

CRIMINAL ORGANISATIONS CONTROL BILL 2011

Committee

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Michael Mischin (Parliamentary Secretary) in charge of the bill.

Clause 7: Application for declaration —

Committee was interrupted after the amendment moved by Hon Giz Watson had been partly considered.

Hon MICHAEL MISCHIN: I think I have already made my comments. Hon Giz Watson was about to ask a question.

Hon GIZ WATSON: I was just collecting my thoughts on where we got to before we were interrupted by questions without notice. What I understood from the parliamentary secretary was that he considered that the method of notification was adequate; therefore, it would be unnecessary to insert something that specifically says that reasonable practical steps must be taken to notify the respondent. I think Hon Linda Savage made the point somewhere in that conversation that it might be that the respondent did not turn up. It might then be viewed dimly that attempts to contact them were not adequate enough. It seems to me that that is a sort of expensive way to go about it. Why not make the effort to contact the respondent directly in the first place? If it is simply, as it is going to stand in the bill, a matter of putting a notice of the application in the newspaper and in the *Government Gazette*, I think there is a pretty high chance that the respondents are not going to know that it is there. Is it intended that attempts will be made? It is one thing to actually put it in the legislation, but is the intention, procedurally, that attempts will be made to contact the respondent?

Hon MICHAEL MISCHIN: I would expect that they would take all reasonable steps to notify a respondent if there was perceived to be a means of doing so. In respect of some criminal organisations where they are readily identifiable and have a place of operations and the like, it may be that that can be done. A letter can be posted to them or a notice can be stuck on a wall, but this is a minimum requirement to enable notice of an application to be disseminated into the community and to reach the attention of those that the application is focusing on. As I pointed out, the designated authority would, in any event, bear in mind whether there has been a sufficient notification so that someone could exercise their opportunity to make submissions in responding to the application. It is not the organisation itself that makes the response, but the members of the organisation and other persons who may be directly affected, whether or not adversely, by the outcome of the application to make submissions and so on. I would expect that a designated authority, properly exercising his or her powers under the bill, would take that into consideration and satisfy themselves that a satisfactory opportunity to be heard has been afforded to those who are able to make submissions. In any event, as I have pointed out, the amendment focuses on assigning the responsibility for giving notice to the designated authority, who is not the person who ought to have that responsibility; it ordinarily should be imposed upon the applicant rather than the adjudicator.

Amendment put and negatived.

Clause put and passed.

Clause 8: Publication of notice of application —

Hon GIZ WATSON: I move —

Page 11, after line 28 — To insert —

- (b) setting out the grounds on which the application is sought; and
- (c) setting out the information supporting those grounds; and

Obviously, the existing subclause (c) will flow on from there. Currently, only the consequences of the grant of an application have to be published in the *Government Gazette*, but not the reasons for granting the application. This amendment is in similar terms to clause 36(c) and (d) for a control order application. I have simply duplicated the requirements that are currently provided in clause 36. We are arguing, in terms of fair procedure, for the respondent to know the grounds for the application, and the information supporting those grounds is a procedural fairness that we think ought to be included in this clause.

Hon MICHAEL MISCHIN: The government will not support the amendment. There are essentially two bases for that position. The first is a matter of principle. This clause is about notification of the fact of an application to achieve a certain end. It would not be sensible to publish all the details of the application and the evidence in support of it when people are simply being notified that an application is underway, the time and date of it and, essentially, the rights and obligations of people if they want to contest the application. I will use an analogy and, admittedly, it is not a perfect analogy. If a police officer were to approach a magistrate for the issue of a search warrant, they would have to provide what they are after, what they intend to search for and the grounds for that

search warrant, and the grounds and the evidence in support of those grounds would not ordinarily be published. The detail of an application that is proposed to be made would not necessarily be required to be published, in the same way as happens with a licensing application or a planning application; that detail is obtained down the track once people are advised of the fact that it is happening.

Secondly, it is a matter of practicality. Some of the basis for the application may be confidential information which ought not be disseminated generally and which may reveal sources and the like. The information supporting the application can be very voluminous. It may consist of a considerable amount of affidavit evidence that has at that stage been untested. So what the member is essentially asking for is that a whole newspaper be prepared setting out not only the essential information that an application has been made and when a person will have an opportunity to be heard on it, but also all the information to support it. It simply would not be practicable to do that. It may be dangerous to do that if in fact information that ought not be in the public arena were revealed. Those who have an interest will be informed of their rights to make submissions on the application. They will have the case revealed to them so that they can make sensible responses to it. That will be done under the control of the designated authority who will have to make the decision down the track. This amendment is neither necessary nor appropriate when giving notice of the fact of an application.

Amendment put and negated.

Hon GIZ WATSON: I have one further point on clause 8, “Publication of notice of application”. The application must be published in the *Government Gazette* and at least one newspaper circulating throughout the state and must specify that an application has been made for a declaration under part 2 of the bill in respect of the organisation. What will be done with an organisation that does not have a name?

Hon MICHAEL MISCHIN: That, fortunately, is not a matter that I will have to decide because I am not the enforcement agency that needs to bring the application, but there are ways that that could be done. If the organisation has no name, there may be difficulty establishing what the organisation is or whether it is in fact an organisation as opposed to a loose collection of people who may have a common aim but do not associate for the criminal purposes that are specified in the bill. There may be ways of identifying an organisation with reference to perhaps clothing, manners of behaviour and that sort of thing and ascribing the application in those terms. I would find it unlikely, speaking from my experience, that we could readily identify or convince someone that something is an organisation without there being some name to it or appellation by which it is known to others, and by which people identify themselves as either being part of it or otherwise. Even local action groups that get together in the community find themselves a name for particular purposes, whether they are incorporated or not. I would find it difficult to imagine that there is an organisation without it having some kind of a name by which they are known to themselves and others.

Progress reported and leave granted to sit again, pursuant to standing orders.