

**SENTENCE ADMINISTRATION AMENDMENT BILL 2016**

*Second Reading*

**MR J.R. QUIGLEY (Butler)** [4.01 pm]: I move —

That the bill be now read a second time.

The Sentence Administration Amendment Bill 2016 is introduced and designed to give effect to the rule that when there has been a murder and no body of the victim has been recovered, any person convicted of that murder will not be granted parole.

Background: This bill has come before Parliament in response to a community-based campaign that there be legislated a rule that when there has been a murder and no body has been recovered, the convicted murderer will never be granted parole. I wish to stress that this bill does not find its genesis in any political ideology or invention, as has been suggested, by the Labor opposition, but rather as a genuine response to a community-based movement that gathered over 20 000 signatures seeking this Parliament's response to the community demand that the law be changed to ensure that when there has been a murder and no body has been recovered, the convicted murderer would never be considered for parole.

I now deal briefly with the rather short provisions of the bill. The provisions for parole in Western Australia and the mechanisms for it are covered by the Sentence Administration Act 2003 and insofar as parole may apply to a prisoner sentenced to a life term for a murder, that is covered by section 12A of the Sentence Administration Act 2003. That section of the Sentence Administration Act provides that the Prisoners Review Board, as earlier defined in the legislation, must give the minister a written report about a prisoner at the times set out in columns 2 and 3 of the table in this section. The relevant section of the table is "Life imprisonment for murder where a minimum period has been set under section 90(1)(a) of the *Sentencing Act 1995*" and is to be "At the end of the minimum period", and subsequent reviews are to be undertaken "Every 3 years after that". Section 12A(2) provides that the Prisoners Review Board must give the minister a written report about a prisoner at the times stated in columns 2 and 3 of the table, which I have just explained is at the expiration of the minimum term and subsequently at three-yearly intervals, and that the board must do this whether or not a report has been requested by the minister. Section 12A(3) provides that a report given under subsection (2) must deal with the release considerations relating to the prisoner.

Section 12A(4) provides that if a report given under subsection (2) recommends that the prisoner be released, the report must, in addition to any other matters the board thinks fit, report on whether the prisoner should be released on parole and, if release on parole is recommended, the period for which the prisoner should be on parole; and, under subsection (4)(b)(ii), the board should report on the additional requirements, if any, to which the prisoner should be subjected whilst on parole. Subsection (5) provides that the report given under subsection (2) may recommend whether or not the Governor should be advised to exercise any power vested in the Governor to release the prisoner and, if release is recommended, the requirements or conditions, if any, that should apply to that prisoner's release.

Section 25 of the Sentence Administration Act 2003 vests in the Governor the power to release on parole a prisoner serving a life sentence or an indefinite sentence. Section 25(1) provides that the Governor may make a parole order in respect of a prisoner serving life imprisonment for murder but only if a minimum period has been set under section 91A of the *Sentencing Act 1995*, the prisoner has served the minimum period, and a report has been given by the board to the minister under section 12 or section 12A. I have dealt with those sections already. It is a statutory requirement that before the Governor can sign off on parole for a murderer who is under a life sentence or an indefinite term for a murder, there must have been a report provided by the Prisoners Review Board to the minister. The Governor may make a parole order under section 25(1)(a) in respect of a prisoner serving life imprisonment for an offence other than murder, but only if the prisoner has served the required time. That is a life sentence for other than murder.

I go back to the provisions of this bill, which rather closely reflect the provisions that have been introduced in South Australia, although it has a slightly different regime for parole because it has a parole board that can itself make the order and from which there can be on appeal to the Supreme Court. Western Australia does not have that. Here, the recommendation for parole is made by the Prisoners Review Board to the minister and, as previously stated, section 25 mandates that the Governor cannot make an order for release of a murderer who has received a life term without there having been a report to the minister.

Clause 6 of the bill seeks to insert section 12B into the Sentence Administration Act 2003. It will provide that the board shall not recommend the release of a prisoner serving a life sentence for murder unless he has cooperated. In proposed section 12B(1), it will mean —

- (a) a person serving a sentence of life imprisonment for murder where a minimum period has been set ... or

- (b) a person serving a sentence of indefinite imprisonment where the nominal sentence (as defined in the *Sentencing Act* ... was imposed for murder;

These are the operative provisions of this bill. Proposed section 12B(2) states —

A report given under section 12 or 12A —

That is a report initiated by the Prisoners Review Board. It is when the minister has requested a report on a person serving a life or an indefinite term for murder. It continues —

must not make a release recommendation in relation to a prisoner unless the Board is satisfied that the prisoner has satisfactorily cooperated in the investigation of the murder (whether the cooperation occurred before or after the prisoner was sentenced to imprisonment).

A person could go to trial and plead not guilty but be convicted of murder—in that sense they have not cooperated with the murder investigation—but, after conviction, may be approached by police to further cooperate as to the whereabouts of the victim's remains.

Proposed section 12B(2) provides that cooperation given after conviction can be taken into account when the report is being made to the minister.

What is proposed at section 12B(3) has been enacted in South Australia. It states —

For the purposes of subsection (2), —

That measures the prisoner's cooperation with the police or authorities —

the Board must take into account any report tendered to the Board from the Commissioner of Police evaluating the prisoner's cooperation in the investigation of the murder ...

The Prisoners Review Board must go back to the Commissioner of Police and request an evaluation of the level of cooperation by the prisoner—that is, the murderer. It shall include —

- (a) the nature and extent of the prisoner's cooperation; and
- (b) the timeliness of the prisoner's cooperation; and
- (c) the truthfulness, completeness and reliability of any information or evidence provided by the prisoner; and
- (d) the significance and usefulness of the prisoner's cooperation.

Since announcing the opposition's response to the community petition for this legislation, I note that the government's immediate response, through the Attorney General, was that this legislation was not required because he—the Attorney General of Western Australia, Hon Michael Mischin—would never make a recommendation to the Governor to release on parole a murderer who has failed to cooperate about the location of the victim's remains. The Deputy Premier of Western Australia—who is also the Minister for Police; Tourism—in response to a question in this chamber about this proposed legislation, repeated the Attorney General's response; that is, that this legislation was not necessary because the Attorney General, Hon Michael Mischin, would never release a murderer who has not cooperated with police in locating the victim's remains.

The inadequacy of this response by the government is best explained by referring to a case at hand. I refer to the case of the convicted Mr Mansell. He was convicted four years ago of the murder of an employee of his, a Mr Puddy. In the lead-up to the trial, Mr Mansell was uncooperative with police. During Mr Mansell's trial, he chose not to give evidence. He remained mute and the state had to prove its case, which it did by an array of evidence including forensic evidence of the deceased's blood in Mr Mansell's house and that Mr Mansell's wheelie bin had been used to remove the deceased's remains from the premises. The wheelie bin was located in my electorate up near Two Rocks, but no information was ever provided by Mr Mansell about the whereabouts of Mr Puddy's remains. A sentence of life imprisonment was ordered to be suffered by Mr Mansell, with a minimum term of 18 years. Throughout this process, Mr Mansell remained mute—he did not respond. He received an 18-year minimum term of imprisonment. When the Attorney General says that he will never release a murderer who has not revealed the whereabouts of a body, the Attorney General will not be around when Mr Mansell's case comes up for review. Mr Mansell's case will not come up for review, as I understand it, until late 2029 or 2030. I can say with certainty that I will not be here, but I can venture with some certainty that no-one in this chamber today will still be here in 2030. I can look around and think maybe one or two, but certainly not the Attorney General.

**Mrs M.H. Roberts:** I will probably be here!

**Mr J.R. QUIGLEY:** Now I am getting a lot of dissent from around the chamber! The member for Midland will be here and, I have to reflect, the member for Hillarys will probably be here also. He might keep them true.

**Mr R.F. Johnson:** You never know!

**Mr J.R. QUIGLEY:** We are quietly betting on it, member for Hillarys.

**Mr R.F. Johnson** interjected.

**Mr J.R. QUIGLEY:** I am sure the member will be most voluble in 2030 if someone proposes to release Mr Mansell. But the short point I wish to make is the government's response, out of the mouth of the Attorney General, that Mr Mansell will never be released is fatuous at best because he will not be the Attorney General when that time comes. He cannot even predict in 2030 whether it will be a Labor or Liberal government, or a government of some other complexion. It is unknown. The Attorney General's response is an inadequate response to the community's demands that this be set in stone. The Attorney General's next response was that bringing this bill forward is really a reflection of no confidence in the shadow cabinet. He said that the shadow Attorney General is introducing this bill because he does not have confidence in the shadow cabinet to stand firm and not make a recommendation to the government to detain Mr Mansell in prison forever. Of course, that is met by two responses. Firstly, it is likely that no members of the shadow cabinet will be in this Parliament at that time. Perhaps we will be in government; perhaps not. Things change. Who knows? That is an inadequate response to this legislation and absolutely trivialises the issue to say that bringing forward this bill reflects no confidence in my colleagues in shadow cabinet—just as it is just as fatuous to say that Hon Michael Mischin will never release someone such as Mr Mansell when he will not even be Attorney General in 2029–30.

This bill is not just directed to the final resolution of these matters. Although it is somewhat unlikely that an Attorney General would make a recommendation to the Governor to release a murderer at the expiration of a minimum term when the murderer has not revealed the body, it is not impossible because things lose their currency and review boards change, personnel change and other things change. In 2030, people will be googling on their iPads, or whatever the latest device is at that stage, to find out who Mr Puddy or Mr Mansell were because it will all have slipped into history. People forget the outrage of the community at the time of the murder, so things can then slip through the crack. More than that, by passing this bill, which we hope that the government, upon reflection, will join us in passing through this chamber and setting this in stone, it will have an immediate effect on the thinking of anyone who has either just been convicted of a murder and the victim's body has not been recovered or who is currently under investigation for a murder and a body has not been recovered. That person will know that it is the law of Western Australia that unless they reveal the whereabouts of the body, they will never get parole; they will serve the whole of their natural life in prison. In that regard, I turn to clause 6, which introduces proposed section 12B, and go back to proposed subsection (3), which I have already read out; that is, when the board takes into account the Commissioner of Police's report on the level of cooperation by the convicted prisoner, the board must not only take into account the nature and extent of the prisoner's cooperation but also the timeliness of it.

I have personally spoken to the parents of victims. All of them have been parents—oh, there is one sister. I have spoken to Mr Laurie Puddy, who is resident in Sydney, and who is still traumatised by the murder of his son. Both he and his daughter, Nadine, feel as though Mr Mansell still has their son and brother by not revealing his whereabouts. It is not just a matter of closure; the anguish goes on. They know that the only person who knows the whereabouts of their beloved son and brother is this murderer, so the anguish is enduring. I would say that the passage of this legislation will likely have an immediate and very salutary effect on Mr Mansell. At the moment he has chanced his arm. He exercised his right at law to say nothing and did not say anything to the police. He went to trial and sat in the dock and stayed mute, hoping that the police could not prove their case, which they ultimately did. Now he has gone to prison and we are told he is behaving like an exemplary model prisoner and has been downgraded to medium security, so the process has already begun. He has been downgraded to medium security notwithstanding the fact that he still secretes the whereabouts of his victim. It is outrageous. He would be hoping that this legislation is defeated. He would be hoping that the government votes down this legislation. If the government votes down this legislation, the candle of hope still flickers in his mind that in 14 or 15 years—as I say, with this matter becoming less current, with changes in the Prisoners Review Board and perhaps with changes in the regime for parole—he will see daylight again outside prison. With the passage of this legislation, this chamber will slam that door shut on him unless he immediately reveals the whereabouts of his victim. This legislation provides that the Prisoners Review Board take into account the timeliness of his disclosure. It is not right that he would keep Mr Laurie Puddy and Ms Nadine Puddy in torment for another 15 years, and then at the time the Prisoners Review Board gets around to determine his case say, "Oh, well, I'll tell them where it is. What have I got to lose at this point? I have served 15 years." He will have left the Puddy family suffering for what will be 18 years.

I do not know Mr Puddy's age or health but people do not live forever. It would be a tragedy if Mr Puddy passed from this world never knowing the whereabouts of the remains of his son. It is a matter of timeliness. As I said, this does not come from Labor Party ideology; this follows legislation in other states. This is a direct response to a petition that was organised by the mother of another victim—that is, Margaret Dodd. I will be very circumspect here because I understand that that matter is before the courts. The person who is before the courts

is presumed by everyone in this Parliament, I hope, and certainly by me, to be innocent because they have not been convicted. There is a strong presumption of innocence in our law. It does not apply to that person but it would apply to anybody involved in the murder of Hayley Dodd, similarly.

**Mr R.F. Johnson:** Anybody in that situation who was found guilty of a murder and doesn't tell the police or anybody where the body is being hidden would come under your legislation. Can I just say that I support your legislation. They are doing this—they have already done it, I believe—in Victoria, and I believe it is absolutely essential that anybody who commits a murder and does not divulge where that body is should never be let out. Make the law and have it clear. I do not have the same confidence that some people have in our present parole board, for instance. Her Honour Narelle Johnson, I think, was very, very good and very, very tough. This one at the moment is not quite so tough.

**Mr J.R. QUIGLEY:** I will take that interjection, member for Hillarys. We do not know what the Prisoners Review Board or the community's attitude is going to be like in 15 years' time.

**Mr R.F. Johnson:** It'll be a load of left-wing pinkos!

**Mr J.R. QUIGLEY:** I take it, from my tan, that the member for Hillarys is not referring to me. I come from sunny Butler, where we get a bit of a suntan during the summer.

To digress from that moment of levity, it is a matter of wondering not only what the Prisoners Review Board is going to do in 15 years' time, but also the powerful leverage police will have under this legislation to be able to say to a convicted person, "You will spend the rest of your life in prison unless you reveal now", because the requirements of the legislation refer to the timeliness of their disclosure. The police will be able to say, "Do not wait for 15 years' time. Tell us now." This bill will not take away a person's right to plead not guilty at trial. They can run their risk, but the legislation will provide for whether the cooperation occurs before or after the prisoner is sentenced to imprisonment. However, it has to be soon after the event because people need to know where their relatives are, for heaven's sake. Although no-one has been convicted or even charged in the Claremont serial killer case, from time to time we see—it happened most recently on the twentieth anniversary of Sarah Spiers' disappearance—the ongoing torment of the late Sarah Spiers' parents of never being able to grieve properly and to bury their most beloved daughter.

Similarly another case, member for Hillarys, occurred in my electorate of Butler, which currently includes the suburb of Clarkson, where, on or about Anzac Day 2015, Jason Edge was murdered. That case is under investigation and I think some people might be before the court so I will not say anything in regard to the efficacy of that case, but another mother and father, Mr and Mrs Edge, are just tormented by the fact that Jason's remains have not been recovered in 10 months.

I urge and reach out to my parliamentary colleagues on the other side of the house and invite them to not play politics with this bill, to not look at it as a Labor-Liberal divide, but to look at it as a parliamentary response to the community's demand for this rule to be brought in, and to bring it in swiftly and not have an inquiry and put it off to inquiries and all that. Mr and Mrs Edge are in Clarkson at the moment and they are tormented. They have not seen their son for 10 months. The police have told them he has been murdered but they do not know where his remains are. If we pass this legislation, anyone under investigation for that crime will think twice in a hurry, because failure to cooperate would mean that they would spend the rest of their natural life in prison.

In summing up, I will make those two points again: Firstly, it is entirely inadequate to say that this legislation is not required because Mr Mischin says that he will never release these people. He will not be there at the time those cases come up and we cannot predict, as the member for Hillarys said, what the Prisoners Review Board will be doing or what the community's attitude will be in 15 or 20 years' time. Secondly, this bill when passed—I am expressing optimism that it will not sink into a political bunfight—will provide an incredibly powerful incentive to those under investigation to cooperate with the police now and not in 20 years' time, because I am sure that the police, during the course of an investigation in which a body has not been recovered, will be pointing out what will become the new section 12B of the Sentence Administration Act and pointing out the requirement of timely disclosure.

**Mr G.M. Castrilli:** Is there any retrospectivity clause?

**Mr J.R. QUIGLEY:** No, the provisions of the bill will not be retrospective—I have been asked that question by the media—because all of these actions are yet to take place; it is what the Prisoners Review Board will be doing in the future. It will apply to those who are already inside, like Mr Mansell, because when he comes forward for review in 2030, the Prisoners Review Board, or some iteration of it—as the member for Hillarys said, it keeps changing—under this legislation will be required to obtain a letter from the Commissioner of Police detailing the level of cooperation of Mr Mansell, and that will be happening in the future even though the murder happened prior to the introduction of the bill. It will not change the penalty for murder.

People have asked me a question and I want to answer it on the floor of the chamber. I have been asked by members of the media this question: what about those cases where the wrong person has been convicted of a murder? They say, “Mr Quigley, you know this because you were involved in the Mallard case.”

**Mr R.F. Johnson:** There was no hidden body there.

**Mr J.R. QUIGLEY:** No; but even in a case where there is a hidden body the first thing I say is that parole was never designed to be a hedge against the remote possibility of wrongful conviction. The second thing I say is that I am glad they have raised the Mallard case because it was whilst he was incarcerated in prison that he and his friends and advisers were able to advocate and bring forward the evidence that demonstrated his innocence. He was still inside. So if a prisoner who is still serving a sentence says that there is evidence out there that proves their innocence, they can put that evidence on the table. If Mr Mansell is in prison saying that he is innocent, let him come forward and prove his innocence, just as Mr Mallard did. But what has Mr Mansell done? He has kept silent throughout the process. As Mr Puddy and Nadine, the late Mr Puddy’s sister say, they feel absolutely wretched because they feel in a very real sense that the murderer is still in possession of their loved one, and he may one day walk the streets again. It is for those two reasons—firstly, we do not know what is going to happen in 15 or 20 years’ time despite what the Attorney General says today, and, secondly, it will give a hugely powerful incentive to the police and to suspects to disclose the body and locate the body now.

On behalf of the 20 000 signatories to the petition, on behalf of the community of Western Australia, I implore the house to reach out across the aisle, put politics aside and pass this bill into statute law. I understand the immediate political reaction of saying that it is unnecessary and things like that. I can honestly say this: in moving around this community I have heard only one person or two—but the honourable Deputy Premier; Minister for Police, was only really on instructions and was repeating what the Attorney General had said—speak against this legislation. I have heard only two people speak against this legislation: the Attorney General and the Deputy Premier of Western Australia.

**Mrs L.M. Harvey:** I did not speak against it. I said I’d see what the legislation looked like, but the Attorney General advised that under the existing Sentence Administration Act, with a strong Attorney General, the legislation wasn’t required. That is what I said. I didn’t say I didn’t support your legislation. I said I was supporting what the Attorney General said. I haven’t seen your legislation to say whether the government would support it or not, but I will be looking at it once you table it, member. I will be absolutely looking at it once you table it.

**Mr J.R. QUIGLEY:** I accept what the Deputy Premier said in that she was repeating what the Attorney General said on advice, but I am absolutely stunned that the Deputy Premier; Minister for Police says that she will wait until she sees the legislation. The legislation was read into Parliament last week and contains only a couple of clauses, so I am surprised that the Deputy Premier on a matter this important has not had the opportunity to read one page of legislation and one page of explanatory notes.

**Mrs L.M. Harvey:** Will the member accept that the legislation in this place is always considered in context with the second reading speech, which is what he has done today? We now have the legislation in the context of the members presentation and we are giving it due consideration.

**The ACTING SPEAKER (Mr P. Abetz):** Members! I am on my feet. The member for Butler accepted the interjection from the Minister for Police. When that happens, we should try to not have two or three others also talking at the same time. Let us just settle down. The member for Butler has the call.

**Mr J.R. QUIGLEY:** I take the Deputy Premier’s point and I therefore say that the only person in Western Australia who I have heard speak against this principle of “no body, no parole” legislation, remarkably, is the Attorney General of Western Australia. I have not heard another person in Western Australia speak against this principle. People say to me in the street, “What’s wrong with Mr Mischin? This is a no-brainer.”

That raises the other point. His knee-jerk reaction was not against this, but to attack Mrs Dodd by saying, “This is a stunt.” I never met Mrs Dodd before this petition.

**Mr R.F. Johnson:** I think he called it a beat-up.

**Mr J.R. QUIGLEY:** He called it a beat-up and a stunt by one grieving mother.

**Mrs L.M. Harvey:** He was not attacking her; he was attacking you.

Several members interjected.

**Mrs L.M. Harvey:** I am saying that he apologised for the distress that he caused Mrs Dodd and he had no intention of attacking Mrs Dodd at all. He was attacking the opportunistic approach of the Labor Party in the way that it managed Mrs Dodd.

**Mr J.R. QUIGLEY:** No, he did not. I am not agreeing —

**The ACTING SPEAKER:** Members! I think we need to cease the interjections and give the floor to the member for Butler to wrap up.

**Mr J.R. QUIGLEY:** Nonetheless, I will respond —

**Mr P. Papalia:** Why do you look at us all the time?

**The ACTING SPEAKER:** No, I looked at the Minister for Police. I said everyone. The member for Butler has the call.

**Mr P. Papalia** interjected.

**The ACTING SPEAKER:** I am on my feet, member for Warnbro. The member for Butler has the call. Let us cut the interjections for now and let the member for Butler wrap up.

**Mr J.R. QUIGLEY:** As I said, the criticism of the Attorney General in rejecting this principle that there be a statute law on “no body, no parole” was directed pointedly at a grieving mother. I am not a grieving mother. It was pointed at a grieving mother whom he accused of engaging in a beat-up and a stunt. We have heard the grieving mother respond directly. She took the utmost offence and was absolutely shattered by the attack launched on her by the Attorney General. She was not only grieving for the loss of her precious daughter, but also publicly humiliated and criticised by the first law officer of Western Australia for engaging in a stunt and a beat-up because she believes in this principle. I will not go around the chamber now because eventually there will be a division and the names of people like the member for Joondalup, who speaks so strongly on law and order, will be on the roll. The member for Forrestfield sits up the back of the chamber and says most loudly all the time, “We’re tough on law and order. We are tougher than you—always were and always will be.” I wonder whether he will be sitting on this side or that side of the chamber. I wonder whether the member for Forrestfield will vote for this legislation because 25 000 Forrestfield electors are wondering which way he will vote. The member can trivialise it just as the Attorney General trivialised the anguish of Mrs Dodd, but the simple proposition is this: should we join with other states in having a provision that where there is no body, there is no hope of parole?

**Mr W.J. Johnston:** Can you tell me: why is it that the Liberal Party in Victoria has copied your legislation and that the opposition leader, Matthew Guy, only last week also followed your lead and introduced this legislation?

**Mr J.R. QUIGLEY:** He did do that and he was on *AM* radio saying that the Liberals would be introducing that private member’s bill in Victoria, but I do not want to hold myself out as the originator of this idea. This idea was brought to me by the community. It demanded that this Parliament enact what the South Australian Parliament has enacted. It is unsurprising that the Liberal opposition in Victoria is doing the same thing because it is a no-brainer. This is what the community wants.

**Dr A.D. Buti:** See how uncomfortable they are.

**Mr J.R. QUIGLEY:** I do not know, member. In fairness, the Minister for Transport and the Minister for Corrective Services look pensive. They are weighing this, and that is a good thing. I do not get interjections from the members of cabinet on the other side that what I am saying is poppycock. I do not get that feedback in this chamber. I have on other times that I have spoken. I am reaching out across the aisle. I am not doing this for the Labor Party. I am reaching out across the aisle and saying that we as a Parliament should be doing this.

**Mr R.F. Johnson:** You’ve reached me and I will be supporting it. There may be some others as well.

**Mr J.R. QUIGLEY:** Thank you. I am reaching out across the aisle. It was a bit sad that the Attorney General sought to bring it down to rank politics, but I put that down to the fact that many members of the Legislative Council do not have the same political antenna that we do here in the Assembly where we have to face constituents in individual seats. They are a bit insulated and immune to public sentiment. I rather liked the speech of the member for Swan Hills yesterday who even evinced laughter from the Deputy Premier when he said, “Well they do a lot of talking up there but they don’t get much done.” If we want to get re-elected down here in this chamber, we have to be more attuned to what the community actually wants. I do not think any member of this chamber, including the member for Belmont—I could go around—would not say that to pass this into statute law is what our community wants. Thank you, Mr Acting Speaker.

Debate adjourned, on motion by **Mr A. Krsticevic**.