

CRIMINAL CODE AMENDMENT BILL 2008

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Jon Ford) in the chair; Hon Michael Mischin (Parliamentary Secretary) in charge of the bill.

Clause 4: Section 297 amended —

Progress was reported after the amendment moved by Hon Sue Ellery had been partly considered.

Hon MICHAEL MISCHIN: The government does not agree to the proposed amendment for the reasons explained during the course of the second reading debate and during the course of the debate on clause 1 in this committee stage. The line has had to be drawn as to the category of people who will receive the mantle of protection by way of minimum sentences to persons who assault and do them bodily harm or grievous bodily harm. The government has determined that that level of sanction should be limited to the protection of persons whose function it is to put themselves in harm's way. That is their job. A teacher may very well find him or herself in harm's way. A nurse may very well find him or herself in harm's way, as may a bus driver, taxidriver, delicatessen owner and just about every category of worker in society.

Police officers, prison officers and ambulance officers are, by reason of their employment, required to be involved in circumstances where they are meant to keep the peace. Ambulance officers have been included in the legislation because they often deal with persons who may have been involved in antisocial behaviour, such as fights and the like, and they take over from police officers or, indeed, may be first on the scene.

There is somewhat of a contradiction here. The Leader of the Opposition proposes to put forward this amendment on the basis that it seems the government is not fulfilling its mandate and yet has spent some considerable time moving amendments that will mitigate the government's mandate and its promise to introduce mandatory sentencing legislation. Now, after a great deal of concern has been expressed about how many people, including juveniles, might end up in custody, the opposition has sought to extend the range of potential people in custody by extending the range of people whom, if they are assaulted and bodily harm is done to them, will result in an automatic sentence of imprisonment for the offender. That scope is expected to extend to not only adults, but also juveniles. The government does not support the amendment. The act is to be reviewed within three years. If in the course of that review it becomes necessary to extend the level of protection to other public officers, that can be considered at a later date. I should also point out that it is not as though these people do not have any protection. As the law currently stands, if grievous bodily harm is done to a teacher or a nurse, the offender could be liable to 14 years' imprisonment. The only limitation is that if someone assaults a teacher or a nurse, the offender does not automatically go to jail for a minimum term. It is not as though they are without the protection of the law; they have it in the same way as police officers and others currently have it. However, the offender will not automatically be given a custodial sentence.

Hon SUE ELLERY: I thank the parliamentary secretary for his response. It is an interesting proposition. He said that a line had to be drawn. I concur that the government has drawn a line. I guess the question that remains in my mind is where the line has been drawn and whether it had to be drawn.

The promise the Liberal Party made to the people of Western Australia at the election was that it would, as a matter of priority, introduce legislation that would apply to all public officers. Upon getting into government, it has decided that it would apply the mandatory sentencing provisions only to certain categories of public officers. If we accept that the level of risk for public officers exists on a spectrum and the government has determined that the point at which the mandatory sentencing provisions of this legislation will kick in is the point that applies to police officers, ambulance officers and certain other categories, it is a bit flippant to say that bank tellers and delicatessen owners—who by the way are not public officers—fall into the same category as the other public officers who sit on that spectrum. There is a fundamental difference between a bank teller and a delicatessen owner with regard to the duty of care they have to the people with whom they must deal in the course of their daily work. For example, a consequence of the nursing profession and of the obligations nurses are under by virtue of their registration, is that they are required to put the care of their patients at the forefront of their activities. Mental health nurses have found themselves at risk when caring for a patient in that patient's interests. Equally, a teacher's duty of care to the children in their care on school grounds has seen teachers literally put their bodies in front of a child when dealing with aggrieved parents who are caught up in custodial disputes. As a consequence of their work, they find themselves having to protect someone who is vulnerable. There is a fundamental difference between the example that the parliamentary secretary gave and the amendments that we have moved. If the mandatory sentencing provisions are about those who are required to put themselves in harm's way, nurses do that, fireys do that and teachers do that. If we are to point the finger at where internal inconsistencies might lie, that finger will not point in one direction only.

I reiterate that we are moving these amendments because that is the promise that the Liberal Party made at the last election. A rational and objective assessment of what is required for these three extra categories to which we seek to have the legislation apply goes to the duty of care those people have for the people whom they look after. There are practical examples of when they have had to put themselves in harm's way to protect patients, children, property owners or next-door neighbours when fighting a fire.

Hon MICHAEL MISCHIN: I do not seek to extend the debate, but why limit it to nurses? Why not include those working in a hospital or in the course of providing a health service to the public? Why not doctors as well? Why not teachers aides? Why not cleaning staff at schools? This is an isolated, inconsistent and illogical amendment.

Hon ADELE FARINA: I would like the parliamentary secretary to clarify the application of this law to ambulance officers. The parliamentary secretary has said that this law will apply to protect ambulance officers. Does it also extend to protect voluntary ambulance drivers? As the parliamentary secretary may be aware, in the south west many of our ambulance drivers are volunteers. They perform exactly the same function as full-time ambulance officers. Are volunteer ambulance officers in the south west also protected under this legislation?

Hon MICHAEL MISCHIN: Ultimately that will be a question to be determined by a court, but I can see no reason why they would not be protected. The legislation speaks of an ambulance officer. It does not differentiate between a full-time ambulance officer who is remunerated, a voluntary ambulance officer or whether the ambulance officer is employed by the public sector or by St John or whichever other organisation.

Amendment put and a division taken, the Deputy Chairman (Hon Jon Ford) casting his vote with the ayes with the following result —

Ayes (8)

Hon Helen Bullock
Hon Kate Doust

Hon Sue Ellery
Hon Adele Farina

Hon Jon Ford
Hon Sally Talbot

Hon Ken Travers
Hon Ed Dermer (*Teller*)

Noes (21)

Hon Liz Behjat
Hon Robin Chapple
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Phil Edman

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Alyssa Hayden
Hon Col Holt

Hon Lynn MacLaren
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton
Hon Simon O'Brien

Hon Giz Watson
Hon Alison Xamon
Hon Ken Baston (*Teller*)

Pairs

Hon Jock Ferguson
Hon Ljiljanna Ravlich
Hon Matt Benson-Lidholm

Hon Nigel Hallett
Hon Max Trenorden
Hon Wendy Duncan

Amendment thus negatived.

Hon SUE ELLERY: I was bold when I last stood when I was talking to amendment 14/4. I canvassed the same arguments that would apply to 22/4, so I move —

Page 3, line 26 — To insert after “subsection (4)(d)(i)” —

, (d)(ii), (d)(iii)

Hon MICHAEL MISCHIN: For the same reasons that were canvassed on the previous amendment, 14/4, the government does not agree to the amendment.

Hon ADELE FARINA: I refer to the question I asked earlier when I jumped a clause, which was: do the provisions of this act also protect volunteer ambulance drivers? The parliamentary secretary responded by saying that it would be up to a court to determine, but clearly it is up to this Parliament to determine before a court determines it! If we want to protect volunteer ambulance drivers as well, we should explicitly say so or ensure that the provision as it is currently written in the Criminal Code is sufficient to protect volunteer ambulance drivers also. Section 297(3)(d)(iii) refers specifically to volunteer fire brigade officers, and I wonder why it was felt necessary in the drafting to expressly state “volunteer fire brigade” but not do that for volunteer ambulance drivers, and whether there is some reason for that or a definition of ambulance officer somewhere in some piece of legislation that clearly defines volunteers as well as permanent officers. If so, why are we not then expressly referring to that piece of legislation as we do at subparagraph (d)(ii) and (iii)? I am seeking clarification because

it is important that we understand the intention of the government in passing this legislation. Is it the intention of government that volunteer ambulance drivers will also be protected?

Hon MICHAEL MISCHIN: Which legislation is the member referring to?

Hon ADELE FARINA: Does the protection provided to ambulance drivers in the legislation we are dealing with tonight extend to volunteer ambulance drivers?

Hon MICHAEL MISCHIN: Members will note that section 297(4)(d)(iii) specifies a member or officer of a private fire brigade or volunteer fire brigade within the meaning given to those terms by the Fire Brigades Act 1942. Those are separately defined terms within that act so they have to be specifically differentiated. In the case of an ambulance officer, as far as I am aware, there is no definition of a ambulance officer in any statute. Accordingly, the plain meaning of the words would apply. The reason I said it would ultimately be a question for the court is because the question will be decided by whether someone at any given time is an ambulance officer. The legislation does not distinguish between an ambulance officer and a voluntary ambulance officer or any other subcategory of ambulance officer; it simply says an ambulance officer. That is currently in section 297 of the code, and it has not caused any difficulty in the past. Therefore, the government does not propose to tamper with that. We would assume that the plain meaning of the words would apply and a court would interpret accordingly. Trying to add additional qualifications, although apparently trying to clarify and make it more certain, may in fact create loopholes. The government proposes to leave the words as they are.

Hon Sue Ellery: Does the government have a view about whether it should apply to voluntary as well as to paid ambulance officers?

The DEPUTY CHAIRMAN: I remind members that interjections from members who are sitting down make it hard for Hansard and the camera people downstairs to record.

Hon MICHAEL MISCHIN: I have no reason to suppose that it does not apply to a voluntary ambulance officer.

Hon ADELE FARINA: I appreciate the parliamentary secretary is trying to be helpful; however, this is a question that goes to the government's policy on the bill and how it intends these provisions to apply. I do not think it is sufficient for the parliamentary secretary to say he supposes it will apply. Is it the government's intention in passing this legislation that it applies to volunteer ambulance drivers? It is a fairly simple and direct question, and the opposition would like to know the government's position.

Hon MICHAEL MISCHIN: The term is already in the legislation. It applies in the same circumstances as currently apply if one were to assault a person acting as an ambulance officer and do that person grievous bodily harm. Those circumstances would result in an offender being liable not only for a term of up to 14 year's imprisonment, as is currently the case, but also, if the legislation is passed, being subject to a minimum term of imprisonment, or in the case of a juvenile, detention. It means what it means: an ambulance officer or someone acting at that time as an ambulance officer in either, I would have thought, a voluntary or remunerated capacity.

Amendment put and a division taken, the Deputy Chairman (Hon Jon Ford) casting his vote with the ayes, with the following result —

Ayes (8)

Hon Helen Bullock
Hon Kate Doust

Hon Sue Ellery
Hon Adele Farina

Hon Jon Ford
Hon Sally Talbot

Hon Ken Travers
Hon Ed Dermer (*Teller*)

Noes (20)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Phil Edman

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Alyssa Hayden

Hon Col Holt
Hon Lynn MacLaren
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore

Hon Helen Morton
Hon Simon O'Brien
Hon Giz Watson
Hon Alison Xamon
Hon Ken Baston (*Teller*)

Pairs

Hon Jock Ferguson
Hon Matt Benson-Lidholm
Hon Ljiljana Ravlich

Hon Nigel Hallett
Hon Max Trenorden
Hon Wendy Duncan

Amendment thus negatived.

Clause 4, as amended, put and passed.

Clause 5: Section 318 amended —

Hon GIZ WATSON: I move —

Page 4, lines 4 to 23 — To delete the lines.

This is similar to the clause 4 amendment that I proposed. This amendment deals with the section of the act that deals with bodily harm and not grievous bodily harm. I apologise for getting ahead of myself earlier! Supporting this amendment to delete the lines will mean that the bill does not apply to juveniles. I will not repeat the arguments because I am sure that members understood what I was saying during the debate on the previous clause. The only thing that I will add is that because we are dealing with bodily harm, it is even more important that these provisions do not apply to people under 18.

Hon SUE ELLERY: The Labor Party will support Hon Giz Watson's amendment—members will have noted an identical amendment in my name on the supplementary notice paper—for the same reasons previously argued; albeit we are now dealing with the first of the section 318 or assault category amendments. It is worth noting that section 318 refers to offences that only apply in the case of harm caused to public officers. Nevertheless, the same arguments apply about the reasonableness of mandatory sentencing applying to children and, for the same reasons put forward during the debate on the section 297 proposed amendments, the opposition believes that mandatory sentencing should not apply to children.

Hon ADELE FARINA: Earlier, I asked a question about potential bodily harm offences under section 318(1)(d). Will the parliamentary secretary tell me how many juveniles have been charged under this provision? I appreciate that previously this did not relate specifically to police officers; however, I now understand that the Attorney General has extrapolated information about charges against police officers and that that information should therefore be available to the parliamentary secretary. I would like it placed on the record. I would like to know how many juveniles have been charged under section 318 for assaulting a police officer. I would also like to know, in relation to those juveniles, how many were convicted; and, of those, how many received a term of imprisonment, and what was the length of that term of imprisonment.

Hon MICHAEL MISCHIN: I answered this earlier in the consideration of the bill—or at least part of it. In 2008, there were 320 lodgements in the Children's Court for offences under section 318. That covers all categories of assaults enumerated under section 318. Of those, only three were not for assaults on a public officer, of whatever category as defined under section 318(1)(d). Of these, 124, or some 39 per cent, dealt with offenders of the ages of 16 and 17 years. In 2007-08, 10 per cent of offenders in the Children's Court were sentenced to detention. I am informed that 97 juveniles—that is anyone under the age of 18—were convicted. That information is a little disjointed, but that is the only information available at this time.

Hon ADELE FARINA: I have some information that says that in relation to section 318 charges, when the accused persons have entered a plea of guilty, the sentences that were imposed subsequently were intensive supervision orders or suspended terms of imprisonment. So we are now moving from a situation in which the maximum penalty for a person who has pleaded guilty is an intensive supervision order or a suspended term of imprisonment to a situation in which a mandatory sentence will be imposed if the person is aged 16 and above. I would like to know the basis of the government's decision to impose this requirement. I say that because there do not appear to have been any appeals against those sentences that have been imposed. That would suggest that in the past there has not been a concern that the sentences that have been imposed are too lenient. Normally, when we introduce legislation into Parliament to reform or change the law, it is because there is a body of evidence to suggest that the law needs to be changed. However, the evidence that we have to date would suggest that that is not the case in respect of this legislation, because there have not been any challenges to the sentences that have been imposed. Therefore, when it comes to appeals, the decision must have been made that the sentences were reasonable in all the circumstances of the case. The government is asking us to throw out any consideration of the circumstances of the case. As I have said, the government has failed to produce any evidence to suggest that there has been a growing concern about the leniency of the sentences that have been imposed, as illustrated by the police, or other bodies, appealing those sentences. Perhaps that is information that I do not have. I ask the parliamentary secretary to provide to this Parliament any evidence that he may have that appeals have been made against sentences that have been considered to be too lenient.

Hon MICHAEL MISCHIN: I do not have that information, but some of the premises upon which that final question has been built are arguable. The member has said that a proportion of the offenders who have made pleas of guilty have received an intensive supervision order or a suspended sentence. I am not sure whether the member is talking about adults or juveniles, or all offenders; or whether she is talking about section 318(1)(d) offences involving police officers —

Hon Adele Farina: Yes, I am.

Hon MICHAEL MISCHIN: — or about offences involving public officers generally. In any case, as the member would be well aware, the basis upon which the prosecution can, and ought to, appeal a sentence that has been imposed is not the same as that applicable to an offender. A greater threshold needs to be crossed by the prosecution. Therefore, although the prosecution may very well think that a sentence is inadequate, in the circumstances it may not be viable to appeal that decision. It is the trend in sentencing that has prompted the government to take this initiative in the first place.

Hon ADELE FARINA: Can the parliamentary secretary tell me what additional funding will be made available by the government to run additional programs for offenders while they are in prison to ensure that they do not reoffend? I ask that question because the purpose of these sorts of measures should be to prevent offenders from committing these offences. Imprisonment, which should be seen as a measure of last resort, is also supposed to be an opportunity to provide some rehabilitation for offenders. As we know from a lot of surveys and studies that have been undertaken, people tend to reoffend unless they go through a rehabilitation program. What additional funding will the government be making available to ensure that any offenders who are put in prison as a result of these new measures will undergo an appropriate rehabilitation program while they are in prison?

Hon MICHAEL MISCHIN: I am not aware of any funding specifically to deal with offenders who are caught by these provisions. The purpose of these provisions is to hopefully reduce the number of offenders by deterring people from committing the offence of assault against a public officer. If these offenders do happen to go to jail, they will have available to them the same rehabilitative facilities that are available to any other offender, including those offenders who assault other categories of persons as set out in section 318 and are deemed to be persons who ought to go to jail. The fact that there is a minimum sentence of imprisonment for certain categories is irrelevant to the question of what facilities are provided. These offenders will be subject to the same prison regime and the same rehabilitative and punishment facilities as any other offender who goes to jail.

Amendment put and a division held, the Deputy Chairman (Hon Jon Ford) casting his vote with the ayes, with the following result —

Ayes (12)

Hon Helen Bullock
Hon Robin Chapple
Hon Kate Doust

Hon Sue Ellery
Hon Adele Farina
Hon Jon Ford

Hon Lynn MacLaren
Hon Sally Talbot
Hon Ken Travers

Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Phil Edman

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Alyssa Hayden

Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton

Hon Simon O'Brien
Hon Ken Baston (*Teller*)

Pairs

Hon Jock Ferguson
Hon Matt Benson-Lidholm
Hon Ljiljana Ravlich

Hon Nigel Hallett
Hon Max Trenorden
Hon Wendy Duncan

Amendment thus negatived.

Hon MICHAEL MISCHIN: I move —

Page 4, lines 4 to 7 — To delete “a young person (as defined in the *Young Offenders Act 1994* section 3) is convicted of an offence against this section committed in prescribed circumstances, then, notwithstanding that Act” and insert —

a person is convicted of an offence against this section committed in prescribed circumstances at a time when the person had reached 16 but not 18 years of age, then, notwithstanding the *Young Offenders Act 1994*

The purpose of this amendment is to reflect the provision that has already been passed in respect of section 297 of the code, but to exclude juveniles under the age of 16 from the operation of the mandatory detention and imprisonment provisions.

Hon GIZ WATSON: The Greens will support this amendment and we appreciate the fact that the government has moved some way towards recognising that young people should not be given mandatory prison sentences.

Hon SUE ELLERY: The Labor Party will support this amendment. The single issue that raised its head I think in every variation of the party room is how this bill will apply to young people. We took the position that it ought

not apply at all. If that is not the will of the chamber, we appreciate the shift by those members inside the government to move this amendment so that we will at least limit to the extent it is possible the application of the mandatory sentencing provisions.

Amendment put and passed.

Hon GIZ WATSON: I move —

Page 4, line 16 — To delete “as the court thinks fit” and insert —
unless —

- (A) that sentence would be clearly unjust given the circumstances of the offence and the person;
- (B) the person’s criminal record indicates that they are unlikely to be a threat to the safety of the community;
- (C) the imposition of a term of imprisonment would not act as a general deterrent;
- (D) a term of imprisonment would be contrary to the public interest;
- (E) the court has afforded the victim of the offence an opportunity to make submissions either personally or in writing as to whether a term of imprisonment should be imposed; and
- (F) the court has given written reasons why a term of imprisonment was not imposed.

These words are similar to the words moved by the Leader of the Opposition earlier in this debate. The criteria to be reinserted would in effect reintroduce some provisions that would guide the sentencing. I will not read through them because they are the same as the words the opposition moved earlier. We seek the support of the chamber on this amendment.

Hon MICHAEL MISCHIN: For the same reasons as already expressed on the mirror provision in relation to clause 4, the government does not agree to the amendment.

Hon SUE ELLERY: We support the amendment for the same reasons as outlined before; that is, we think it is reasonable that Parliament give to the courts the capacity to make alternative arrangements in light of all the exceptional circumstances set out from (A) through to (F). It is right and proper to acknowledge that parliamentarians cannot predict now the circumstances that might come before the courts. For those reasons we think it is reasonable to insert a provision that will give the court certain powers if what is before it constitutes something that is manifestly unjust and when it would be manifestly unjust to proceed to a mandated sentence in the circumstances. For those reasons we support the amendment.

Amendment put and a division taken, the Deputy Chairman (Hon Jon Ford) casting his vote with the noes, with the following result —

Ayes (12)

Hon Helen Bullock
Hon Robin Chapple
Hon Kate Doust

Hon Sue Ellery
Hon Adele Farina
Hon Jon Ford

Hon Lynn MacLaren
Hon Sally Talbot
Hon Ken Travers

Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Phil Edman

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Alyssa Hayden

Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton

Hon Simon O’Brien
Hon Ken Baston (*Teller*)

Pairs

Hon Jock Ferguson
Hon Ljiljana Ravlich
Hon Matt Benson-Lidholm

Hon Nigel Hallett
Hon Max Trenorden
Hon Wendy Duncan

Amendment thus negated.

Hon MICHAEL MISCHIN: I move —

Page 4, lines 25 and 26 — To delete “and subsection (2) does not apply” and insert —

at a time when the person had reached 18 years of age

By way of explanation, as with the previous amendment to clause 4, this amendment will make it clear that the subclause applies to those who have achieved the age of 18 years. It does not apply to juveniles.

Amendment put and passed.

Hon SUE ELLERY: By virtue of the amendment that the chamber has just carried, my amendment 16/5 falls away.

Hon GIZ WATSON: Similarly, amendment 8/5 standing in my name also falls away.

I move —

Page 5, after line 4 — To insert —

unless —

- (i) that sentence would be clearly unjust given the circumstances of the offence and the person;
- (ii) the person's criminal record indicates that they are unlikely to be a threat to the safety of the community;
- (iii) the imposition of a term of imprisonment would not act as a general deterrent;
- (iv) a term of imprisonment would be contrary to the public interest;
- (v) the court has afforded the victim of the offence an opportunity to make submissions either personally or in writing as to whether a term of imprisonment should be imposed; and
- (vi) the court has given written reasons why a term of imprisonment was not imposed,

This amendment seeks to re-insert the same words that have been debated twice now in relation to providing a range of circumstances that need to be considered. So as not to take up the time of the house, I will not go through them at length again. I simply seek to insert those words.

Hon SUE ELLERY: I rise again to indicate that the government will support the amendment for the reasons that we have argued previously. We think it is reasonable for the Parliament to send a clear message to the court that when it finds exceptional circumstances before it and it would be manifestly unjust to apply a mandated sentence, it has the capacity to not apply that mandated sentence.

Hon MICHAEL MISCHIN: For the reasons already expressed with respect to the similar proposed amendments, the government does not agree to the amendment.

Amendment put and a division taken, the Deputy Chairman (Hon Jon Ford) casting his vote with the ayes, with the following result —

Ayes (12)

Hon Helen Bullock
Hon Robin Chapple
Hon Kate Doust

Hon Sue Ellery
Hon Adele Farina
Hon Jon Ford

Hon Lynn MacLaren
Hon Sally Talbot
Hon Ken Travers

Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Phil Edman

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Alyssa Hayden

Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton

Hon Simon O'Brien
Hon Ken Baston (*Teller*)

Pairs

Hon Ljiljana Ravlich
Hon Matt Benson-Lidholm
Hon Jock Ferguson

Hon Nigel Hallett
Hon Max Trenorden
Hon Wendy Duncan

Amendment thus negatived.

Hon SUE ELLERY: I move —

Page 5, after line 18 — To insert —

- (iv) a teacher as defined in the *School Education Act 1999*

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Hon Michael Mischin; Hon Adele Farina

(v) a nurse as defined in the *Nurses and Midwives Act 2006*,

In speaking to amendment 17/5 listed on the supplementary notice paper, I will refer to amendment 18/5. These proposed amendments go to extending the provisions of the bill to three other categories of public officer—teachers and nurses in amendment 17/5 and fire officers in amendment 18/5.

Hon MICHAEL MISCHIN: I understood the Leader of the Opposition to also move amendment 18/5, which inserts certain subparagraphs.

In any event, the government does not agree with amendments 17/5 and 18/5. Apart from anything else it would create an anomaly in the legislation by including teachers, nurses, fire officers and the like in mandatory sentencing provisions in cases in which they are assaulted and bodily harm is done to them, yet not in cases in which grievous bodily harm is done to them.

Amendment put and a division taken, the Deputy Chairman (Hon Jon Ford) casting his vote with the ayes, with the following result —

Ayes (8)

Hon Helen Bullock
Hon Kate Doust

Hon Sue Ellery
Hon Adele Farina

Hon Jock Ferguson
Hon Jon Ford

Hon Sally Talbot
Hon Ed Dermer (*Teller*)

Noes (20)

Hon Liz Behjat
Hon Robin Chapple
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies

Hon Phil Edman
Hon Brian Ellis
Hon Philip Gardiner
Hon Nick Goiran
Hon Alyssa Hayden

Hon Col Holt
Hon Lynn MacLaren
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore

Hon Helen Morton
Hon Simon O'Brien
Hon Giz Watson
Hon Alison Xamon
Hon Ken Baston (*Teller*)

Pairs

Hon Ken Travers
Hon Ljiljanna Ravlich
Hon Matt Benson-Lidholm

Hon Nigel Hallett
Hon Max Trenorden
Hon Wendy Duncan

Amendment thus negatived.

Hon SUE ELLERY: I move —

Page 5, line 21 — To insert after “subsection (1)(h)(i)” —

, (h)(ii), (h)(iii)

As I indicated earlier, this amendment seeks to add fire officers to the category of public officers who are covered by the provisions of the legislation.

Amendment put and a division taken, the Deputy Chairman (Hon Jon Ford) casting his vote with the ayes, with the following result —

Ayes (8)

Hon Helen Bullock
Hon Kate Doust

Hon Sue Ellery
Hon Adele Farina

Hon Jock Ferguson
Hon Jon Ford

Hon Sally Talbot
Hon Ed Dermer (*Teller*)

Noes (21)

Hon Liz Behjat
Hon Robin Chapple
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Phil Edman

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Alyssa Hayden
Hon Col Holt

Hon Lynn MacLaren
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton
Hon Simon O'Brien

Hon Giz Watson
Hon Alison Xamon
Hon Ken Baston (*Teller*)

Pairs

Hon Matt Benson-Lidholm
Hon Ken Travers
Hon Ljiljanna Ravlich

Hon Wendy Duncan
Hon Nigel Hallett
Hon Max Trenorden

Amendment thus negatived.

Clause, as amended, put and passed.

Clause 6: Review of Act —

Hon MICHAEL MISCHIN: The government will vote against the clause and insert a new clause 6.

Hon GIZ WATSON: As clauses 6 and new clause 6 are clearly linked, I would like to know what the difference is between the clause that is proposed to be deleted and new clause 6.

Hon MICHAEL MISCHIN: There is no difference between them. The advice I have received is that if the current clause 6 remains in the bill as printed, it will become what is known as a “homeless provision” when the bill is passed. It is preferable to move that provision into the Criminal Code where it will have a home after the bill is passed. Logically, it will appear after section 739 of the Criminal Code, which provides for a review of the law of homicide. There is no material difference between the two clauses; it is simply a question of providing the most appropriate home for that clause so that it is not overlooked when the bill is passed.

Hon SUE ELLERY: During the briefing that was provided to the opposition, it was explained that the new clause was necessary for the reasons that the parliamentary secretary just outlined. I want it put on the record that there is no material difference between the words that appear in the bill before us in clause 6(1), which states “after the expiry of three years from its commencement” and the words “as soon as practicable after the third anniversary of the day on which those amendments came into operation”. Perhaps that is just a case of Parliamentary Counsel changing the words, but if there is a material difference, I would like to know what it is.

Hon MICHAEL MISCHIN: There is no material difference. One refers to the expiry of three years from the commencement of the act and the other uses the formula of the anniversary of the commencement of the act. Proposed section 740A more closely reflects the wording of section 739 of the Criminal Code, which deals with the review of a law of homicide. I will read it out and the member can follow the proposed clause. Section 739(1) reads —

The Minister must carry out a review of the operation and effectiveness of the amendments to this Code and the *Sentencing Act 1995* made by the *Criminal Law Amendment (Homicide) Act 2008* as soon as is practicable after the fifth anniversary of the commencement of section 17 of that Act.

The new clause reflects that form of words. In fact, it is a better way of putting it.

Hon GIZ WATSON: What would be the effect if the house did not accept the motion to delete this clause?

Hon MICHAEL MISCHIN: It would make no legal difference. All that would happen, because the other provisions of the amendment bill will be absorbed within the Criminal Code, is that we will be left with a section 6 that sits isolated in the amendment act. It is better to include it in the substantive act in the same way as the review of the homicide laws are included, so it is not overlooked and reflects the current operation.

Hon GIZ WATSON: It is important that it is not overlooked. I would like to offer the comment that this is an indication of why we should never rush bills through because even the government can find ways of improving them.

Hon MICHAEL MISCHIN: We did.

Clause put and negatived.

New clause 6 —

Hon MICHAEL MISCHIN: I move —

Page 5, after line 30 — To insert —

6. Section 740A inserted

After section 739 insert:

740A. Review of certain amendments to s. 297 and 318

- (1) The Minister shall carry out a review of the operation and effectiveness of the amendments made to this Code by the *Criminal Code Amendment Act 2008* as soon as practicable after the third anniversary of the day on which those amendments came into operation.
- (2) The Minister shall prepare a report based on the review made under subsection (1), and shall, as soon as is practicable after that preparation, cause the report to be laid before each House of Parliament.

New clause put and passed.

Title put and passed.

Bill reported, with amendments.