HISTORICAL HOMOSEXUAL CONVICTIONS EXPUNGEMENT BILL 2017

Committee

Resumed from 21 August. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 5: Application for convictions for historical homosexual offences to be expunged —

Progress was reported on the following amendment moved by Hon Michael Mischin —

Page 5, line 6 — To delete "CEO" and substitute —

Minister

Hon MICHAEL MISCHIN: I inquired about the government's policy decision to have a scheme in which the decision-maker in these matters would be the chief executive officer. We were told that there was a draft of the bill, that there had been consultation and that the government was following advice, and a few other justifications have been raised, but my specific questions remain. Firstly, in the course of consultation was the attention of those consulted drawn to the fact that the CEO would be the decision-maker, or was that the case simply in an outline of the bill or by way of the draft bill?

Hon SUE ELLERY: I can provide some information to the house about how we got to the point of making a decision about who the decision-maker would be. I am not able to add anything to what I told the house yesterday about the specific nature of the consultation. I can provide the house with the following information. In the debate yesterday, Hon Michael Mischin made reference to a submission put to him by the Law Society of Western Australia when he was the Attorney General. That submission was copied to the now Attorney General in his capacity as shadow Attorney General. That submission included a comprehensive cross-jurisdictional analysis showing that the Law Society supported various aspects of similar legislation in other jurisdictions and provisions that reflected the CEO, and not a minister, as the decision-maker. In 2015 the Tasmanian Anti-Discrimination Commissioner released a report titled "Treatment of historic criminal records for consensual homosexual sexual activity and related conduct" which found —

> Given the nature of the issues raised by this process, … the scheme should be established in a way that enables the greatest flexibility in the way in which determinations are made and the information that is sought to enable that decision. I am also of the view that applications should be assessed with as little formality as possible. … I am also of the view that it is important to remove the decision making from the political sphere.

The Queensland Law Reform Commission reported on the matter in 2016. It found that the scheme should be administrative rather than judicial. In Queensland, consideration was given to three models: an independent expert panel; the CEO or director general; or the responsible minister. Ultimately, the Queensland Law Reform Commission recommended that a senior position within the government, such as the CEO or director general, should be the decision-maker. The director general oversees the court and the Director of Public Prosecutions, which are essential agencies for the operation of the scheme. No concerns were raised about ministerial oversight of decisions. It was acknowledged that the DG would be able to obtain advice when required.

Hon Michael Mischin also raised questions about the reasons for following other Australian jurisdictions in having the CEO as the decision-maker. During debate on the Tasmanian bill in its Legislative Council on 20 September 2017, Hon Ivan Dean, member for Windermere, noted that he contacted other jurisdictions with schemes in place, and particularly referred to a Victorian report that stated —

> The proposed Tasmanian scheme looks very similar to ours. Our scheme has worked very well and been very well received. We haven't had any issues with the Secretary making the decisions. It is out of the political realm, which is good, and our provisions make it clear that it is a beneficial scheme and offences must be expunged if they come within the parameters of the scheme.

The government has made it clear that the proposed scheme for Western Australia is based on a best-practice model that takes into consideration what is in place in other jurisdictions. The two jurisdictions that this bill has been drawn from the most are Victoria and Tasmania. I just referred to information from Victoria that its scheme is working well. I confirm once again that the heads of jurisdiction, the Director of Public Prosecutions, the Commissioner for Victims of Crime, the WA Police Force and the Solicitor-General all supported the bill as drafted, including the appointment of the CEO as decision-maker. I am not able to give the house any further information about the detail of that consultation. I am able to say that no stakeholder groups lobbied on the issue of who the decision-maker should be—none of the groups that support the bill, heads of jurisdiction or those on the list I have just read out.

Hon MICHAEL MISCHIN: All right. Now we know that the Law Society advocated a particular thing, and that is fine. We also know that Queensland, at least, considered the option and gave a reason why it chose one over the

other, although I do not know what the arrangements are in Queensland, but in Western Australia the director general may be responsible for the administrative side of the courts and the provision of departmental resources and the like for our DPP, but it is a separate statutory office in Western Australia and is not overseen by the director general. I would have thought that it is overseen by the Attorney General, but be that as it may.

Is it fair to say that, in the drafting of this bill, the option of having a decision-maker other than the director general was not specifically considered?

Debate interrupted, pursuant to standing orders.

[Continued on page 5036.]

Sitting suspended from 4.15 to 4.30 pm