Mr SCANLAN: It would, I guess, depend on the information provided by the accused. A lot of the time our investigators work on their gut feeling as well and what we are actually being told. Where it is likely that the body has been disposed, you would have to take into consideration the information they have provided and the fact that they are able to provide some corroborating form of evidence. For instance, before you went to the location, they would be asked to please provide a description of that location to us, and they are able to provide some great detail around the actual location. We would have to evaluate each on its merits on what they are telling us and what the investigators are able to glean from other evidence that is provided to us during the course of any other investigation.

Hon NICK GOIRAN: Sure, because if this bill becomes law, WA Police will have to provide a report to the Prisoners Review Board and they have to indicate whether they are satisfied that the prisoner has cooperated. That satisfaction surely has to be at a higher level than a gut feeling by the relevant officers.

Mr SCANLAN: And that is when I talk about the extra corroboration that they might be provided during the course of any investigation. For example, where we have a telephone intercept in place during the course of an investigation, they might have indicated where the body may have gone but they have not exposed the exact location. Where we have got that type of information and then we get taken down to, for example, the forest area to have a look for the body, that is corroborated in some form. So we would have to make sure that any of the information that is being provided by these accused people is in some way corroborated.

The CHAIR: I guess the category that Hon Nick Goiran has raised is somebody who appears to be cooperating but for some reason is not able to lead you to discover a body. What about the case where somebody does not know? Can you give us any accounts? Can you put a narrative around what happens with the assessment of somebody's level of cooperation when the conclusion of the investigating officers is that they do not know?

Mr SCANLAN: There are a couple of examples I could use. I was talking about one this morning. We have not found the body of Richard Cotic, who was murdered in Geraldton some time ago. The offenders for that were Steve Southam, Paul Zaghet and John Hobby. The reality is that the murder was probably undertaken by Steve Southam and Zaghet, but John Hobby disposed of the body. Now, we have never been advised as to where the location of that body is, so those two people who have been convicted of murder highly likely do not know the location of where the body was placed. Their information that they have provided to us would be that, yes, we murdered the person. The person who disposed of the body was, say, John Hobby. So he is the person. They have pointed us in the direction and provided us with as much information as they possibly could.

The CHAIR: So an assessment could be done that gave them, metaphorically speaking, 10 out of 10 for cooperation, despite the fact that there was no recovery of a body?

Mr SCANLAN: Yes.

Hon SIMON O'BRIEN: Has Hobby been convicted?

Mr SCANLAN: Yes, John Hobby was convicted. He is still in prison.

Hon SIMON O'BRIEN: I am just wondering, too, about the alternative of seeking to go into private session. That might be something the witnesses might want to request, if that is the case. In the case of Hobby, although he has been convicted, has he cooperated on the location of the body?

Mr SCANLAN: No, not to my knowledge. I actually worked on the case.

Hon SIMON O'BRIEN: So this would be a case, one would think, where this proposed new provision would actually come into play.

Mr SCANLAN: Yes.

The CHAIR: Are there any other criteria—I went through those four that are enumerated in the bill—but are there any others that you feel should be added to that list?

Mr SCANLAN: No, I think it satisfies what is actually required.

The CHAIR: Are there any other questions on that? No.

Hon NICK GOIRAN: Just one thing, although I am not sure that the current witnesses can help us. Are you aware of whether WA Police currently provides any information to the Prisoners Review Board when it is considering releasing prisoners?

Mr BROWN: Yes, we definitely make submissions from time to time on cases, on a case-by-case basis, depending on what our position is. It is obviously up to the review board to make determinations.

Hon NICK GOIRAN: Are you aware whether it is the case that you would provide a submission, as you say, in every instance?

Mr BROWN: No, not in every instance.

Hon NICK GOIRAN: So only upon request?

Mr BROWN: Or if we have a particular position that we think needs bringing to the review board's attention.

Hon NICK GOIRAN: Okay.

Hon SIMON O'BRIEN: How would police be aware of a case being in front of the review board, then, if it has not sought information?

Mr BROWN: It could come from a number of means. We could be made aware as an agency by various means about a person who we have been tracking over time. It might be a case that we have been interested in for some time, because we have worked on it, we have knowledge of it and we know it is of interest to the community or to the agency, but then more likely it is going to be on request from the review board.

Hon NICK GOIRAN: Are the submissions that get put in always drafted or handled by a particular unit within WA Police?

Mr BROWN: Yes, they go through a particular unit. I am trying to think of the one that I did recently that went through. We have a direct contact point, so everything is filtered and goes through one point of contact from police to the review board.

Hon NICK GOIRAN: Okay. But the submission is drafted by that unit?

Mr BROWN: Handled by that unit. It might get recrafted or rewritten, but the materials will come, in these sorts of cases, obviously from the homicide area or from a particular business unit with inputs.

Hon NICK GOIRAN: How many people are in that unit?

Mr BROWN: It is only small. I think there is only one person maybe who sits in that space.

Hon NICK GOIRAN: Do they do any work other than providing submissions to the Prisoners Review Board?

Mr BROWN: I am not sure. I think it is primarily for that purpose alone.

Hon NICK GOIRAN: So this legislation will add to that one person's workload.

Mr BROWN: It would be a very small addition. Most of the work will be done by the major crime team. My knowledge is that we have only 11 or 12 cases in totality at this point in time. We do not see any extra resource impact on the agency at all between major crime or with this particular individual we are talking about who filters for the review board, so it can be done within our current capacity.

Hon NICK GOIRAN: So this unit or this person is not working at full capacity, therefore.

Mr BROWN: I do not know the capacity, but my advice is that we do not need any additional resources or expertise to provide the information that would be required to make the submissions.

Hon NICK GOIRAN: I have to say that I do not understand that, because if the person is not at full capacity at the moment, then they would be in the position to take on these extra cases. If they are at full capacity, you are going to need more resources.

Mr BROWN: I do not know the actual number of people—whether it is one or two—and I do not know the capacity that they are working to, but I can tell you that the vast majority of the actual work in providing the submissions will be done by the major crime area, for which we are adequately resourced for the small number of additional cases that we would have to assess and make recommendations on.

Hon NICK GOIRAN: Would it be possible, through the Chair, that we could ask the witnesses to take on notice what the name of the unit is, what the number of people —

The CHAIR: The FTE.

Hon NICK GOIRAN: —the FTE is in the unit, and to provide written confirmation that no additional resources are required to handle these extra reporting requirements?

The CHAIR: I will just add to that while we frame this question. The penultimate dot point in your submission says that it is “not expected to have a major impact upon the WA Police Force”. I think that what Hon Nick Goiran is asking for is for you to tease out what you mean by not having a major impact. We want to know whether it is a minor impact or no impact.

Mr BROWN: Understood.

The CHAIR: I am understanding you to be saying that this is by nature of a coordination unit; that they do not actually do the work. They coordinate the work and then collate the submission.

Mr BROWN: That is correct. In the scheme of all of the impacts on the Western Australian police force, this is at the very low end of the scale as far as resource impact goes and would not require us to make a bid for extra FTE. If we did need to put extra effort into this space, we could find it from elsewhere from within the agency.

[10.30 am]

Hon NICK GOIRAN: Sure, but you may not need an extra FTE, but if you have got a homicide detective who now needs to sit down and prepare a report and put in a submission to the board, which this homicide detective never had to do previously, that is a concern. Presumably, the homicide detectives are under the pump at the moment. We hear about the nature of policing in Western Australia and the need, certainly under the previous commissioner, to prioritise, because there simply is not the capacity to handle all matters. I think we do need clarification of exactly what the resource implication is, fully accepting that, in the scheme of everything that WA Police is doing, this is probably microscopic, but it is all degrees.

Mr BROWN: Yes. What I can add is that I spent seven years myself in the homicide squad so I am acutely aware of the workload. The advice from Mr Scanlan to me this morning is that we are currently, in the state, running 22, I think it is, fewer homicides than in the comparative period in the previous year. We are using that time and effort with the same resources to make sure that the quality of our work is maintained. It must also be noted that not only is our work in a homicide investigation around the initial response and the investigation, but also in the compilation of many similar reports, which we can leverage off, that we sent to the coroner, for example, so a lot of these materials are readily available. It would be a matter of drawing upon those and putting them into a concise, condensed report that is meaningful, ultimately for decisions to be made.

Hon NICK GOIRAN: It is interesting, this observation that the workload for homicide is down at the moment. Is that just in respect of the current year?

Mr BROWN: Yes, it is.

Mr SCANLAN: I will just go back one step. In 2015–16, we made a fairly significant investment from WA Police into our major crime division and our special crime division, which looks after homicide and cold case homicide. The homicide squad was given an extra team of 12, so they have got a fifth investigation team, but as part of that growth proposal we also appointed a review officer, whose job it is to review all homicides, both live and historical and provide information back to the investigation teams and to the divisional management team. I would envisage that that role would also take on the work that you are talking about today. In respect of our homicides, over the last five years we have usually fluctuated between 35 and up to 45. To date, we have had 21 this calendar year, so the number of homicides is actually down this year, but what we are finding is that there is a lot more work now required also certainly through disclosure processes et cetera that we have to comply with, legislation that puts a great impost on some of our investigators, hence the increase in our major crime division, and certainly our cold case homicide area.

The CHAIR: Paperwork!

Hon PIERRE YANG: Mr Deputy Commissioner, you mentioned that at any time there are 10 cases that this legislation or proposed legislation may have application to. Can I clarify with you the number? It does not mean there will be 10 reports required at any time; it simply means there will be 10 cases where there will be an application for parole from time to time. There could be one report required in one calendar year, or financial year, or there may be several. Is that correct?

Mr BROWN: Yes, that is correct, and the advice to us in the lead-up to this committee hearing was that we will start in the very near future working on that ballpark number on a priority basis and getting the submissions and the cases up to spec, pending any report that might need to be made over time.

Hon PIERRE YANG: Is it reasonable to assume that, if you had one, or a number, of reports required throughout a financial year—given the resources available, is it reasonable to expect that the person responsible for the reports would be able to absorb that in relation to their current work, by prioritising their workload?

Mr BROWN: Yes, absolutely, and again, I worked in the environment for seven years; Mr Scanlan, the same if not more. We are acutely aware of the workload and the need to not only focus on what is required in response to an immediate investigation, but in the detailed paperwork that needs to be provided for various reasons for the government and the community, post the homicide event itself. We have a large resource within state crime and, without naming the actual number, the detectives and FTE we currently have working on the Macro homicide case has been significant, yet we have been able to move large numbers of people into that case, which also has an outstanding

victim of Sarah Spiers, whose body we have been unable to locate. We have been able to scale in excess of 100 people into that investigation over the last year to compile the brief and do all the detailed necessary paperwork that is required for the court and ultimately the coroner. That is why I say, if we are talking about 10 cases that are of a standard sort of scale, we will be able to meet the resource from what we currently have by, on a priority basis, moving our people into the priority pieces of work.

Hon PIERRE YANG: Thank you.

The CHAIR: Right, moving on —

Hon NICK GOIRAN: Are we formally taking those on notice?

The CHAIR: Yes, I am sorry. I should have gone over that question. Are you happy with it? We can clarify it for you.

Hon NICK GOIRAN: The three questions I would propose, Madam Chair, is the name of the unit that coordinates the submissions to the Prisoners Review Board; the number of full-time equivalents in that unit; and, an itemisation of the resource implications of this legislation.

Hon COLIN de GRUSSA: Madam Chair, is it possible to add another sub-question to that? Is that the only role that that unit performs? It may well be that they are doing other roles as well.

The CHAIR: So what is your first one?

Hon NICK GOIRAN: The name of the unit that coordinates —

The CHAIR: The name and the function.

Hon COLIN de GRUSSA: I am just trying to capture whether that person is doing other work as well as the RB stuff.

Hon SIMON O'BRIEN: If I may, Madam Chair, before moving on to this I just indicate that I have some questions I would like to ask about specific cases which could be actually live and ongoing operational matters, so I am wondering if that might be best taken in camera, and perhaps we come to that at the end. I just want to give notice to that.

The CHAIR: Can we come to that at the end? That gives you a chance to reflect, albeit briefly, on whether you would like to move into a closed session.

We have got a couple of questions about the interjurisdictional—other jurisdictions and what they have done in this area, and we notice that in in the Victorian and Queensland legislation, the parole board requires cooperation in identifying the location or the last known location of the remains and—I stress “and”—where the remains may be found. Can you help us tease out the difference between those two criteria? The first one is identifying the location, or last known location of the remains, and then in those two other states, it specifically says “and where the remains may be found”. Our question is: what is the difference between those two, and—I should probably close the question off—do you think that the WA legislation should be similarly reworded, because at the moment it is not?

Mr SCANLAN: I guess that would cover off on the position where the body may have been moved. Where someone has murdered a person X and placed them at a certain location, and then for whatever reason the body has then been moved on instruction by the accused person or by others, that is how I would see that that piece of legislation covers off on that.

[10.40 am]

The CHAIR: That is covered by the joint criteria, by the conjunction?

Mr SCANLAN: Yes.

The CHAIR: So are we missing that in our bill?

Mr SCANLAN: Quite possibly, I do not know—Rick?

Mr SIMS: I had not considered it from that perspective. The drafting of the legislation was done by the Department of Justice and they would have been working in liaison with the other states and territories in getting that sort of information. So it had not been something we had considered, because from our perspective our role is to write a report that enables the prisoner release board to make a consideration. No, we had not considered it in detail, as indicated in the letter that we forwarded in. We believe that it is a good thing for the families, and it may certainly assist us in identifying other crime by other people involved in crimes et cetera. But as to the actual physical construction of the legislation, we had not considered that.

The CHAIR: I think on the basis of what you are saying, the committee would be correct to conclude that you do not think there is any need to extend the existing proposed provision.

Mr SCANLAN: I cannot think of any cases. With the example I just provided to you, I just cannot think of any cases where that may have occurred at the moment, so where it would be necessary.

The CHAIR: Thank you.

Hon NICK GOIRAN: Can we ask the witnesses to take this on notice?

The CHAIR: Would you like to have a think about it?

Hon NICK GOIRAN: And to reply back to the committee as to whether it would be beneficial for WA Police if the bill was amended to mirror these Victorian and Queensland provisions. Because this concerns me that it has not been actively considered until this point. It is not a criticism, it is just a statement of fact.

The CHAIR: No, I think what the officers are saying is in the light of what is currently on the table, it is not relevant.

Hon NICK GOIRAN: But it has not been considered.

Mr SIMS: Not by us, but it would have been considered by the agency drafting the legislation.

Hon NICK GOIRAN: Perhaps.

Mr SIMS: And it may be a question that you might also like to address to them.

Hon NICK GOIRAN: Yes, indeed, but I would be very interested to hear WA Police's position on it.

Mr SIMS: Certainly.

The CHAIR: We will refer that to you. If we are going to move on to another tranche of questions, our last question on my list is: should the prisoner be given the opportunity to comment on the Commissioner of Police's report given under the proposed new section where, for example, that report might enumerate reasons why the person has not cooperated; it might have identified a failure to cooperate? Do you think that the prisoner should be given a chance to comment on the conclusions of the commissioner's report?

Mr SCANLAN: I guess they had their opportunity when they were first arrested and then found guilty, to provide that information. We have, in practice, sometimes gone and met with people in prison to find out more information, whether or not they are prepared to cooperate. I do not know whether or not it would do any harm to let them provide their reasons. It might provide us with further information that we could possibly use. They might nominate someone else who might have

that information. Where they will not provide the information to us, they might provide it to the review board. It would probably be a good thing.

Mr BROWN: My view is that it would be in the interest of justice overall to provide them with the material so they can make comment.

The CHAIR: You have raised two different aspects of that availability or mechanism whereby a prisoner can see the report. The first is justice and the second is that you might actually get more information, is that correct?

Mr BROWN: Yes, it is correct.

The CHAIR: That is very useful, thank you.

Hon NICK GOIRAN: Before we move on to specifications, can I just ask some further questions?

The CHAIR: Yes.

Hon NICK GOIRAN: Deputy commissioner, I heard you mention in your opening statement that WA Police considers this legislation is in the interests of the achievement of justice; I think I heard that correctly.

Mr BROWN: Yes, correct.

Hon NICK GOIRAN: I think you also said that WA Police considers that the legislation would improve the prospects of recovery of the body.

Mr BROWN: Yes.

Hon NICK GOIRAN: In the written submission provided by Commissioner Dawson dated 22 September—you have seen that?

Mr BROWN: Yes, I have. I have it in front of me.

Hon NICK GOIRAN: He mentions in his submission in the first paragraph on page two, for the benefit of members and for yourself, deputy commissioner, he says —

While the conviction of the offender would have been based on the WA Police Force's ability to conduct a thorough investigation and to collect evidence which satisfies a Court or Jury, beyond reasonable doubt, that the accused committed the offence, the recovery of the body or the revelation of the last known location of the body would be beneficial in the respect that it can serve to finalise aspects of the offence.

You would concur with the commissioner on that?

Mr BROWN: Yes, I would.

Hon NICK GOIRAN: So, as I understand it, what he is saying is that by encouraging the suspect—at this stage the person is a suspect—to cooperate with police with regard to the location of the body, it can assist police in finalising what charges to lay.

Mr BROWN: What charges to lay and the true circumstances given the demise of the victim. The specifics of that case or those things, material in particular, around the cause of death; the clothes or items that were found in or nearby where the deceased or victim was ultimately located, the clothing, all of those things which are material to the case.

Hon NICK GOIRAN: So that effectively becomes a third reason why WA Police think that this legislation would be helpful. It helps you to finalise the charges, it helps in the prospect of recovering the body, and you say it is in the interests of achievement of justice.

Mr BROWN: Yes.

Hon NICK GOIRAN: Can you tell me, are you aware of any manslaughter cases where the body has not been recovered?

Mr BROWN: No, I would have to take that on notice. I have details of the current cases that my homicide squad have provided but whether or not they were charged with wilful murder, murder, or manslaughter—I would have to take that on notice and get back to you.

Hon NICK GOIRAN: If you could take that on notice. Presumably, if there are certain cases where bodies have not been found, they are not just limited to murder cases.

The CHAIR: Is that a question?

Hon NICK GOIRAN: It is a question.

Mr BROWN: That would be correct.

Hon NICK GOIRAN: Do you think it is fair to say that it is likely that there have been some manslaughter cases in Western Australian history where the body has not been found?

Mr BROWN: Absolutely possible. We are more than happy to do that digging for you.

Hon NICK GOIRAN: When you come back to the committee on that, can you at the same time then indicate whether WA Police would find it equally beneficial if this legislation would cover manslaughter convictions; and if the answer is no, why not?

Hon SIMON O'BRIEN: I have something arising from that. This just follows on from my colleague. I think the example he put to you was of a situation where a suspect is assisting with your inquiries but has not been convicted. Presumably, you would go through the processes that you have alluded to anyway and always have. The legislative provision before us concerns the attitude or degree of cooperation of a convicted person, years and years down the track when they are appearing before the Prisoners Review Board. I am just wondering if you could drill down to this because I cannot immediately see how this provision about something happening at possible parole time years and years down the track, could assist before you have a conviction and you are just carrying on your inquiry.

[10.50 am]

Mr BROWN: Yes, I think your articulation of the separation between the two is clear. However, it might be the case that we charge somebody with wilful murder or murder, and that they are found guilty, possibly—I do not know whether these cases exist in number—of manslaughter, and then we get to the situation you described, which is before the review board, with the same circumstance of not being able to locate the victim. I do not know whether any cases of that nature are in our system.

Hon SIMON O'BRIEN: The precise nature of my question is: if you are dealing with a suspect and the suspect is cooperating in other matters, even to the extent of admitting the crime, presumably they would also be cooperating by saying where the body was. I cannot contemplate any circumstance where this proposed new provision could possibly apply in assisting you at the time of your initial investigation.

Mr BROWN: Agreed.

Mr SCANLAN: One of the circumstances that has not been covered off is where we do have a suspect that is assisting us with our inquiries and we have not found the body. The need or necessity to find that body also clarifies for us other party involvement. We have a number of cases that we have worked on over the years where we suspect others of being involved, but we certainly do not have the evidence to convict those other parties. If we have anyone on our list where they come forward

and we do find the body, it may put us in a position where our investigation will start over again because we would need to then consider whether charges are then laid against those other parties involved.

Hon SIMON O'BRIEN: That is clearly understood, and thank you for that, Mr Scanlan. I think we could all clearly understand an active murder inquiry attempting to establish relevant circumstances and perhaps the author of further related crimes, but surely that is something that happens now, that an investigator might say, "Well, look, you have made certain admissions to us and we are going to be charging you and the court might look more favourably on your circumstance if you were to tell us a little bit more about the circumstances." Presumably an investigator does that already. They would not be saying, "This might hang on you if, 20 years from now, when you are looking at parole, you tell us." They would not say that.

Mr SCANLAN: An accused person is fully aware. If this legislation goes through, they will be fully aware that they have to provide us with the information that we require about the location of the body at the time. Now, they might not choose to do that, and there are a number of reasons why they do not do it; it could be to protect a third party or it could be to protect a member of a family.

Hon SIMON O'BRIEN: Or to protect themselves.

Mr SCANLAN: Or to protect themselves, exactly. Until we find the body from an evidentiary perspective, the true circumstances of the offence are not known.

Hon SIMON O'BRIEN: I think what you are putting to us, just so that my understanding is clear, is that if an investigator were able to say, "Look, there is a law here that looks down the track at whether or not you might be released on parole at some stage, and will depend on you cooperating with us about locating the body", I think you are saying that that would be a useful tool in your armoury in some cases.

Mr SCANLAN: There are pretty strict rules about what we can and cannot say to the people, but from a legislative perspective we could make them fully aware of what the legislative requirements are. If you are charged with murder, unless exceptional circumstances exist, you must be sentenced to life imprisonment. That is the starting point. Then, when you are looking at that parole period and you are looking at the cooperation et cetera of these people, there is no doubt that we would be talking to them about certainly assisting the families to provide closure around making sure that we can rule the offence off and we have done everything we possibly can, and then indicating to the court, like we do with other matters, not necessarily just homicide, the level of cooperation of an accused person.

Hon SIMON O'BRIEN: Just a couple of quickies, Madam Chair. Would it be the case now that where you have not got a body, but you have the person that you are intending to charge, that you would put to them, "Why don't you help the victim's family get closure by telling us where the body is?" Does that not happen now?

Mr SCANLAN: I am sure that discussions would take place around providing closure for families.

Hon SIMON O'BRIEN: And someone charged or about to be charged with murder, would they not be aware, or be made aware, that the matter of whether or not they have cooperated with police inquiries might be a subject for the court to consider in sentencing?

Mr SCANLAN: Those discussions would take place. I have no doubt that someone that is brought in for a homicide matter is fully aware that they are being confronted with life imprisonment and certainly that, dependent on their level of cooperation, would depend on any sentencing matter before the courts—the sentencing judges are aware. So their level of cooperation is obviously taken

into consideration at the time of their sentencing, and that is for the defence counsel to put up their arguments around that.

Mr BROWN: If I might add to that in that, of course, we need to handle these sorts of conversations with suspects in our custody very deliberately to make sure there is no oppressive nature to them and no inducement. Of course, these sorts of conversations in 2017, and for many years now, have all been captured on video-recorded interviews, so they are all above board.

The CHAIR: We are proposing to move into private session but because of the formalities surrounding that process, I am going to have to ask you to do the slightly bizarre thing and leave the room for about 15 seconds, if you would not mind.

[The committee took evidence in private]