

DANGEROUS SEXUAL OFFENDERS LEGISLATION AMENDMENT BILL 2017

Committee

Resumed from 8 November. The Deputy Chair of Committees (Hon Laurie Graham) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clauses 1 to 8 put and passed.

Clause 9: Schedule 1 Part C clause 3D inserted —

Hon MICHAEL MISCHIN: During the course of the second reading debate I made mention of certain complaints that the then opposition made about the operation of the Dangerous Sexual Offenders Act 2006. It claimed that certain amendments that were passed last year after considerable consultation and refinement, and having due regard to substance rather than form, were inadequate. I also mentioned that the then opposition, in the course of its manifestos on law reform initiatives before the last election, made certain undertakings to the public about how it would strengthen the legislation. I have already touched on the particular claims of what it would do. One of its claims concerned bail. In light of certain offenders being arrested or otherwise summonsed to court for breaches of supervision orders, no matter how trivial they may have been in the scheme of things, the then shadow Attorney General opined that Labor would be tougher. The Labor Party's election manifesto stated —

WA Labor will cease the immediate re-release into the community by providing that there will be no bail applicable to dangerous sex offenders against whom there is a credible allegation they have breached a Community Supervision Order. This means they will remain in custody until the allegation of breach has been dealt with by the Supreme Court.

I move —

Page 5, line 4 to page 6, line 7 — To delete the lines and substitute —
jurisdiction is vested must refuse to grant bail.

This amendment is a precursor to a number of amendments; a couple of which deal with the question of bail. This bill proposes —

Several members interjected.

Hon MICHAEL MISCHIN: Sorry, am I interrupting something?

Hon Jacqui Boydell interjected.

Hon MICHAEL MISCHIN: The proposed amendments to the bill impose a limitation on bail but nowhere near what was promoted by the Labor Party prior to the election; indeed, it was not what the Labor Party promoted in a raft of proposed amendments to the Dangerous Sexual Offenders Legislation Amendment Bill 2015. My amendments propose to reinstate what Labor insisted at the time was essential for the protection of the public, achievable for the protection of the public, just for the protection of the public and necessary for the protection of the public. This amendment is the first step towards achieving that. I would appreciate the minister's response to also advise or confirm whether what the government proposes meets the election commitment that there be no bail for someone against whom there is a credible allegation of a breach of a community service order, and whether the government's amendment, without the benefit of mine, will mean that those people remain in custody until the allegation of breach has been dealt with by the Supreme Court.

Hon SUE ELLERY: Australia has ratified the International Covenant on Civil and Political Rights, which sets out, amongst other things —

It shall not be the general rule that persons awaiting trial shall be detained in custody, ...

It is important to note that the provisions in respect of dangerous sexual offenders set out in the Dangerous Sexual Offenders Legislation Amendment Bill 2017 are similar to the way that bail for murder is dealt with, so it is the strongest way in our system to deal with bail. We want to ensure that we treat this in the same way we treat murder—considered to be a very serious crime—but still meet our international obligations. Effectively, the provisions will allow that only in exceptional circumstances will bail be approved. Of course, these provisions need to be read in conjunction with the reversal of the onus of proof, which puts the obligation on the offender to demonstrate the reasons bail should be granted. They need to demonstrate that they are not an ongoing risk to the community.

Hon MICHAEL MISCHIN: That may well be, but does the minister agree that the amendments put forward by Labor last year that it insisted ought to be passed and that it criticised the then government for not accepting also contravened this convention that the government is now relying on?

Hon SUE ELLERY: It has been a while since we debated this, but I remember us having numerous exchanges across the chamber. I remember that the honourable member wanted me to place on the record or acknowledge in

some way that the criticism made against him when we were in opposition was somehow unreasonable or unfair. I do not intend to revisit that argument. I am happy to entertain questions about the specifics now before us, but I really do not see the purpose in revisiting what we explored when we were debating clause 1 in the chamber last time.

Hon MICHAEL MISCHIN: All right. We will get back to it. Does the amendment meet the promise that there will be no bail applicable, and that dangerous sex offenders accused of a breach will remain in custody until the allegation of breach has been dealt with by the Supreme Court? Does it do that? This is the government's proposal. Does it do that? Does it ensure that?

Hon SUE ELLERY: I understand that essentially the member wants me to acknowledge that there is some broken promise. We canvassed this matter while canvassing clause 1 when the chamber was last considering this matter. I also made the point in my second reading reply that the question of the constitutionality of the legislation is pertinent. Lessons were learnt in the matter before the High Court in respect of that Queensland case. We have had advice in government about how best to ensure that we achieve the policy objective of continuing detention in custody or supervision in the community of dangerous sexual offenders when their unconditional release from custody would present an unacceptable risk of them committing a serious sexual offence, and we have to do that in such a way that does not go beyond the constraints of the constitutional law. That is what we have tried to do in the provisions before us.

Hon MICHAEL MISCHIN: That is an admission, then, that the election promises exceeded what was achievable; correct?

Hon Sue Ellery: That is your characterisation.

Hon MICHAEL MISCHIN: How would the minister characterise it?

Hon Sue Ellery: I just have.

Hon MICHAEL MISCHIN: No, the minister explained, but has not actually in simple terms admitted that what was promised could not be achieved; correct?

Hon Sue Ellery: Honourable member, I have nothing further to add on this.

Hon MICHAEL MISCHIN: I am sure the minister has not.

Hon Sue Ellery: We canvassed this extensively during the clause 1 debate when we were last in the chamber considering this bill.

Hon MICHAEL MISCHIN: A media article of 14 June reads —

Removing the court's discretion to release an offender on bail during proceedings relating to a supervision order breach, until those proceedings conclude, will also be included.

Is that correct? Is that being done?

Hon SUE ELLERY: Honourable member, we are repeating the debate we had while considering clause 1 previously; Hon Michael Mischin referred to the media article then. I answered those questions when we were dealing with clause 1 when the matter was last before the house. I have explained to the member the reasons for not supporting what we are actually debating right now, which is the member's amendment. I am not sure that I can add anything further.

Hon MICHAEL MISCHIN: I have moved the amendment standing in my name that reflects the amendments the Labor Party put forward last year and insisted be passed, and which the Labor Party reaffirmed in its election commitment and which it has reaffirmed since then in media announcements foreshadowing this bill, and which it now tells us it is not going to do and will not do. I have moved the amendment standing in my name.

Division

Amendment put and a division taken, the Deputy Chair (Hon Laurie Graham) casting his vote with the noes, with the following result —

Ayes (15)

Hon Martin Aldridge
Hon Jacqui Boydell
Hon Jim Chown
Hon Peter Collier

Hon Colin de Grussa
Hon Donna Faragher
Hon Colin Holt
Hon Michael Mischin

Hon Simon O'Brien
Hon Robin Scott
Hon Tjorn Sibma
Hon Charles Smith

Hon Aaron Stonehouse
Hon Colin Tincknell
Hon Ken Baston (*Teller*)

Extract from *Hansard*
[COUNCIL — Thursday, 7 December 2017]
p6711b-6714a
Hon Michael Mischin; Hon Sue Ellery

Noes (15)

Hon Robin Chapple
Hon Tim Clifford
Hon Stephen Dawson
Hon Sue Ellery

Hon Diane Evers
Hon Laurie Graham
Hon Alannah MacTiernan
Hon Kyle McGinn

Hon Samantha Rowe
Hon Matthew Swinbourn
Hon Dr Sally Talbot
Hon Darren West

Hon Alison Xamon
Hon Pierre Yang
Hon Martin Pritchard (*Teller*)

Pairs

Hon Nick Goiran
Hon Dr Steve Thomas

Hon Alanna Clohesy
Hon Adele Farina

Amendment thus negatived.

Clause put and passed.

Clauses 10 to 15 put and passed.

Clause 16: Section 17 amended —

Hon MICHAEL MISCHIN: What this clause proposes is a realisation—allegedly—of “WA Labor’s Law Reform Initiatives”, which were published in its policy manifesto of February this year. That said, among other things, and against a background of criticism over the last several years about how the legislation was intended to operate, and I quote —

WA Labor will strengthen the Dangerous Sex Offender laws to better protect the community by reversing the onus of proof —

Which it does, but I will talk later about whether it will make any material difference —

which will require dangerous sex offenders to satisfy the Court that on the balance of probabilities they will comply with each and every condition stipulated by the Supreme Court as part of a community supervision order.

Progress reported and leave granted to sit again at a later stage of the sitting, on motion by Hon Sue Ellery (Leader of the House).

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Sitting suspended from 4.15 to 4.30 pm