

SENTENCE ADMINISTRATION AMENDMENT BILL 2016

Second Reading

Resumed from 24 February.

MR D.A. TEMPLEMAN (Mandurah) [7.25 pm]: I would like to speak to the motion before us on the notice paper, which is a private members' bill, the Sentence Administration Amendment Bill 2016, that was introduced by the member for Butler.

The ACTING SPEAKER (Mr P. Abetz): There are too many conversations happening all at once. The member for Mandurah has the call, so let us take our conversations outside or hush our voices a little. Thank you.

Mr D.A. TEMPLEMAN: Earlier this year members would be aware that I tabled a substantial online petition signed by over 20 000 online petitioners and a petition that complied with standing orders of this place that was signed by two members of the public—Margaret and Ray Dodd. Margaret and Ray's daughter Hayley went missing a number of years ago and she has never been found, and, of course, it is presumed that she met a tragic end. I do not want to talk about their case because it is before the court and I do not want to prejudice or have any negative impact on the proper procedures in this case. Margaret and Ray are like a number of parents and families in not only Western Australia but Australia generally who have loved ones, daughters or sons, who have gone missing—some who were murdered but their perpetrator has never been found or indeed the perpetrator has been tried for murder and been found guilty. Margaret and Ray have never, ever given up on making sure that justice is delivered for their daughter Hayley and for their family and for many other families affected by what is unimaginable trauma and grief. In the intervening years, both they and other parents and family members have campaigned for the introduction of a law or an amendment to current laws throughout Australia in the states and territories for what is coined “no body, no parole”. This is along the premise of essentially creating a strong sense in legislation that a person who has been tried and found guilty of taking another person's life or lives is given an ultimatum that if they are not willing to cooperate with authorities and divulge the whereabouts of the deceased, then they should not be eligible for parole.

The member for Butler in introducing this bill into this place highlighted a number of other jurisdictions, including other states, that are either in the process of introducing this law or this proposal has been introduced already and is in practice around the world. We know that the Victorian and South Australian Parliaments now have similar bills before them and I understand that New South Wales and Queensland are contemplating such a move as well. I do not believe we, as Western Australians, should be the last state or territory to fall into line with the general mood of concern, as we seem to be in many other areas.

The member for Butler made an important point about the Attorney General's initial response to a matter. It was very disappointing that when this matter was brought before Parliament, via the petition and some prior media attention, it was dismissed by the Attorney General as a stunt. In fact, he described it as being simply a reaction to a woman's or a family's grief. This was particularly offensive to Margaret and Ray, because I can tell the minister and her government members that it was Ray and Margaret Dodd who approached the opposition and, indeed, the Attorney General. He and I, as the member for Mandurah, were the two members of this Western Australian Parliament who were highlighted in the original online petition. The petition was framed to the Attorney General of Western Australia and me as the member for Mandurah. I understand why the Attorney General's name appeared on the online petition because, of course, he is the Attorney General; he has jurisdiction over such matters. The reason that I was mentioned in the online petition was that I have known Margaret and Ray for a long time. Their daughter Hayley attended Coodanup College, or Coodanup Senior High School as it was known when she attended as a student before she went missing a year or so later. Up till the time I presented the petition in Parliament in February, over 20 000 people had signed it. Currently, there are some 38 000 signatures on that online petition and I will take the opportunity, probably next week, to table the additional signatures to the petition that have been collected online since the original 20 000 were tabled in this place.

I want to tell members unequivocally that this was not a stunt, as the Attorney General described. This was not an example of a woman's grief. This was a genuine effort by a family to seek justice for their daughter and for the daughters and sons of many other families across this country and in Western Australia, and for a number of families who still grieve and still want to find the final resting places and remains of their loved ones so that they, in their words, can finally lay them to rest. That is what they want. I can tell members that I admire Margaret Dodd; she is a feisty lady, but she was outraged by the Attorney General's response. I understand that subsequently, some days later, he did apologise but, to my knowledge, he has not apologised to her directly.

Mrs L.M. Harvey: He has in writing, yes.

Mr D.A. TEMPLEMAN: I am glad to hear that because that is essential. Margaret and her husband, Ray, were outraged. The Attorney General attempted at the time to dress this up as an opposition-led stunt; it was not. The government needs to be called to account for that. The simple fact is that this legislation is—it is a peculiar word to use in some ways—an incentive for someone who has been tried and found guilty of murder to divulge the whereabouts of the deceased in order to, essentially, have any eligibility for parole in the future. The legislation that has been introduced by the member for Butler has unequivocally included and is based upon the legislation that was introduced into South Australia.

Mr J.R. Quigley: And the Northern Territory now.

Mr D.A. TEMPLEMAN: Every state and territory now seems to be falling into line. It is not as though it is an out-on-a-limb-type proposal that has been clutched out of the air; it is a genuine attempt to say to a person who has been tried and convicted of murder that they should have the decency to identify the whereabouts of the deceased—the person they have been committed for and found guilty of murdering. In his comments after his accusation that the legislation was a stunt, the Attorney General then sought to highlight that this legislation was unnecessary and that we already had measures and procedures to deal with that. This legislation makes it unequivocal to anyone convicted and found guilty of murder that if they do not divulge the whereabouts of the person they have been tried and convicted of murdering, they will not be eligible for parole. It is as simple as that.

I am very hopeful that the government will see fit to support this legislation that will send a very clear and unequivocal message to the perpetrators of murder out there that if they are tried and found guilty and convicted of murder, this is a condition of any future consideration of parole. As the member for Butler very clearly and effectively articulated, this legislation sends a very clear message to those people.

I plead on behalf of not just Ray and Margaret but other families in Western Australia who still wait for news of the whereabouts of the remains of their loved one—the member for Butler highlighted a couple of examples in this place—that we will have a situation in which Western Australia can demonstrate a maturity to progress this legislation through Parliament. It will be seen as another measure of sending a message to those people who perpetrate murder against their fellow citizens.

I know that the member for Girrawheen would like to make a comment. I do not expect that we will get to a vote this evening, but I can assure members that we will bring this bill forward in the coming weeks and take it to a vote. I will be looking very closely at members opposite, many of whom profess to be on the side of the citizen, profess to be tough on crime and profess to support families experiencing grief and trauma. This is their chance to step up. They should not listen to the rhetoric of the Attorney General when he says that this is unnecessary legislation. I know that a few members on the other side will support this bill, but we need the majority of members in this place to support this bill so that it can move to the other place and progress to become a landmark piece of legislation. I assure members opposite that their support of the bill will be gratefully accepted. If they choose to oppose this bill, be it on their heads.

MS M.M. QUIRK (Girrawheen) [7.40 pm]: It is a well-established principle in criminal law that we sometimes strike bargains with criminals. The most obvious example is a discounted sentence for pleading guilty. The rationale behind that is that it saves the state the expense of a trial and the trauma to witnesses in giving evidence and it streamlines the court waiting list. In those circumstances we give a discount. It is also a sign that the defendant has admitted his wrongdoing. For all those reasons, he or she is given a discount. What the shadow Attorney General proposes in this Sentence Administration Amendment Bill 2016 is akin to that sort of arrangement. Most important, this bill is about saying to secondary victims of homicide that we will give them closure; we will ensure that they are not in a position of never knowing what has happened to their loved ones. If this is the kind of incentive that has to be given to offenders, so be it. The government might say that it cares about victims of crime, but the fact that it is not prepared to support this legislation shows to me very clearly that that is only rhetoric and it has little regard for the secondary victims of homicide, in other words, the families who remain.

As we have heard, this legislation has been enacted in South Australia and is being contemplated in other jurisdictions. I read today on the 3AW website, the Fairfax network, along with 6PR, about the father of a victim in a state where they are contemplating similar legislation. The article reads —

Ken Larcombe, whose 21-year-old daughter Jodie was murdered in 1987 but has never been found, told Neil Mitchell the law would help hundreds of victims' families.

“We are the ones doing a life sentence,” Mr Larcombe said.

“If a guy won't say where the body is, he's laughing at the families.

That's the last power these animals have over the families and the victims.

I think they would be sentiments shared by many secondary victims of homicide. If it is within our power to locate their loved one, we should make every endeavour.

Thirdly, this is legislation that the police support. We hear in this chamber on a daily basis how difficult the job of police is. If this is something that will mean, in the course of their investigation, that a suspect is more willing to disclose where a body is or maybe a co-offender is given greater incentive to disclose where a victim can be found, that is something the police want, and I do not think it is unreasonable. One of the arguments against this legislation, which has been levelled by the Attorney General is, "I have that discretion anyway; I have the discretion to refuse a parole application in those cases when it comes time to consider an offender's parole application." We are talking about 15, 18 or 20 years hence. How do we know who will be in the job then? The Attorney General saying, "Trust me, I'll never release a person in those circumstances", is, firstly, worthless because he is unlikely to be the Attorney General in 18 years. In any event, it seems to me to be legally flawed to say that he will refuse those applications in all cases when it is his sworn duty to consider each case on its merits. That undertaking is both meaningless in the sense that he is unlikely to be there and in the sense that his legal obligation is quite different from the political rhetoric which, as he said, is that he will not support applications in any event.

There has been some argument about what would happen if an offender were to get his parole but it turned out that the body had been moved. Surely, that is a difficult situation: should the offender still be released on parole? I think that shows a misunderstanding of or a failure to comprehend the exact nature of what is in the bill. It is not a large bill. It is four pages long. I would have thought that most people would be able to read and understand it. However, for the purposes of this legislation, the Prisoners Review Board has certain matters that it must take into account, including the nature and extent of the prisoner's cooperation, the timeliness of the prisoner's cooperation, the truthfulness, completeness and reliability of any information or evidence, and the significance and usefulness of the prisoner's cooperation. Therefore, in the remote circumstance that a body has been moved, the board can still take into account how timely the provision of that information was and how truthful, complete and reliable it was. So it would be a furphy to say that if the body has been moved, this will not advance the case further one way or the other. We say that because of the value for secondary victims, for family members and loved ones to have that closure, this legislation is very important.

One last thing I want to raise about the Prisoners Review Board more generally relates to the failure to publish reasons for refusal of parole. Previously, under the former Labor government, reasons were published about whether an offender was granted or refused parole, and that gave people a much better understanding of the justice system. That was also particularly helpful because it enabled the community to pinpoint whether parole was being refused because an offender could not, for example, do a particular course whilst in prison. That kept the prison authorities honest because if they wanted to reduce the numbers in prisons, they had to make sure that people who were going to become eligible for parole had the capacity to do the necessary courses that would be a prerequisite for them getting parole. Now we have a situation that reasons for granting parole are published only when someone is successful. In terms of putting a magnifying glass to the system to see whether there are logjams, for example, in prisoners being able to get training before they get parole, it is very helpful. It is yet another example of how this government has failed to be transparent and disclose that it is partly responsible for prisoners not getting the training they need and going out in the community having served their full time without having done any rehabilitative courses whatsoever.

I, too, support this legislation. I congratulate the shadow Attorney General for bringing it to this chamber. Most of all, I say to all those families who are wondering where their loved ones are that if it were up to us, they may well get the opportunity to have that question answered.

MR S.K. L'ESTRANGE (Churchlands) [7.49 pm]: I rise to speak on the Sentence Administration Amendment Bill 2016. I and my Liberal-National government colleagues are just as serious and hard on crime as any other government could be. More than anything we would love to have a piece of legislation that could achieve what this bill purports to achieve. All of us would like to be able to put pressure on a prisoner to 'fess up and tell us where they put the body. No-one on any side of this place would argue against that. To think otherwise is absolutely ridiculous.

The issue I have about voting for this bill is trying to see where the bill articulates the notion that a prisoner must tell us where the body is. I will step the member through that. First of all, proposed section 12B(2) reads —

A report given under section 12 or 12A 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).

My question is: what does cooperation entail? It is not actually defined. My second question is: what time frame does this cooperation have to take place in?

Ms M.M. Quirk interjected.

Mr S.K. L'ESTRANGE: There is no actual defined time limit. It says “whether the cooperation occurred before or after the prisoner was sentenced”. The prisoner could be sitting in a jail for 15 or 20 years.

Ms M.M. Quirk: It is better than never knowing.

Mr S.K. L'ESTRANGE: The people who want to know might well be deceased themselves by that point in time, so what point does this bill have?

Mr P. Papalia interjected.

Mr S.K. L'ESTRANGE: My criticism, member, is that the issue of getting a prisoner —

Mr P. Papalia interjected.

Mr S.K. L'ESTRANGE: Listen to what I am saying, because you will actually agree with me.

Mr P. Papalia interjected.

Mr S.K. L'ESTRANGE: Listen to me. The issue at hand is that we want the prisoner to give up the location of the missing body. That is the issue. There is absolutely no argument on this side of the chamber with trying to solve that issue.

Mr P. Papalia interjected.

The ACTING SPEAKER (Mr P. Abetz): Member for Warnbro, you are on three calls. If you interject again, I will ask you to leave the chamber.

Mr S.K. L'ESTRANGE: Proposed section 12B(3) reads —

For the purposes of subsection (2), 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, including —

- (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.

Again, I have questions about what this actually means. How do we get to a point where we have to hold the police commissioner to account on the prisoner’s cooperation? How does that work practically? If the Commissioner of Police is doing his or her job, is it not their job to lock this person away for as long as possible? Is that not what they are there to do—find the murderer and put them away for as long as possible?

Mr J.R. Quigley interjected.

Mr S.K. L'ESTRANGE: Member for Butler, you said no?

Mr J.R. Quigley: It is the court’s job to impose a sentence.

Mr S.K. L'ESTRANGE: I agree. That is exactly right—it is the court’s decision to do that; it is not the police commissioner’s place to do that.

Mr J.R. Quigley interjected.

Mr S.K. L'ESTRANGE: It is interesting that the member for Butler interjects, and this is his bill. Maybe he thinks that the Western Australian public are simpletons, because the way he has drafted this bill does not reflect what he has been purporting in the media. They are different things. Nothing in this bill relates to the disclosure of the location of the deceased by the prisoner. It is not in the bill, and the member knows that.

Mr J.R. Quigley: Do you want me to answer that?

Mr S.K. L'ESTRANGE: Absolutely.

Mr J.R. Quigley: The question will be asked by the police during the investigation: where is the deceased body? It is a question of whether the person cooperates or not. It is simple—the same as in other states.

Mr S.K. L'ESTRANGE: I thank the member for that interjection. A key component of the member’s bill is his faith and trust in the Commissioner of Police. Does the member for Butler agree with that? The member nodded, so he agrees with that. Let me read from an article in WAToday, titled “Police lie even under oath: Quigley”. It reads —

Shadow Attorney-General John Quigley says he has no faith in police to give truthful testimony at a Corruption and Crime Commission inquiry into the Tasing of Aboriginal man Kevin Spratt.

The member for Butler says he has no faith in police, yet a key component of his own bill is to rely on the Commissioner of Police's evidence.

Mr J.R. Quigley: Corrupt police who have been convicted of offences, I was talking about!

Mr S.K. L'ESTRANGE: The member for Butler is like a jellyfish in a mire of Labor uncertainty! That is where he exists. The member has a spineless argument on this issue, and he does not know what he is talking about. He is out there trying to politicise the Sentence Administration Amendment Bill 2016 and he is a disgrace. He is trying to politicise this bill and take advantage of the emotions of a highly emotive topic.

Several members interjected.

Mr S.K. L'ESTRANGE: Families are in enormous distress out there in the community, and this side of the chamber would love nothing more than to be able to go to those people and say, "We want a bill, we want an act, that will help you find your loved ones sooner." But, member, this bill does not do it. This bill fails on all fronts, and this bill —

Several members interjected.

Mr S.K. L'ESTRANGE: That is interesting, because —

The ACTING SPEAKER (Mr P. Abetz): Members!

Several members interjected.

The ACTING SPEAKER: I am on my feet, member for Butler. Let us just settle down and continue.

Mr S.K. L'ESTRANGE: The member for Butler opposes mandatory sentencing.

Mr J.R. Quigley: You're going to vote for the murderers!

The ACTING SPEAKER: Member for Butler!

Mr S.K. L'ESTRANGE: Let us not forget that. The member for Butler opposes mandatory sentencing, yet he is trying to advocate leaving people in jail forever. He is advocating that he can do that with this bill.

Mr J.R. Quigley: Vote for the murderers! Vote for the murderers!

The ACTING SPEAKER: Member for Butler!

Mr S.K. L'ESTRANGE: This is a flawed bill. Explain why it is not flawed.

Mr J.R. Quigley: Vote for the murderers!

The ACTING SPEAKER: Member for Butler, I call you for the third time.

Point of Order

Mr J.R. QUIGLEY: I think it could be the second time; I do not want to lose my credit.

The ACTING SPEAKER (Mr P. Abetz): There were two marks again your name already, member for Butler, so I am afraid that is what I need to go by.

Mr J.R. QUIGLEY: Third, is it? You said the first time.

The ACTING SPEAKER: That is right; you have already been called twice, so I am calling you for the third time.

Mr J.R. QUIGLEY: You said the first time!

The ACTING SPEAKER: No, third; I meant to say third.

Mr J.R. QUIGLEY: I just wanted to correct you because I did not want my previous interjections not to get full credit!

The ACTING SPEAKER: It is for the third time. If I need to call you again, you may be heading home a little early.

Debate Resumed

Mr S.K. L'ESTRANGE: I refer members to the last paragraph of the member for Butler's explanatory memorandum, which reads —

Clause 6 also mandates that the Board must take into account any report tendered to the Board from the Commissioner of Police evaluating a prisoner's co-operation including the extent of the prisoner's co-operation, the timeliness, truthfulness, completeness and reliability of the information and the significance of usefulness of the prisoner's cooperation with the investigation of the victim's remains.

Member, show me where that appears in the bill. Can the member for Butler show me?

Several members interjected.

Mr S.K. L'ESTRANGE: Show me where that is in the bill.

Mrs L.M. Harvey: It's not there.

Mr S.K. L'ESTRANGE: Where is it? Who wrote the bill? I will read that last bit again —

... reliability of the information and the significance of usefulness of the prisoner's cooperation with the investigation of the victim's remains.

The explanation is false. The explanation relates to nothing in the bill. What type of a joke is that? That is a disgrace! This is a topic of enormous importance to a vast number of families who would love nothing more than to find the body of their loved one. The member for Butler is playing with the emotions of the Western Australian public; that is outrageous!

Several members interjected.

Mr S.K. L'ESTRANGE: That is outrageous. The member for Butler has not even gone to the trouble of checking his own bill.

Mr J.R. Quigley: Vote for the murderers!

Mr S.K. L'ESTRANGE: The member has not even looked at it!

Mr P.T. Miles interjected.

The ACTING SPEAKER: Member for Wanneroo!

Mr J.R. Quigley: You're voting for the murderers too, are you?

Mr S.K. L'ESTRANGE: When the member for Butler was doing a news conference on radio 6PR, he brought up the Dodd murder inquiry situation. This is a very sad case. Everybody on this side of the chamber —

Ms M.M. Quirk: You don't even care anyway.

Mr S.K. L'ESTRANGE: We absolutely care. We set hard minimum sentences for murderers.

Ms M.M. Quirk: Where does it say "hard" sentences?

Mr S.K. L'ESTRANGE: That is what we do, member.

Ms M.M. Quirk: It is not in the bill anywhere, is it?

Mr S.K. L'ESTRANGE: I get it! When we identified that the bill presented in the chamber —

Mr P.B. Watson: Sit down!

The ACTING SPEAKER: Members, given the hour, under standing order 61, this business is suspended.

Debate adjourned, pursuant to standing orders.