SENTENCING LEGISLATION AMENDMENT (PERSONS LINKED TO TERRORISM) BILL 2021

Committee

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

Clause 36: Part 8 Division 2A inserted —

Committee was interrupted after the clause had been partly considered.

Hon NICK GOIRAN: We are in Committee of the Whole House, but it does make me wonder whether after the recent announcement there are circumstances in which committees will be able to meet when Parliament is in session, but we will deal with that on another occasion. At the moment, we are dealing with clause 36 and the fact that a mirror provision in an earlier clause of the bill appears to be missing; it is not mirrored here and it is not immediately apparent why that provision is not included. I wonder whether any subsequent advice was obtained on this point during the short recess for the taking of questions without notice. I reiterate that clause 36 seeks to insert six specific statutory release considerations that deal with young persons—that is, children who are associated with terrorism—yet in the Sentence Administration Act 2003, there are seven express statutory release considerations, the first of which appears to be missing. I refer to proposed section 66F(a). Earlier, when explaining this, the parliamentary secretary kindly referred us to the fact that clause 36 will insert proposed section 150C(2)(a). The parliamentary secretary also seemed to make the point that it will be a similar provision to what already exists in the Sentence Administration Act—that is, that there is already a paramount consideration principle in the Sentence Administration Act. If we are doing a comparison, it would appear as though that earlier section—I think the parliamentary secretary might have referred me to section 6 of the Sentence Administration Act —

Hon Matthew Swinbourn: It was section 5B

Hon NICK GOIRAN: Thank you. If section 5B is said to be the mirror of proposed section 150C(2)(a), if I understand the argument—that is, those two are said to be mirrors—it means proposed section 66F(a) appears to be missing. I understand the point the parliamentary secretary was making earlier, that proposed 150C(2)(a) could, because it is a paramount consideration, be read at a higher level than proposed section 66F(a). I do not want to quibble about that, but the point still remains that we decided to expressly include proposed section 66F(a), despite the fact that section 5B exists, and now it is not being included. It is not readily apparent why we are doing that and I wonder whether the parliamentary secretary has been able to obtain any further advice on this point.

Hon MATTHEW SWINBOURN: To be honest with the member, I am not going to be able to take it a lot further. The advisers gave it further consideration during the break for question time, and the view generally is that, in effect, the two things will have the same force, notwithstanding that there is obviously significant wording there that is not mirrored in the other provision. But, as I say, I do not think I can take the member further on that drafting. As he has pointed out, the paramount consideration of community safety still remains an important element.

Hon NICK GOIRAN: I will conclude on this point; it is not really a question. I just make the observation that if we follow that through, it would imply that if at clause 16, which we have already passed, we had deleted proposed section 66F(a), nothing would have turned on that. To follow the argument, it would have meant that we could have relied on section 5B of the Sentence Administration Act and, therefore, we did not need proposed section 66F(a). If that is not true, we should have a mirror of proposed section 66F(a), notwithstanding that proposed section 150C(2)(a) will be in place. As I say, I just offer that as an observation. It is not necessarily posed in the form of a question. I appreciate that, even though I find it a significant curiosity, if I can put it that way, ultimately it is not destructive to the bill or to the scheme of the bill. I know that we are both keen to see the passage of the bill occur in the next five or so minutes.

Clause put and passed.

Clauses 37 to 40 put and passed.

Clause 41: Act amended —

Hon NICK GOIRAN: We are now at part 4 of the bill, which deals with the amendments to the Criminal Procedure Act 2004. The parliamentary secretary might recall that during consideration of clause 1, "Short title", we dealt with a range of issues, including the consultation process that had been undertaken by government. The parliamentary secretary indicated to the chamber that the Director of Public Prosecutions was an individual who had been consulted. I think that might have happened in or around October 2020. In any event, the date is not material, but I recall that the parliamentary secretary indicated that the director had made a specific recommendation dealing with the issue of disclosure. In essence, it was along the lines that there should be a blanket prohibition on disclosure. That was rejected by the working group and, instead, we now have before us part 4. We did ventilate that quite extensively in debate on clause 1, and there is no need for us to do that again. But I note that I had asked government to specifically

reconsider—not to be confused with "review"—that particular decision and I wonder whether there has been an opportunity for that to occur.

Hon MATTHEW SWINBOURN: Consideration has been given to that. We are not changing from that position, but I have some information that has been prepared since that earlier discussion to provide to the member. The bill relies upon the use of terrorist intelligence information in order to make decisions about the early release of prisoners and young offenders who are the subject of that information. It also must allow for the review of those decisions by appropriately constituted courts. Consequently, the bill creates legal structures to prevent the inappropriate disclosure of terrorist intelligence information. There are provisions that deal with this in the case of the chair's decision in the context of early release. Then there are provisions that deal with the situation in legal proceedings.

In the context of legal proceedings, proposed section 119C is relevant. It reflects the policy that we need to protect terrorist intelligence information. Balanced against the need to protect highly sensitive national security information is the offender's right to a fair hearing, remembering that we are no longer dealing with the matter as a question for decision by the chair. These provisions will ensure that there is a safe mechanism for the potential disclosure to be considered so that affected parties are given the opportunity to make an application to access information that may not be deemed terrorist intelligence information. The wording in proposed section 119C(2) requires the court to dispense with disclosure requirements if it is satisfied that the information is terrorist intelligence information and that no miscarriage of justice will result from its non-disclosure. This is similar to the wording in section 138(3) of the Criminal Procedure Act 2004 relating to the ability of a court to dispense with disclosure requirements in criminal proceedings. Proposed sections 16D(3) and 119C(3) in the bill additionally provide that the Commissioner of Police must be given the opportunity to be heard by or to make oral submissions to the court on the validity of the terrorist intelligence information for the court to consider when determining whether the information is terrorist intelligence information. It is also important to note that proposed sections 16D and 118C in the bill also provide that all disclosures of proceedings are to be heard in private to protect the confidentiality of the terrorist intelligence information. The amendments to the Criminal Procedure Act 2004 are consequential in nature to give effect to the policy enshrined in proposed section 119C. This provides a consistent approach to dealing with this sensitive information across all legal proceedings and creates a balance between the need to protect information that is assessed by a court as sensitive and, in this case, terrorist intelligence information with the need to afford affected parties the right to appeal decisions and have access to information in order to preserve those rights.

Clause put and passed.

Clauses 42 to 45 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, and passed.