DANGEROUS SEXUAL OFFENDERS LEGISLATION AMENDMENT BILL 2015

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 29: Section 34 amended —

Debate was interrupted after the clause had been partly considered.

Clause put and passed.

Clauses 30 to 32 put and passed.

Clause 33: Section 37 replaced —

Mr J.R. QUIGLEY: I refer to proposed section 37 and the report by a qualified expert. Clause 33 states —

> (1) A qualified expert ordered or engaged to provide a report in relation to a person under this section must —
>
> (a) examine the subject; and
>
> (b) prepare an independent report.

In what circumstances would a court order an independent person to do a report rather than engage or request that they do a report? Could someone be asked to do a report against their will? I am thinking of the case of Ugle specifically. In that case they did not want to provide a report to the court because it would break the nexus of the relationship between the therapist and the prisoner. Could the minister tell us why it is necessary to include the word "ordered" to provide a report, which means to compel a person to provide a report? It might not be a very good report if a person is doing it under compunction rather being engaged or requested to do a report. Could the minister clarify that for us?

Mrs L.M. HARVEY: I am advised that this clause links to section 14 of the act, which refers to the court's ability to request an examination by a professional. The court must order that the offender undergoes an examination by two qualified experts named by the court, at least one of whom is to be a psychiatrist, for the purpose of preparing a report in accordance with proposed section 37 to be used at a hearing of the application. Section 14 of the act allows for the court to order or request an examination, and proposed section 37 allows for the preparation of a report on the examination that can be given to the court.

Mr J.R. QUIGLEY: I appreciate that section 14 of the act refers to that, but this provision does not state to order the preparation of a report and to engage a qualified psychiatrist or qualified psychologist to that end; it states —

> A qualified expert ordered … must —
>
> (a) examine the subject; and
>
> (b) prepare an independent report.

Why does the government think it is necessary to include the word "ordered" in this clause? I understand that there can be an order for expert evidence to be obtained from a qualified psychiatrist or a qualified psychologist, but what would happen if the named psychiatrist or psychologist does not want to be involved in the particular case? This particular section seems to cut across professional independence by stating that the expert will be ordered to do it anyway and they must do the following.

Mrs L.M. HARVEY: I am advised that it is highly unlikely that a court would order a specific professional to examine an offender and furnish the court with a report. However, the purpose of using the word "ordered" is to compel the offender to engage with a specialist or expert in order to have an examination, and then for a report about the offender's suitability or otherwise for release to be furnished to the court. The use of "ordered" is to compel the offender to participate in the examination.

Mr J.R. QUIGLEY: I will vote against this clause as it has been explained because, with respect, that is not what it states. The clause does not state that an offender will be compelled to participate; it states —

> (1) A qualified expert ordered … to provide a report… must —
>
> (a) examine the subject; and
>
> (b) prepare an independent report.

I am saying that that cuts across the expert's professional independence.

Mrs L.M. HARVEY: I am advised that section 14 of the act already covers the requirement for the offender to participate and proposed section 37 refers to the report on that examination of the offender. Similar language is used in clause 33 for proposed section 37, for consistency with section 14, but section 14 is the part of the act that has a requirement for the offender to participate.

Mr J.R. QUIGLEY: I will go back to the actual wording of section 14.

Mrs L.M. Harvey: It's section 14(2).

Mr J.R. QUIGLEY: Section 14(2) states —

> (a) the court must order that the offender undergo examinations by 2 psychiatrists named by the court …

That puts an obligation on the offender; it does not put a legal obligation on the independent psychiatrist or psychologist. At that point, the independent psychiatrist or psychologist might say "For professional reasons, I can't deal with this person." This provision puts an obligation on the offender to cooperate; it does not put an obligation upon the psychiatrist, but proposed section 37 does. What would happen if a psychiatrist said, "For a professional reason, which I care not to disclose, having regard to the rule of ethics of my profession, I am not going to examine the subject or prepare an independent report"?

Mrs L.M. HARVEY: I am advised that in the scenario explained by the member, the court would find an alternative expert to perform the examination and furnish the court with a report.

Mr J.R. QUIGLEY: That may or may not be the decision of a judge, but that is not what the legislation provides for, is it? I am worried about the position of the psychologists and psychiatrists in this matter, not the position of the offender. I am worried about the position of the professional psychiatrists and psychologists. When a professional psychiatrist reads that he is ordered to—what is he ordered to do?—examine and report, and he says that for a professional reason he does not want to do that and that he does not want to expose his professional reason, he could be compelled or could feel under compulsion.

Mrs L.M. HARVEY: In those circumstances the court would not make the section 14 order.

Mr J.R. QUIGLEY: The minister went on at some length about trusting the reporting process of psychologists and psychiatrists. Indeed, earlier this afternoon she made mention that she reposed a lot of faith in qualified psychiatrists and psychologists. The report indicates that there is a great big hole in this legislation and this is where the government is deficient in protecting the public. Proposed section 37(2) states —

> The report must indicate —
>
> (a) the reporter's assessment of the level of risk that, if the subject were not subject to a continuing detention order or a supervision order, the subject would commit a serious sexual offence; and

That happens as a matter of practice in these reports. If he is not subject to a continuing detention order, there is a high risk of him reoffending, so they pass that one. The reason for the report is an assessment—they are already doing that. I have already referred to the Wimbridge, Ugle and Lewis cases as being very high on the scale of psychopathic behaviour. Nowhere in clause 33 is the qualified psychiatrist or psychologist required to provide an assessment of the conditions that are to be imposed and whether those conditions will be adequate. No provision in the bill requires the psychiatrist to say, "I have seen the set of conditions that are contemplated either by the sexual offenders' management unit or the Director of Public Prosecutions, or indeed by the court itself, and I make the following assessment of those conditions". That is not in this clause; why not?

Mrs L.M. HARVEY: The judicial function in the consideration of conditions that will be applied to a supervision order in managing an offender in the community is the responsibility of the court. It is the responsibility of the court to make decisions about the conditions of a supervision order.

Mr J.R. QUIGLEY: Yes, but earlier when talking about assessing the suitability of a person receiving a supervision order in preference to continuing detention, the minister said that the government places great faith in professional psychologists and psychiatrists. Does the minister not think that it would be a good idea if the psychiatrists, as part of the process, evaluate the contemplated or proposed conditions of the supervision so that the psychiatrist can give his opinion as to whether the orders go far enough in curtailing, as far as possible, future offending?

Mrs L.M. HARVEY: The member needs to view this in context. I go back to section 7 and the considerations that the court needs to make when deciding whether a person is a serious danger to the community. The report that a psychiatrist prepares as required by section 37 for the hearing of the application and the extent to which the person cooperated when the psychiatrist examined them, and then it goes on to other medical, psychiatric, psychological or other assessment relating to the person, and there are conditions (a) through to (j) that are

considerations of the court when determining whether a person is a serious danger to the community. Section 37 refers to one aspect of the consideration that the judiciary would need to make about a supervision order.

Mr J.R. QUIGLEY: I appreciate that. I have section 7 of the act open in front of me. The conditions to which the minister referred are set out in section 7(3)(a) to (j). But the legislation does not contemplate a psychiatrist's or qualified psychologist's assessment of the adequacy of the conditions to be imposed. Showing the psychiatrist the list of conditions and asking the psychiatrist whether, in his or her professional opinion, the conditions are as good as we can get them to ensure the community's safety is not a step that would long delay the procedure.

Mrs L.M. HARVEY: I need to take the member back to section 14(1) of the act, which reads —

> At a preliminary hearing, if the court is satisfied that there are reasonable grounds for believing that the court might, under section 7(1), find that the offender is a serious danger to the community, the proper officer of the court must fix a day for the hearing of the application for a Division 2 order.

The court determines at the preliminary hearing what will be required for the court to make a decision about an offender being considered for a continuing detention order or a supervision order in the community. The report of the expert engaged by the court to assess the offender is furnished to the court. Section 37 is one of the considerations that the court will make in setting the conditions of the supervision order, not the reverse. The psychiatrist will assess the offender and, from the psychiatric or specialist assessment, the court will make a consideration about the kind of conditions that the supervision will need to manage the offender in the community. We are not then asking the psychiatrist to come back and assess the conditions to see whether the offender can be managed. The court sets the conditions based on its experience in dealing with these matters, and those conditions are informed by the assessing specialist, who would obviously be an expert in dealing with these sorts of offenders and would presumably be informing the court appropriately.

Mr J.R. QUIGLEY: I thank the minister for that. That is, of course, what I was saying. The minister has confirmed that the government will not ask the psychiatrist to come back to assess whether the conditions are adequate or otherwise. I go back again to Wimbridge's case in which the judge said at paragraph 34 that in his view it was not desirable for Mr Wimbridge or the community for Mr Wimbridge to be held in custody for the rest of his life if conditions could be set to ensure that on his release, the community was adequately protected. Surely, at the point when those conditions were set it would be very helpful to know from the psychiatrist whether all bases are covered for the protection of the community.

The police allege they were not; they did not protect the community in Wimbridge's case. I am saying it should be a provision. I assert that it would have been safer for the community if Wimbridge's conditions had been run by a psychiatrist, he may have had further input, which would have protected the community. The police allege that the conditions did not protect the community. The government is letting the community down in that regard.

Mrs L.M. Harvey: Which allegation are you referring to, member? Police have not made an allegation about inappropriate protection of the community.

Mr J.R. QUIGLEY: It is the allegation that Wimbridge raped someone. We are affording him the full presumption of innocence, but it is the police allegation that he raped someone on Saturday. The judge said —

> In my view, it is not desirable for Mr Wimbridge or for the community for Mr Wimbridge to be held in custody for the rest of his life if conditions can be set to ensure that on release the community is adequately protected.

I go back to the words "if conditions can be set to ensure that on release the community is adequately protected". It seems to me and the Labor opposition that the government's provision is, once again, weak, weak, weak, and that the psychiatrist should be in there, and should have been there in Wimbridge's case, to assess the viability of those conditions in protecting the community. Does the minister agree?

Mrs L.M. Harvey: No, I do not.

Clause put and passed.

Clauses 34 to 47 put and passed.

Clause 48: Section 36C amended —

Mr J.R. QUIGLEY: Section 36C of the Evidence Act casts a prohibition on the publication of names of complainants. Subsection (1) states, "Subject to subsections (5) and (6)", and subsection (5) states —

> Nothing in this section prohibits the publication or broadcasting, in consequence of an accusation alleging a sexual offence, of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is

> charged with that offence, and the giving of leave in pursuance of this section does not affect the operation of subsection (1) at any time before the leave is given.

This section relates to the non-publication of the complainant's name. Could the minister tell me how proposed section 36C(5) improves the situation?

Mrs L.M. HARVEY: This proposed amendment to section 36C(5) of the Evidence Act 1906 is for the purposes of removal of any doubt that section 36C(5) applies to suppression of publication or broadcast in relation to complainants of offenders in DSO act proceedings.

Mr J.R. QUIGLEY: Is it correct that the only addition is to include into the Evidence Act a prohibition on the publication of a complainant's name in a DSO proceeding? They were never published under the existing regime. I wonder what evil we are striking at. What is the minister trying to effect here? What hole was in the system before, because in all the cases I have seen, the offender's name is not mentioned? The only offender I have seen whose name is mentioned is Ms Johnston, who publicly named herself in front of the media. In every other case, the name is suppressed. Why is it thought necessary to do this? Is it a safety measure, or why has it been included?

Mrs L.M. HARVEY: This is an amendment to the Evidence Act to absolutely clarify the ability for the protection of the identity of the victim.

Clause put and passed.

Clause 49 put and passed.

Clause 50: Section 113B amended —

Mr J.R. QUIGLEY: I would like the minister to explain to Parliament the amendment to section 113B of the Prisons Act to insert after 113B(1)(a) a new paragraph (ba). Could the minister explain that clause for the benefit of members, please?

Mrs L.M. HARVEY: Clauses 49 and 50 of the bill amend the Prisons Act 1981. The amendment proposed to section 113B of the Prisons Act 1981 allows the release of information about a prisoner by the Department of Corrective Services to a victim of a serious sexual offence. The amendment will facilitate potential DSO victims to be registered on the Department of Corrective Services' victim notification register and thus receive information of proceedings under the DSO act, and to which they may wish to submit a victim's submission.

Mr J.R. QUIGLEY: Proposed paragraph (ba), towards the bottom, reads "committed by the prisoner, whether or not that injury, loss or damage was reasonably foreseeable by the prisoner". Could the minister help me or has the minister's note she has there exhausted the explanation?

Mrs L.M. HARVEY: Section 113B of the Prisons Act is around disclosure to victims. Under subsection (1), a victim of a prisoner means a person who suffered injury, loss or damage as a direct result of an offence for which the prisoner is in custody, whether or not that injury, loss or damage was reasonably foreseeable by the prisoner. This clause inserts paragraph (ba) —

> a person who has suffered injury, loss or damage as a direct result of a serious sexual offence (as defined in the *Dangerous Sexual Offenders Act 2006* section 3(1) committed by the prisoner, whether or not that injury, loss or damage was reasonably foreseeable by the prisoner;

Then paragraph (b) states —

> where an offence for which the prisoner is in custody resulted in a death, any member of the immediate family of the deceased.

Basically, it inserts a different classification of victim with respect to disclosure of information regarding the offender, to ensure that victims of serious sexual offences are included in the Prisons Act around the disclosure of information.

Clause put and passed.

Clauses 51 to 58 put and passed.

Title put and passed.