

SENTENCING LEGISLATION AMENDMENT (PERSONS LINKED TO TERRORISM) BILL 2021

Committee

Resumed from 10 May. The Deputy Chair of Committees (Hon Jackie Jarvis) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 4: Section 4 amended —

Progress was reported after the clause had been partly considered.

Hon MATTHEW SWINBOURN: At the close of our time yesterday, I was halfway through providing an answer to Hon Nick Goiran to a question about the two people whom we have identified as potentially being subject to this bill. I will recap the situation of the first person, who is an adult, who is currently charged with offences of advocating terrorist acts. Under clause 4 of the bill, a category 2 prisoner is a prisoner who has been charged with, or convicted of, an offence against section 80.2C(1) of the commonwealth Criminal Code, which provides offences for persons who advocate the doing of a terrorist act or the commission of a terrorism offence. For a category 2 person to fall within the definition of a person with links to terrorism and subsequently have the presumption against an early release order apply, the person must be subject to a Commissioner of Police report. That is an important element. The person currently before the courts who has been charged with offences of advocating terrorist acts under section 80.2C(1) of the commonwealth Criminal Code falls under the definition of a category 2 prisoner. However, the person will not fall under the definition of a prisoner with links to terrorism unless the person is subject to a Commissioner of Police report.

The other adult person was subject to a commonwealth control order but is now no longer subject to it. It might not have been made clear in previous parts of the debate that he was previously subject to a commonwealth control order but it has now expired. Under clause 4 of the bill, a category 1 prisoner, amongst other things, is a person who has been subject to an interim control order or a confirmed control order at any time during the period of 10 years ending on the day on which the prisoner's current sentence begins or is taken to have begun. Unlike a category 2 prisoner, there are no further requirements to deem a category 1 prisoner a prisoner with links to terrorism in order to have the presumption against early release apply. For this reason, the adult person who was subject to a control order that was within the 10-year time period will fall under the definition of a category 1 prisoner and a prisoner with links to terrorism. To summarise, the one who is facing charges will, all things being equal, be a category 2 prisoner, and the person who was subject to the commonwealth control order will be a category 1 prisoner.

Hon NICK GOIRAN: I thank the parliamentary secretary for that explanation. The definition at clause 4 for category 1 prisoners frequently refers to control orders, whether they be interim or confirmed. The parliamentary secretary has himself confirmed that there is one Western Australian category 1 prisoner, insofar as this person was subject to what we have described as a historical control order. How long are these control orders typically in place?

Hon MATTHEW SWINBOURN: This might be an opportune moment to expand a little more on control orders, and in doing so, answer the member's specific question. A control order is an order made under division 104 of part 5.3 of the commonwealth Criminal Code Act 1995, which allows obligations, prohibitions and restrictions to be imposed on a person for the purpose of protecting the public from a terrorist act. A person can be subject to a control order if it substantially helps prevent a terrorist act or if the person has trained or participated in training with a listed terrorist organisation; engaged in hostile activity in a foreign country; or been convicted in Australia for an offence relating to terrorism, a terrorist organisation or terrorist act, or if overseas for an offence that would, if it occurred in Australia, be a terrorism offence within the definition of the Crimes Act 1914.

Control orders must be issued by the Federal Court and the Australian Federal Police, who can apply to the court to issue a control order against a person who is at least 14 years old. The AFP must have the consent of the Minister for Home Affairs to apply for a control order. In deciding whether to issue a control order, the court must consider the impact of the control order conditions upon the person's circumstances, including their financial and personal circumstances. Control orders are either interim control orders or confirmed control orders. Interim control orders are heard *ex parte*. The issuing court must be satisfied on the balance of probabilities that the order would substantially assist in protecting the public from a terrorist act. An interim control order must specify a day on which the person to whom the order applies may attend the court, for the court to decide whether to confirm, with or without variation, the interim control order, to declare the interim control to be void, or revoke the interim control order. In relation to the member's specific question, division 104 provides for a control order to last up to 12 months, or three months for 14 to 17-year-olds, and may be reapplied for if the circumstances persist and the threshold issues can be satisfied. A control order cannot be made for a person who is under the age of 14.

Hon NICK GOIRAN: These control orders can apply for up to 12 months, but then can be renewed. Is there provision for an unlimited number of renewals, or is there a finite number of renewals for a control order?

Hon MATTHEW SWINBOURN: We are not aware of any particular cap on the total number of control orders that could be issued, but in each instance the applications have to satisfy those prerequisite elements for issuing

them. If a person is subject to a 12-month control order, and comes to the end of that period, and the AFP wants to apply for an additional 12 months or any other period up to 12 months, they would still have to satisfy the Minister for Home Affairs that it is appropriate to make the application, and convince the Federal Court of the requisite grounds on which to make it.

Hon NICK GOIRAN: We have, at the present time, one category 1 prisoner. A category 1 prisoner is automatically also a prisoner with links to terrorism as defined in the bill, indeed in the clause before the committee at the moment—clause 4. In other words, every category 1 prisoner is a prisoner with links to terrorism. The person that the government has identified as being the category 1 prisoner is somebody who has, as I understand it, been subject to a control order in the past, but is no longer subject to a control order. Is that person a prisoner in the ordinary meaning of the word? Is he in jail?

Hon MATTHEW SWINBOURN: I am trying to give the member the details of who that person is, and hopefully answer the specific question in the course of doing that. The person who is identified as having been previously subject to a control order is Shayden Thorne. He was convicted of the offence of preparation for incursions into foreign countries for the purpose of engaging in hostile activities, a terrorism offence under part 5.5 of the commonwealth Criminal Code Act 1995—foreign incursions and recruitment. On 25 February 2019, he was sentenced to three years and 10 months' imprisonment, with a non-parole period of two years and 10 and a half months. He was not released on parole, so he served his full term. Thorne falls within the definition of a person linked to terrorism under the bill. His conviction falls under the definition of a terrorism offence. Additionally, Thorne is no longer subject to a control order, which is obviously a matter for the commonwealth. In the event that Thorne is convicted of a further offence in Western Australia and sentenced to imprisonment, the presumption against an early release order will apply, and the Prisoners Review Board, constituted by the chairperson alone, will have to be satisfied of exceptional reasons before granting an early released order. To summarise, he is not a prisoner.

Can members please keep the chat down; we are doing important work here.

He is no longer a prisoner, and he is no longer subject to a control order, but if he were to reoffend and be convicted, those provisions would come back into force and he would be considered a category 1 prisoner.

Hon NICK GOIRAN: The parliamentary secretary is now identifying an important distinction. This person, by the sound of it, is not a category 1 prisoner at the present time, because I take it the person is no longer a prisoner. To be a category 1 prisoner under clause 4, a person must meet certain criteria, one of which is that they are currently a prisoner. It sounds to me that this individual, who presumably resides in Western Australia, has been identified as a prospective category 1 prisoner. Is that a fair way of describing it?

Hon Matthew Swinbourn: Correct.

Hon NICK GOIRAN: At the moment in Western Australia we have zero category 1 prisoners, but—it is difficult to say that we have a prospective category 1 prisoner, because in a sense anyone could be a prospective category 1 prisoner—at least one person who meets part of the substantive requirements to be a category 1 prisoner. I will just park that to one side, but in comparison to that, there is one other person who is a category 2 prisoner. I think the parliamentary secretary said yesterday that they had been charged with a commonwealth offence, which is working its way through the courts. Can the parliamentary secretary confirm that that person is a prisoner and has been charged, because if they are not a prisoner and have merely been charged, they do not meet the criteria for a category 1 prisoner?

Committee interrupted, pursuant to standing orders.

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