

DANGEROUS SEXUAL OFFENDERS LEGISLATION AMENDMENT BILL 2017

Second Reading

Resumed from 7 November.

HON SUE ELLERY (South Metropolitan — Leader of the House) [4.12 pm] — in reply: I thank members for their contributions to the second reading debate on the Dangerous Sexual Offenders Legislation Amendment Bill 2017. I note the support of the opposition and Hon Charles Smith, and I note the opposition of the Greens to the bill.

In my response I will go to the particular policy issues that relate to the bill before us and I will make an overarching response to some of the issues raised by Hon Michael Mischin. The question of constitutionality of such legislation is pertinent. Lessons were learned in a matter before the High Court about similar legislation in Queensland. When we came to government, we received advice on how to achieve the policy objective, which was to enable continuing detention in custody or supervision in the community of dangerous sexual offenders if their unconditional release from custody would present an unacceptable risk that they would commit a serious sexual offence, and to do so in such a way that did not go beyond the constraints of commonwealth constitutional law. That was the balancing act we had to perform.

I will speak about some specific issues that were raised. Some were raised by a couple of speakers; others were raised by just one. I will cover them in no particular order. I will start with the question of the reverse of the onus of proof. The onus of proof in these matters is on the offender. The court must be satisfied that each condition set out in section 18(1)(a)–(g) of the Dangerous Sexual Offenders Act will be substantially complied with. If the court does not have before it sufficient information from the Director of Public Prosecutions to be positively satisfied that the offender will meet the conditions as required, the offender will have to adduce the appropriate evidence. Importantly, because the onus is on the offender, if an offender chooses not to give evidence or adduce evidence, the court may, in certain circumstances, draw the inference that the evidence that the offender would have given would not have assisted them.

I refer to the practical effect of the reversal of the onus of proof. Under the new bill, the paramount consideration remains the need to ensure adequate protection of the community, with a court being able to state the conditions that it considers appropriate subject to section 18, and the new onus provisions apply. The onus of establishing that the offender is an unacceptable risk remains on the DPP. That is in section 7(2).

Debate interrupted, pursuant to standing orders.

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Sitting suspended from 4.15 to 4.30 pm