COMMUNITY PROTECTION (OFFENDER REPORTING) AMENDMENT BILL 2011

Committee

Resumed from 16 October. The Deputy Chair of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Michael Mischin (Attorney General) in charge of the bill.

Clause 11: Section 22 amended —

Progress was reported after the clause had been partly considered.

Hon GIZ WATSON: When we were last on this bill, we were waiting for a response from the Attorney General. I am waiting for my file to come up as I have been caught slightly on the hop.

Hon MICHAEL MISCHIN: I am content to go through the answer again. As is plain, clause 11 of the bill will amend section 22 of the principal act. That section concerns appeals by persons aggrieved by a decision of the court in relation to past offender recording orders. The appeal process does not apply to orders that are made by consent. The purpose of consent orders is to increase the efficiency of the court process, and if the person subject to an application for a past offender reporting order consents to the order and its terms, the court's time is saved as the terms of the order do not need to be debated in detail. It is expected that a person would consent to a past offender reporting order in circumstances in which it is clear that the court's consideration of the matters detailed in section 19 of the principal act, such as the nature of the offence and the person's criminal history, would obviously result in an order being made. Before endorsing the order, the court would, of course, as a matter of process, ensure that the person understands the terms of the order and the effect of giving their consent. Accordingly, there is no basis for a later appeal to say that they are not within the circumstances that are envisaged by section 19, as they have accepted, by way of their consent, that they are someone who falls within those categories. There is nothing unusual about that.

Clause put and passed.

Clause 12: Section 24 amended —

Hon GIZ WATSON: I reiterate what I said during the second reading debate. Clause 12 gives a person who is put under an offender reporting order or past offender order a certain period of time after making the order in which to provide the initial report. However, it is possible that the order would have been made in the offender's absence. In such cases, section 21 requires that a copy of the order be served on the offender. Now, in theory at least, this might be after the time limit for the initial report to expire, and while section 63 makes it a defence if the person was not aware of the obligation, I consider it would have been far better if the clause had been drafted to include the words "or if the reporting order was made in the absence of the respondent within seven days of a copy of the order being served on the respondent." My point is that a person should not be at risk of prosecution at all for breach of obligation if they have not first been informed of the obligation, not simply given a defence. Perhaps I might ask the Attorney General to respond to that. Rather than it being made a defence, was consideration given that it actually be made explicit that if the respondent was absent that that allowance be made?

Hon MICHAEL MISCHIN: As Hon Giz Watson pointed out, clause 12 details when an initial report to police must be made by a reportable offender, and the report according to the proposed subsection requires that it must be made within seven days of a report order being made or, if a person is in state custody, within seven days of being released from custody. Also, as pointed out by Hon Giz Watson, section 21 of the principal act allows for an order to be made by the person in the absence of the person who will be the subject of the order, and if the person fails to report within seven days of the order being made and failure is due to the order not being received, there is the defence available to the person under section 63(3) of the principal act.

I make two points. Generally, Western Australia Police would not attempt to prosecute a person who failed to comply with a seven-day reporting period if the person was not aware of the reporting order having been made. The police, if they were inquiring into the failure to comply, would ascertain that and one would think that there would not be a basis for a case. For a start, there would be an interview with the person concerned and, in any event, there would be some evidence that would need to be drawn on that the order had been served or that there was other information regarding the existence of the order. There is another factor to it and, of course, the exculpatory criminal responsibility provisions of section 24 under chapter V of the Criminal Code would apply to all offences in Western Australia unless explicitly excluded, and section 24 requires the prosecution to overcome and prove beyond reasonable doubt that the accused did not have an honest and reasonable but mistaken belief in the existence of a state of things that would not make that person criminally responsible. If a person honestly and reasonably, but mistakenly, believes there was no order against them, and had no knowledge of the order, that would be a factor against any successful prosecution, even apart from any positive defence under section 63(3) of the principal act. It has just been pointed out to me that section 63(1) of the principal act

provides that one of the thresholds in the prosecution of any offence is that a reportable offender without reasonable excuse fails to comply with any of his or her reporting obligations commits an offence. I would have thought a reasonable excuse is that a person did not know that there was such an obligation, so it cannot happen.

Clause put and passed.

Clauses 13 to 15 put and passed.

Clause 16: Section 38 amended —

Hon GIZ WATSON: I am looking around the chamber to see whether any members of the Standing Committee on Uniform Legislation and Statutes Review are present and seek to move the committee's amendment.

Hon Michael Mischin: I am here!

Hon GIZ WATSON: Yes, that is right! But the Attorney General is probably not in a position to move the amendment, although I note it was not a unanimous report, but members other than the chairman signed off on it. I am happy to move committee amendment 1, not the least so that it will form the basis for further discussion about this particular matter. I move —

Page 12, lines 27 and 28 — To delete "form of identification or other document," and insert —

identification documents,

I remind members that this was covered in the standing committee report at pages 4, 5 and 6. The gist of it was that the committee recommended that the Legislative Council consider whether clause 16 of the bill appropriately delegates Parliament's law-making powers. If the Legislative Council takes the view expressed in paragraph 3.8, the committee proposes the following form of amendments, one of which I have just moved. I also made a point about this particular matter in my second reading contribution. I think it was about passports and whether a passport is the only document that can be referred to.

Hon Kate Doust: As you go down the recommendation list, it says that if you don't have a passport, a range of other documents could be provided.

Hon GIZ WATSON: That is correct. I think there is merit in the amendment that has been recommended by the Standing Committee on Uniform Legislation and Statutes Review. Perhaps the appropriate thing to do is to ask the Attorney General to indicate whether the government will support the amendment.

Hon MICHAEL MISCHIN: I would love to, but I am bound by certain rules of confidentiality. It is apparent from the report that there were different views about whether it was advisable or preferable to enumerate the several documents in the bill rather than to permit regulations to be made setting out those documents. Currently, there are regulations with a raft of documents identified and those would be the sort identified in the bill if push came to shove.

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