BAIL AMENDMENT BILL 2022

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Jackie Jarvis) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Committee was interrupted after clause 7 had been agreed to.

Clause 8: Schedule 1 Part C clause 3 replaced —

Hon MATTHEW SWINBOURN: Just before we commence clause 8, the member may recall that before question time I gave an undertaking, although I do not think the member insisted on it, to provide more information on examples of bail programs. There were bail support services run by external stakeholders, which I identified as Legal Aid Western Australia and the Aboriginal Legal Service. We do not have the exact details of these programs; we are just aware that they run. There are also programs prescribed under the Bail Regulations 1988 that can be imposed as a condition to a grant of bail. Those prescribed programs are an anger management program —

The DEPUTY CHAIR: Members, while the parliamentary secretary is checking, there is a lot of low-level chatter. I am having difficulty hearing the parliamentary secretary.

Hon MATTHEW SWINBOURN: There is skills training for aggression control, a domestic violence program, and the Warminda program "Chance of Going Straight". Those are the ones that we have been able to identify.

Hon NICK GOIRAN: We resume consideration of this matter, and we are at clause 8 of the Bail Amendment Bill 2022. The bill has only three further clauses, and I indicate that I have a few minor questions about these clauses.

With respect to clause 8, what are the kinds of matters that are usually considered by bail decision-makers, pursuant to proposed subclause 3(f) of schedule 1, part C? What are the matters that are usually considered, pursuant to that proposed subclause?

Hon MATTHEW SWINBOURN: We do not have any specific information about what those other relevant matters are. It is a catch-all clause that is broadly defined to take into account the individual circumstances that relate to a particular case. I might add, even though it is in proposed clause 8 and the proposed amendments to clause 3 of the current act, that provision only reflects what is already in the act. I am looking for the clause that is to be deleted at the back of my blue bill. Does the member have his blue bill? On page 92 of that, it says —

> In considering whether an accused may do any of the things mentioned in clause 1(a), the judicial officer or authorised officer shall have regard to the following matters, as well as to any others which he considers relevant —

Really, that is just replicating the existing provision into the redrafting of the clause, which is, obviously, a more modern draft and does not use the gendered term "he", and it moves it from the preamble of existing clause 3 into proposed subclause (f). I cannot give any specific answers because it will depend. Of course, we could say that it is any matter that is not dealt with in clauses (a) to (e), but it would depend on the case. It is a broad catch-all that we are preserving from the existing provision.

Hon NICK GOIRAN: Looking at proposed subclause 3(f), the catch-all provision that the parliamentary secretary mentioned, he helpfully identified that it is really a redrafting or re-crafting of an existing provision: clause 3 of schedule 1, part C of the Bail Act 1982. I compare and contrast that to page 5 of the bill before us and proposed subclause 3(c) of schedule 1, part C, in which it is intended to insert the words —

> (c) in relation to each pending offence and each offence of which the accused has previously been convicted — the conduct of the accused, after the time or alleged time of the offence, towards —
>
> (i) any person against whom it was, or was alleged to have been, committed; and
>
> (ii) any family member of such a person;

What is the benefit of introducing that particular provision in light of the catch-all provision, subclause 3(f), mentioned earlier?

Hon MATTHEW SWINBOURN: The general point is that if Parliament passes this clause, it will make sure that the bail decision-maker is specifically aware that we want this particular matter to be taken into consideration and given more prominence. Proposed clause 3(c) of the schedule requires a bail decision-maker to have regard to the conduct of the accused towards the alleged victim and their family members since the time that each pending offence was alleged to have been committed, together with each prior offence of which the accused has previously been convicted. This is in the context of considering whether the accused, if not kept in custody, may do any of the things mentioned in clause 1A. Extending this consideration to matters involving past convictions as well as pending offences will ensure that any relevant conduct is taken into account in assessing the risks that might flow

from the release of the accused person on bail. It is intended that such an assessment will involve the consideration of, amongst other things, grooming and coercive or controlling conduct towards the alleged victim and their family since the offence was or is alleged to have been committed. We have picked this up from the New South Wales equivalent of our Bail Act. The advisers did not consult with the New South Wales jurisdiction, but they had regard to its act. A review of the New South Wales act was conducted in 2014 by John Hatzistergos. Chapter IV of the review report is titled "Conduct of the accused towards the victim or the victim's family after offence". Paragraph 182 states —

> In the course of consultations, the DPP raised the issue of adding the conduct of the accused towards the victim or the victim's family after the offence but prior to charging in section 17(3). This was discussed with victim group representatives and other stakeholders and has broad support.

Paragraph 183 states —

> The conduct of the accused in this respect may have a material bearing on the applicant's level of risk, and should be included. This should be expanded to include the conduct of the accused towards the victim or their family after the offence more broadly

I have set out the reasons we have included it and how we got to be there in the first place.

Clause put and passed.

Clause 9: Schedule 1 Part C clause 4 amended —

Hon NICK GOIRAN: What is the rationale for introducing clause 4(1)(b) into schedule 1, part C?

Hon MATTHEW SWINBOURN: For context, this was apparently proposed in the 2016 bill, which the member referred to in his second reading contribution, that lapsed on the prorogation of—what would it be?—the thirty-ninth Parliament.

Hon Nick Goiran: Yes; that is right.

Hon MATTHEW SWINBOURN: That was a proposal, so they have picked that —

Hon Nick Goiran: The 2016 bill.

Hon MATTHEW SWINBOURN: Yes. That is right; it was the 2016 bill. To be clear, it is applicable to all post-conviction applications for bail; it is not just restricted to the child sex offences in this act. This is one that would apply to anybody who has been convicted. I will read out the following information —

> As currently drafted, the clause refers simply to a judicial officer's discretion to grant bail having regard to the questions set out in clause 1, as well as any other matters the judicial officer deems relevant. As such, the Bail Act does not expressly require the judicial officer to consider a person's conviction for the offence or the likely penalty.

Ultimately, one of the desired outcomes of this bill is to get proper weighted bail considerations and bail conditions. It might be, for example, that the probable method of dealing with the accused for that offence is likely imprisonment, so one of the bail conditions might be to put an ankle bracelet on them and make them stay home. Of course, we cannot tell with any particularity, because it will be up to the discretion of the judiciary. The purpose of all these amendments is to secure tight enough restraints on the accused to protect victims and, in the case of the amendments to clause 4, the community more broadly.

Clause put and passed.

Clause 10: Schedule 2 amended —

Hon NICK GOIRAN: I had flagged that I had a question about clause 10, but, on reflection, I note that the hardworking and reliable parliamentary secretary attended to that matter in his response to the second reading debate.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [5.29 pm]: I move —

> That the bill be now read a third time.

HON NICK GOIRAN (South Metropolitan) [5.29 pm]: Two significant events have occurred since the Bail Amendment Bill 2022 was read for a second time earlier this afternoon. One is that we have had the benefit

of the examination of this 10-clause bill through the Committee of the Whole House process and the second is that we had the opportunity to have parliamentary question time. During the Committee of the Whole House process, three of the 10 clauses were particularly pertinent for consideration. The first was clause 1. During our consideration of clause 1, it was revealed that the Attorney General of Western Australia has misled the people of Western Australia. Specifically, the Attorney General stated in December 2020 that the proposed amendments to the Bail Act would ensure that when a person has been convicted of a child sex offence, the presumption will be that the offender will be remanded in custody awaiting sentence. When the opposition asked the government which provision in this 10-clause bill contains the presumption that the Attorney General promised to the people of Western Australia in December 2020, we were told that it does not exist. Recently, the Federal Court found that the Attorney General was unreliable because he said one thing in a radio interview and then said another in the witness box, and that everything he says is utterly wrong.

After this serious matter arose involving the tragic death of an individual in Western Australia in October 2020, the Attorney General promised the people of Western Australia that if his government were re-elected a few short months later, he would prioritise sweeping reforms and that it would ensure that there would be a presumption that the offender would be remanded in custody awaiting sentence. Yet here we are, many, many months later—in fact, it will not be too long before it will be two years since the genesis of this matter—and we have a bill that has been second read and examined in the Committee of the Whole House, and is about to be third read, but it will not do what the Attorney General said in December 2020 it would do. It is absolutely disgraceful and outrageous that the Attorney General continues to utter words that, upon further examination, time and again continue to be found to be false. Once again, we cannot rely on anything this individual has to say.

That is not the only revelation that came out of the Committee of the Whole House process as we considered this bill that is about to be read for a third time. We also noted that the amendment in clause 5, although it is good, appropriate and helpful that the definition of "serious offence" will now be consistent throughout the Bail Act, would not have made any difference to the tragic matter that is at the heart and is the genesis of this particular reform. Thirdly, as a result of the examination during the Committee of the Whole House stage, we note that pursuant to clause 6, the power for a bail decision-maker to defer a decision for a 30-day period already exists, so clause 6 will do nothing to enhance that particular power. It is no wonder, because the government failed to consult with experts outside of government about this bill. Had it done so, it would have been told by those experts outside of government that the bill will do nothing. It is underwhelming in the extreme.

To compound this situation of having been misled by the Attorney General, we had question time, during which I asked for further information pertaining to a suppression order that the Attorney General assures us all is relevant to the matter before us. When the Attorney General was asked who informed him of the information on 14 June, he simply did not respond; he provided no answer to that particular question. When the Attorney General was asked to table the document that confirms the time that he was provided that information on 14 June, he did not respond. That triggers an obligation under section 82 of the Financial Management Act. The Attorney General was further asked what time this occurred; he did not respond. He was also asked whether he had seen a suppression order in an unredacted form. Such is the arrogance and contempt with which the Attorney General holds parliamentary question time in the Legislative Council, he did not respond. He seems to think that he can say whatever he likes in the other place on a bill like this—bold assertions, false accusations, particularly about the opposition, and matters to do with the suppression order and the like—only to be utterly exposed upon examination in the Legislative Council. If we were in the Federal Court today, we could expect a judge to conclude that what the Attorney General said about this bill in the other place was confused and confusing. Everything that he has said during the course of this particular matter is unreliable, not the least of which are the comments that he made in December 2020, when he promised one thing but has now delivered something quite different.

As I said during my second reading contribution, from the position of the opposition, this is an underwhelming bill. The Attorney General has misled Western Australians with not only the lack of priority that this particular reform has been given, but also the scope of the reform, which he promised would be sweeping—now we find out it is next to nothing. Once again, although the opposition elects not to oppose the Bail Amendment Bill 2022, it expresses its disappointment in the way that the Attorney General handled this matter. He misled the people of Western Australia and delivered an underwhelming bill. The opposition urges and calls on the Attorney General—if it is not to be him, somebody else within the McGowan government—to undertake meaningful reforms for victims of crime. I ask members to consider for a moment the genesis of this matter to ensure that when a child is informed that their alleged abuser has been released on bail, they have sufficient support and comfort around them to know that they are safe, and that the support people will journey alongside that young child—that young victim—during the course of any proceedings that may ensue. That is the type of reform that is much needed and would have, hopefully, helped to avoid the tragedy that is at the heart of this matter.

I conclude simply by expressing my sympathies to the family and, in particular, my sorrow that during the course of this debate, we have been, in a sense, restrained—or chosen to be restrained—about relaying that history. I do not

want the family to see that in any way that might cause offence, by any members—government or opposition. That is certainly not anyone's intention here; we are just mindful of matters that are presently before the courts. I am mindful that the mother of the deceased expressly said that her preference would be for the name of the deceased to be known, for her story to be told and for her image to be seen. That obviously did take place for a time, but it is not taking place at the present time. I hope that the family will understand the constraints that members have had during the course of this debate.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [5.39 pm] — in reply: I will not make any comment on most of what Hon Nick Goiran just said, but I will join him in the last few comments he made with regard to the family. I think those comments were made sincerely and I would like to also express, on behalf of the government, the same sentiment that he expressed: that the failure to raise this matter in any particularity is not a reflection of the way any of us feel about any of the circumstances that the family has been through. For what it is worth, I hope what we have done here today gives them some comfort for what they have had to endure—the loss of their daughter. With those brief comments, I commend the bill to the house.

Question put and passed.

Bill read a third time and passed.