

HISTORICAL HOMOSEXUAL CONVICTIONS EXPUNGEMENT BILL 2017

Council's Amendments — Consideration in Detail

The following amendments made by the Council now considered —

No 1

New clause 29A, page 23, after line 15 — To insert —

29A. Annual Report

- (1) The CEO must prepare and submit to the Minister, not later than 30 September in each year, a report for the previous financial year that contains details of the following —
 - (a) the number of applications made under section 5;
 - (b) for applications determined under section 11 —
 - (i) the number of applications approved under section 11(2);
 - (ii) the number of applications refused under section 11(2) and a summary of the grounds for refusal;
 - (iii) the number of convictions expunged under section 11(3) and a summary of the offences to which the expunged convictions relate;
 - (iv) the average amount of time taken to determine an application;
 - (c) the number of determinations that a conviction is no longer an expunged conviction under section 12(1) and a summary of the grounds for the determinations;
 - (d) the number of review applications made to the State Administrative Tribunal under section 18 and the outcomes of such applications, if available;
 - (e) any other matters that are, in the CEO's opinion, of such significance as to require reporting.
- (2) The Minister must cause a copy of the annual report to be laid before each House of Parliament within 14 sitting days after the report is received by the Minister.

No 2

New clause 29B, page 23, after line 15 — To insert —

29B. Review of Act

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review, as soon as practicable after the 5th anniversary of the day on which this section comes into operation.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary.

Mr J.R. QUIGLEY: I move —

That amendment 1 made by the Council be agreed to.

Mr P.A. KATSAMBANIS: This bill, amendments to which we are considering today, passed through this place quite a while ago. It went to the Legislative Council and has been returned with two amendments, which certainly, in my opinion and in the opinion of the opposition, make the bill better. There is no need to retrace the debate in this house; I point out that we were all in favour of the legislation and we wished it a speedy passage. I seek from the Attorney General an explanation of why it is now considered, in the opinion of the government, appropriate that the new clause be inserted. In effect, it requires the CEO of the department to report to the minister and, through the minister, to Parliament about the operations of the act on an annual basis.

Mr J.R. QUIGLEY: It is because the opposition in the Legislative Council would not pass the bill without the amendment.

Mr P.A. KATSAMBANIS: I think this shows that the bicameral nature that we have, although it might become frustrating from time to time and sometimes delay the passage of legislation that we are considering, serves a very good purpose in improving good legislation. It should be put on the record that the amendment provides that there be a brief annual report—it does not have to be voluminous, just a page or two—with the number of applications made, the number of applications approved or refused, the number of convictions expunged and the average time taken to determine an application. It is the sort of thing a department would collate anyway, rather than leave it to gathering information through the more opaque parliamentary processes of questions on notice, freedom of

information applications and the like. To report on an annual basis should not be a great imposition. As the Attorney General pointed out, the opposition in the upper house thought this would be a good addition. It has been added. We thank the government for accepting the amendment and offer our support for it.

Mr J.R. QUIGLEY: We do not think it improves the bill at all. We think it casts an unnecessary burden of an annual report about the very small number of applications that are made. I repeat: even though it is burdensome and does not improve the legislation in any way, we accept it. We have no choice. We have to get the legislation through. I note that it was not raised by anyone in this chamber when the bill was passed and it was not a concern of the opposition spokesperson for the shadow Attorney General. We do not think it improves the legislation one bit; we think it just adds a bureaucratic burden. But we are realistic. We want the legislation passed for all those people who are carrying a historical homosexual conviction on their record. We do not think it improves it, but we will agree to it.

Question put and passed; the Council's amendment agreed to.

Mr J.R. QUIGLEY: I move —

That amendment 2 made by the Council be agreed to.

I once again say that this does not improve the legislation one iota. This is just the churlishness of the shadow Attorney General in the other place insisting on this. Firstly, new clause 29A requires there to be an annual review, and I have already spoken on that. Now with new clause 29B, despite having an annual review, the opposition wants there to be a five-year review. We are going to have a review every year and, in the fifth year, there will be the annual review, plus the five-year review. This is just the churlishness of the opposition in the other place rabbiting on forever. This bill passed through this chamber in a couple of hours, yet debate was spread over nearly three days in the other place, and it has come up with this nonsense. We do not control the upper house.

Mr A. Krsticevic: We don't control it either.

Mr J.R. QUIGLEY: It came out of the member's party room. This particular provision just puts another burden on the bureaucracy and on this chamber that is totally unnecessary. First of all, the opposition wants an annual review, but then think about the fifth year, when the annual review will be done, plus all the reviews that preceded it.

What nonsense! But, as I said, we cannot get the legislation through without agreeing to this nonsense. We are concentrating on those people to whom the honourable Premier extended his apology and his regret that they have these historical convictions. We want to see the convictions out of the way—that is despite the fact that the shadow Attorney General put up these amendments. Why did he not do the work and bring on a bill in the four and a half years that he had the job? The shadow Attorney General has come up with this nonsense of an annual review and then a five-yearly review. It shows you just what an empty-headed, moribund shadow Attorney General we have, but we will agree to the amendment.

Several members interjected.

Withdrawal of Remark

Dr D.J. HONEY: I believe that the Attorney General should withdraw the last remarks. I believe that they were unparliamentary.

Mr J.R. QUIGLEY: I paid the shadow Attorney General a compliment. I did not want to really say what I thought about him; I paid him a compliment. But if a compliment is not acceptable in this chamber, I withdraw those gracious words I said about the shadow Attorney General.

The ACTING SPEAKER (Mr T.J. Healy): Thank you, Attorney General.

Mr P.A. KATSAMBANIS: On a further point of order —

The ACTING SPEAKER: It is not a further point of order.

Mr P.A. KATSAMBANIS: On a point of order, I believe that the protocol in this place when a member is asked to withdraw a remark is that they withdraw it; they do not give a preamble and then withdraw the remark. Could the Acting Speaker please point that out?

The ACTING SPEAKER: The Attorney General has withdrawn the remark.

Debate Resumed

Mr P.A. KATSAMBANIS: I would like to make some comments. The Attorney General likes being provocative and I do not want to get between the Attorney General and the shadow Attorney General and any of those comments.

Mr J.R. Quigley: You should be the shadow Attorney General!

Mr P.A. KATSAMBANIS: I have told the Attorney before that I am not necessarily sure that his well-intentioned sentiments are of assistance to me in that regard!

Extract from Hansard

[ASSEMBLY — Tuesday, 11 September 2018]

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Mr John Quigley; Mr Peter Katsambanis; Dr David Honey

I point out that this clause introduces a review, and the previous clause we discussed in brief is not an annual review; it is an annual report. They are very different. To remind the chamber, I should point out essentially what this bill actually allows and why it is important to have parliamentary scrutiny of the legislation. This bill allows for any convictions under a previous law of the state—an inappropriate and wrong law, but a law of this Parliament and this state historically—can be expunged, and it delegates the task of considering the expungement not to the court that made the original decision, but to the chief executive officer of the Department of Justice, who can then further delegate to officers. That is all well and good. In my contribution to the second reading debate, I discussed that such consideration would be a complete waste of court time. I have significant sympathy for this bill and what it attempts to achieve, but it would be a gross waste of court time. It would involve private citizens having to make voluminous applications and roll up to the court et cetera for essentially what would be uncontested proceedings. Therefore, it is a good idea to not tie up court time with these sorts of things. But at the same time, they are serious matters that the Parliament will allow the CEO of the department to undertake. I referred to the annual report. The first time this legislation was considered in detail in this place, the Attorney General pointed out that he did not expect an avalanche of applications under this bill, but that there will be some. Therefore, it should not be too difficult for the CEO to keep the statistics and report them on an annual basis. It would be no more than an hour or so of work.

Amendment 2, new clause 29B, “Review of Act”, allows for a review of the operation of the act on the fifth anniversary after the act has come into force. It is a completely different provision; it looks at the operation and effectiveness of the act. It might be worthwhile considering how many people had taken up the legislation, given that we do not know exactly how many people it applies to, but we have a fair idea. Have they all taken it up? Has a decent percentage of people taken it up—say, 75 per cent to 85 per cent or only 20 per cent? It will be worthwhile to have a look at the act. Again, it should not be a difficult process; it would not need extensive consultation—just a few of the relevant stakeholders and an assessment of the numbers over the five-year period. This provision is pretty standard in a lot of legislation. It is my opinion, looking at legislation from time to time, as we all do in this place, that often these review clauses that appear in so much of our legislation are in the legislation but do not always get enacted. No penalties or provisions force any of these reviews to be undertaken by a minister; it is simply an expression in the act. I have to say, as someone who believes in parliamentary procedure and the concept of parliamentary democracy, that I would like every act that has a review clause to be reviewed in the time permitted in that clause. Five years, as this bill states, is a lot longer period than most of the review clauses that allow for a review every three years. I think it is an appropriate time frame. The opposition supports this amendment, and we are happy to get it through.

Question put and passed; the Council’s amendment agreed to.

The Council acquainted accordingly.