CRIMINAL LAW (MENTAL IMPAIRMENT) BILL 2022

Committee

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

Committee was interrupted after clause 77 had been agreed to.

Clause 78: Tribunal making or varying leave of absence orders —

Hon MATTHEW SWINBOURN: I think the member asked earlier about the number of times the Attorney General had sought a review of the current arrangements. We have reviewed what we have and we are aware of one since 2018.

Clause put and passed.

Clauses 79 to 99 put and passed.

Clause 100: Overview of Part —

Hon TJORN SIBMA: On first inspection, I was comforted by the inclusion of this clause, but probably more appropriately and more fully, this part. I would like to begin to understand what the nearest analogy is for the inclusion of an extended custody and/or a supervision order within the current arsenal of managing individuals in the community, and what might be some key differences in the intended application here.

Hon MATTHEW SWINBOURN: Part 7 of the bill is modelled on the High Risk Serious Offenders Act 2020, which, from the member's point of view, relates to the question of what is most analogous to this provision. I think it is important to understand that the kinds of people are fundamentally different. People under the High Risk Serious Offenders Act have been convicted of an offence, whereas people who will be dealt with under this provision have not had a conviction recorded, for quite obvious reasons. Therefore, the management of them as a cohort and the policy considerations around them are somewhat different. The first answer is that it is modelled on the High Risk Serious Offenders Act. I am sure that the member has a series of questions that will unpack that further.

Hon TJORN SIBMA: As the parliamentary secretary has done throughout the debate so far, I think it is worth noting that the peculiarities and particulars of this particular cohort and the concept of criminal responsibility is not applicable in the sense that it ordinarily would be. However, upon whose recommendation was this provision included? I cannot recall whether this was part of the 2016 review, or it may have originated —

Hon Matthew Swinbourn: By way of interjection, it wasn't the 2016 review.

Hon TJORN SIBMA: That is fine. On my initial cursory reading it would appear that this is effectively a discretionary aspect. There is nothing that necessarily compels the tribunal to contemplate the appropriateness of this measure in all circumstances. Could the parliamentary secretary perhaps direct our attention to the appropriate clause in this part that actually prescribes the circumstances under which the tribunal might give consideration to this and the elements it will weigh up in making its determination?

Hon MATTHEW SWINBOURN: I think the member used the term "discretionary". We do not accept that that is the premise. It is a mandatory provision. I draw the member's attention to clauses 103 and 104, which provide that the tribunal "must" consider, so —

Hon Tjorn Sibma: By way of interjection, a common person's reading of 103 and 104 is that in every particular case the tribunal must give consideration.

Hon MATTHEW SWINBOURN: Yes, member. That deals with that part of the member's question. I think the additional part of the question related to the elements the tribunal will weigh up. I draw the member's attention to clause 103(4), which states —

> If the Tribunal is satisfied that it is necessary that an extended custody order be made in respect of the supervised person so as to ensure the adequate protection of the community —

Adequate protection of the community is one of the elements —

> against an unacceptable risk —

That is another element —

> that the person will commit a serious offence, —

So I can say adequate protection of the community and unacceptable risk that the person will commit a serious offence —

> the Tribunal must recommend in its report that the Minister apply for an extended custody order in respect of the person.

The same provisions apply when we look at clause 104(3), which states —

> If the Tribunal is satisfied that after the expiry of the current community supervision order the supervised person should, to ensure the adequate protection of the community, remain under supervision due to the person's rehabilitation, retraining or resocialisation requirements, the Tribunal must recommend in its report that the Minister apply for an extended community supervision order in respect of the person.

The elements that the tribunal must satisfy itself of are contained in each of those two provisions.

Hon TJORN SIBMA: I do not want to invoke dangerous hypothesising, but I refer to the cohort that is presently managed under the auspices of the current act. This question might obviate the need to get into this matter at a later stage of the bill. Of those 56 or so offenders, every single one of those individuals would effectively have to have this test—the suitability of an extended custody order or an extended community supervision order—applied to them. Is that the appropriate understanding?

Hon MATTHEW SWINBOURN: As the member might recall, yesterday we were talking about the transitional provisions in relation to murder and manslaughter. The transitional provisions provide for them to have a limiting term of life. For that half there will not be any necessity to conduct this process because the end of their term is the end of their natural life. In relation to the other half of that group, it will be at the end of their current term, and that will not happen all at once; it will be progressively happening. It will depend, in relation to their circumstances; there may be none for some period of time, and there may be a cluster of them, but those things are all known because we know what their term will be, if that makes sense. So, about half of them.

Hon TJORN SIBMA: I comprehend the implications of that. What is likely to be the time limit for which an extended custody order or extended community supervision will be valid?

Hon MATTHEW SWINBOURN: The term is set by the court under clause 110, "Supreme Court may make extended custody order". Clause 110(1) states —

> The Supreme Court may, on application under section 105(1), make an extended custody order in respect of the supervised person that is to have effect for the term set by the court.

So the court sets the term. Clause 110(3) states —

> Before making an extended custody order, the court must be satisfied, —

These are the elements that the court will take into account —

> by acceptable and cogent evidence and to a high degree of probability, that, to ensure the adequate protection of the community against an unacceptable risk that the supervised person will commit a serious offence, it is necessary to make an extended custody order in respect of the supervised person.

So clause 110(3) contains the test that the court must satisfy itself of. The court will then be informed by evidence from experts and submissions made on behalf of the supervised, and then make a decision based on the material that is before it. It is a judicial process rather than a tribunal or administrative process.

Hon TJORN SIBMA: With respect to one particular individual, would it be possible for the courts to effectively reapply whatever term it may have initially set for an extended custody order so that effectively that person would remain in custody perennially? Is that permissible or foreseeable under the operation of the bill before us?

Hon MATTHEW SWINBOURN: Effectively, the custody order will be turned into an extended custody order. It is possible for the court to set an extended custody order for the term of the supervised person's natural life. However, having set that extended custody order, the court will be required to review that provision every 12 months. However, that review has the very high test that the extended custody order will remain necessary. Obviously, if the circumstances of the individual change over time—for example, if their degree of impairment is reduced or increased—the court will be in a position to make determinations on those particular circumstances. I guess it avoids the possibility of someone unjustly being under an extended custody order forever when it is no longer justified as opposed to the current circumstance.

Hon Tjorn Sibma: Nevertheless, the other side of the ledger is the paramountcy protection of the community. In some cases, that might be the only reasonable alternative.

Hon MATTHEW SWINBOURN: Absolutely.

Hon TJORN SIBMA: To the extent possible, does that effectively mirror the operation or the management of the dangerous sex offender cohort in the community? Are they effectively subject to a similar process to that being proposed here for this offending class? I ask that because we are trying to establish an analogy. I am also curious to know whether a convicted dangerous sex offender who has criminal culpability, not impaired by mental impairment, and one of the people we are talking about who is effectively under a custody order for sexually-based offences and might present a risk to the public, are treated more or less in the same way? If there are differences, what might the differences in treatment, custody or management in the custodial system be?

Hon MATTHEW SWINBOURN: There is some high-level stuff here. It is probably appropriate to address that in one sense. These two groups of people can sometimes be thrown into a basket together because of their risk factor to the community and the need for the overall protection of the community. However, we need to come back to what happened conceptually to the two groups. High-risk serious offenders, which includes the sexual offenders that the member referred to, are criminally culpable for their actions and they pose a continuing risk to the community, hence why they might be subject to the high-risk sexual offence. In that regard, they remain criminally culpable for their future conduct because they are not incapacitated.

The cohort of people that we are dealing with here may still be a serious risk to the community. Someone who was found not guilty by reason of unsoundness of mind was never criminally culpable for their conduct. Someone who is unfit to stand trial may have been criminally culpable at the time they committed the offence but because of intervening events and changes in the human body or whatever, they will no longer be capable of being held to account for those actions. Conceptually, those two things are different. However, the practical management of them are similar in some respects. As I said, these provisions were modelled on the High Risk Serious Offenders Act. There is that element of it.

The other really important distinction to make is that high-risk serious offenders are in prison. The people we are talking about might be in prison but the other provisions in this legislation will be available to them, so they could be in hospital or they could be living in a disability justice centre. There is a difference in the management of them and there is always the possibility that their state of incapacitation may change over time, whereas those high-risk serious offenders—I am not 100 per cent familiar with that regime—have had this declaration by the Supreme Court about their particular status, and it might be the case that it is never safe for them to be in the community as opposed to the other group.

Clause put and passed.

Clauses 101 to 140 put and passed.

Clause 141: Overview of Part —

Hon TJORN SIBMA: This part is a much-needed inclusion in the bill. How do the victim considerations that are outlined in this clause correspond to the practice of the board under the present act? That is one way of asking what advances are made here in consideration of victims' interests and support to victims throughout this proposed process compared with the example that we presently experience.

Hon MATTHEW SWINBOURN: Just to clear up the current arrangements, section 33(5) of the Criminal Law (Mentally Impaired Accused) Act 1996 states —

> In deciding whether to recommend the release of a mentally impaired accused, the Board is to have regard to these factors —
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> …
>
> (f) any statement received from a victim of the alleged offence in respect of which the accused is in custody.

That is the current legislative provision. I have some material to read out about whether the Victims of Crime Act 1994 will apply to the board and the tribunal in the future. The Victims of Crime Act currently applies to the Mentally Impaired Accused Review Board by virtue of the board's inclusion in the definition of "public officers and bodies" in section 2. Public officers and bodies are authorised to have regard to and apply the guidelines in schedule 1 of the Victims of Crime Act and should do so to the extent that it is within or relevant to their functions and practical for them to do so. As I mentioned before, section 33(5)(f) of the CLMIA act provides that the board must have regard to any statement received from the victim in deciding whether to release a mentally impaired accused. Section 42(1)(b) of the CLMIA act provides that the community members of the Prisoners Review Board are also community members of the Mentally Impaired Accused Review Board. This includes a member who has knowledge and understanding of the impact of offences on victims—that is the constitution of the board. Under the bill, the application of the Victims of Crime Act to the tribunal will continue. Additionally, the membership of the tribunal will require a member with knowledge and understanding of victims' interests and concerns. Part 9 of the bill, which we are dealing with now, goes further than the VOC act in that it will require notification rather than providing that the tribunal should have regard to and apply the guidelines in schedule 1. The advancement here is the mandatory nature of it as opposed to the guidance provided by the archaic term "should". That is generally not considered to be a mandatory term, notwithstanding that it is connected to the word "shall" and all those other things. I am having flashbacks to my plain English speaking course from 20 years ago! The bill will provide that it will be mandatory for that to happen.

Hon TJORN SIBMA: Parliamentary secretary, how does the weight placed on victim considerations in respect of the bill that we are considering correspond nationally in terms of best practice when managing what I imagine

is an added dimension of complexity on behalf of a victim—an individual like this? I make the assumption that it might be a more difficult sort of healing or rehabilitation journey if the concept of blame or culpability is not as easily applied; in fact, it will not necessarily be applied. How will our considerations of victims in the circumstances in the bill correspond to what might be considered best practice across Australia?

Hon MATTHEW SWINBOURN: We are happy to describe that what we are proposing to do will be consistent with best practice across Australia. It is an overlapping thing. It is not simply just what is in the bill; rather, it is in conjunction with those other things. Some of those things include the right to make statements in relation to different stages of the proceedings and the right to be notified at different points in time. We already have the Victim Notification Register. That system is in place and, as I indicated previously, we are not delivering a new one. In terms of guidelines for the tribunal, currently because the PRB and the board are essentially the same bodies, we already have guidelines. I have a printout of the Mentally Impaired Accused Review Board's victim considerations, which I am happy to table if that would be of assistance to the member.

[See paper 2130.]

Hon MATTHEW SWINBOURN: That gives some guidance, obviously, because it is a public website for people who currently engage with the Mentally Impaired Accused Review Board. It is our anticipation that new guidelines will be developed for the tribunal on how it will engage with victims. I referred yesterday to the Office of the Director of Public Prosecutions. Its policy and guidelines for victims of crime helps guide it in how it deals with victims at that front end, because obviously the process is continuing under this bill. I am told that the PRB policy manual is also publicly available on the website. After the tribunal is established, the president of the tribunal will have the power to make practice notes in terms of how, more broadly than the skeleton or the bones provided by the act itself, the rights of victims will be fleshed out in terms of the day-to-day management and engagement with victims of crime.

Hon TJORN SIBMA: I found that particularly helpful and I look forward to going through that tabled document at a later stage after contemplation of the bill, just out of interest; I want to reinforce my appreciation for that. This might lie somewhat outside the auspices of the bill, nevertheless it attempts to deal with the importance of the welfare of victims more conceptually and holistically. Is there a point of liaison, I suppose, within the Department of Justice within the Commissioner for Victims of Crime bit—I do not know where that necessarily sits—that specifically deals with victims affected by this class of offender and could the parliamentary secretary outline the kind of advocacy or support service that is provided by that section or staff?

Hon MATTHEW SWINBOURN: The Commissioner for Victims of Crime and her staff have functions under the existing arrangements. One of those functions is to prepare reports for the board representing victims when they are concerned for their safety and to recommend protective conditions. The second one is to notify victims of court and board hearings and outcomes by telephone and letter. Those two functions are currently performed and will continue to be performed under the new arrangements.

There is not a particular officer who deals with this cohort of people. I know that the Commissioner for Victims of Crime is a very direct and hands-on person. She, herself, is often directly engaged. It is not the case that it is difficult to reach the commissioner; the commissioner will speak directly to people herself and is very much engaged in this space and works hard to make sure that victims of crime are supported. The other thing that I think the member will take some comfort from is that in January this year, the Commissioner for Victims of Crime wrote to victims on the victim notification register who had been in contact with the victim mediation unit and who would be impacted by the changes in this bill—in other words, the existing cohort of CLMIA victims. This correspondence advised about the bill and its impact on victims. The commissioner's intention in contacting victims was obviously to provide information, education and support. That included advising them that there would be more chances built in for victims to have their say during the offender's progression through the justice system; the opportunity for victims to be better informed and notified during court and tribunal processes; more certainty for victims, allowing them to prepare for an accused's potential release with the court setting a finite term; the establishment of the tribunal to administer orders; and the replacement of the current board. The commissioner will continue to update victims on the progress of the bill and the potential impact on victims of crime. The commissioner has been very proactive, for want of a better word. She knows the sensitivities and need for support of the cohort of people that she deals with. I am confident that she is currently undertaking those supports in conjunction with the development of the bill.

Hon Tjorn Sibma will recall that yesterday I tabled the document that was described as "Program Streams". Under the S2 heading is the heading "Themes", and under that, at S2.9, is "Victims". Victims are included as a specific workstream under those project streams, so victims are locked into our considerations.

Clause put and passed.

Clauses 142 to 170 put and passed.

Clause 171: Tribunal members —

Hon TJORN SIBMA: The prospective establishment of the tribunal is such a feature of this bill that, to a large degree, we have dealt with its proposed operations and the proposed differences in view of its future as compared with the case at the moment. My concern is not so much with the title of division 4, "Membership of Tribunal", per se, but more around the implications of these issues from a resourcing perspective. Is it possible to give an estimate of the resourcing required to allow the board as it is presently constituted to discharge its functions in any financial year, and would it be possible to provide some breakdown of the cost components?

Hon MATTHEW SWINBOURN: I have here the annual report from 2019–20, which I think is the most recent. Sorry; that particular table on the remuneration expenses for board members is not included in later ones. It is not quite what the member asked because he was talking about the costs. We do not have the administrative support costs because that is not dealt with as a separate amount; I think that would come under the overall budget of the Department of Justice's court and tribunal services because it provides the administrative support. One reason we do not have it is not that it was not reported but that it was reported within the annual report of the Department of Justice, which we do not have on hand. I do not imagine that the expenses would be massively different from what they were in 2019–20, when the remuneration for the board was $32 671 in total. The report is probably a tabled paper. I will table the page from the report.

[See paper 2131.]

Hon TJORN SIBMA: I appreciate that there is a fungibility issue here in that the secretariat or administrative functions are captured and that to obtain a level of granularity would be almost a Pyrrhic victory as it would not tell us much more. We can assume that there is an administrative cost.

Hon Matthew Swinbourn: By way of interjection, it is one of those things that we must fund and that happens. It is not something that we can choose not to fund.

Hon TJORN SIBMA: No; there is no discretionary capacity. That is appreciated. What is the current size of the board in terms of the number of members?

Hon MATTHEW SWINBOURN: Our understanding is that there are eight members, but it includes sessional members. It is a little bit difficult to nail down because it will depend on that. If the member has the table that we were looking at before, it gives an indication of its constitution in that regard.

If I can come back to the cost issue that we were talking about before, we would obviously expect a little bit more permanence about the tribunal's activity compared with the board's, because obviously there will be a more significant role than previously existed. That is really about the act. Again, it is flexible. If Hon Tjorn Sibma looks at clause 171, which we are on now, he will see that it says —

> (1) The members of the Tribunal are —
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> …
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> (c) as many community members as are necessary to deal with the workload of the Tribunal, appointed by the Minister;

If the workload is high in the future, the membership might increase. It might then contract depending on how it goes over time. It is perhaps not like a court, which is going to sit in session every day on a permanent basis; it is going to be dictated by its work.

Hon TJORN SIBMA: Thank you. This is what I was trying to ascertain. At first reading of clause 171 we have that members of the tribunal are constituted thus: a president; one or more deputy presidents and both of those positions—president and deputy president—are appointed by the minister but the president is appointed, effectively, on the nomination of the minister but by the Governor. There are also as many community members as are necessary to deal with the workload; one or more psychiatrists; one or more psychologists; one or more persons appointed under the Disability Services Act and likewise one under the Prisons Act; and one or more persons in respect of functions undertaken under the Young Offenders Act. Effectively, are we still at around eight people potentially but with a surge capacity? Is that effectively what I am given to understand, that membership will fluctuate and that we want the availability of members with either that particular experience or expertise to be able to assist in the formation of a collective tribunal view for the management of an individual? Is that the intention?

Hon MATTHEW SWINBOURN: Yes.

Hon TJORN SIBMA: Bear in mind the expanded powers of the tribunal as contemplated in this bill. I concede that I am off clause 171 but I thought it would be appropriate to ask this here. It is a question for clause 174, but to facilitate the passage of the bill, I am more than comfortable discharging my responsibilities by contemplation of parts rather than clauses. I am not intending to save the world one clause at a time, even though there are others

with that view at different times. Is there any intention to increase the level of remuneration in light of these expanded responsibilities and powers?

Hon MATTHEW SWINBOURN: I appreciate the member's indulgence to work with these issues as much as we can without having to get stuck on individual clauses—God forbid. The member was talking about an intention to boost the remuneration of the presiding member. The answer is there is no intention of doing that. If I take the member to clause 174, "Remuneration", it reads —

> (1) A member is entitled to the remuneration determined from time to time —
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> (a) in the case of the President — by the Governor on the recommendation of the Minister; and
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> (b) in any other case — by the Minister.
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> (2) The Minister's recommendation as to, or determination of, remuneration under subsection (1) is to be on the recommendation of the Public Sector Commissioner

Essentially, if we can play out that process, the Public Sector Commissioner will determine where these matters are set out. They make recommendations to our minister but perhaps to other ministers as well who would have these kinds of bodies. There is a formal process of the president making a recommendation to the Governor or an approval by the relevant minister. The minister alone cannot go, "My mate's going to get this job and I'm going to pump up the salary." There is obviously a process and we are just getting involved with that process.

Clause put and passed.

Clauses 172 to 198 put and passed.

Clause 199: Overview of Part —

Hon TJORN SIBMA: Unfortunately, I am not as familiar with the present act as I should be before we debate the bill that seeks to repeal and —

Hon Matthew Swinbourn: By interjection, this is not provided for under the current act.

Hon TJORN SIBMA: Excellent. That will expedite the consideration. On what basis has it been deemed appropriate to include part 11 in this bill?

Hon MATTHEW SWINBOURN: I am advised that the 2016 review I would not say went as far as recommending the provision of these things but suggested we consider the need for transfer into and out of the state. It is not an overwhelming precedent issue in this area but when the instructing officers and others have been doing their work, there are provisions in Victoria and South Australia. The relevant provisions in those states are the Criminal Law Consolidation Act 1935 for South Australia and, in Victoria, it is the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997. Those acts make provision for this transfer into and out of the state. We have looked at their provisions and developed our own. Because this is a root and branch rewrite of the act, we are taking into account that this may be a future necessity. It is now included in the act so that if this issue arises in the future with a particular supervised person, we will have the provisions to deal with it, which we currently do not have.

Hon TJORN SIBMA: If I understand the parliamentary secretary correctly, there is no pressing need presently. At any time, has there been an inquiry or an expression made regarding the desirability of the transfer into or out of this state for this class of person?

Hon MATTHEW SWINBOURN: Not to our knowledge or to the knowledge of corrective services but it is not difficult to contemplate the circumstances in which it might arise, particularly with regard to the cultural issues that might apply for a particular person who committed an act in our state but has family support structures in another state or vice versa. It would be more appropriate to achieve the ends we need to achieve by having them in the right jurisdiction, if I can put it that way.

Hon TJORN SIBMA: It is always dangerous to make assumptions, obviously, but a scenario that arises in my mind is potentially the need to facilitate transfers in or out of the Northern Territory and potentially South Australia. Would that be a fair assumption?

Hon MATTHEW SWINBOURN: We cannot make that assumption. I understand what the member is getting at and because we do not have a history for this cohort of people to lean back on, we cannot say that. For prisoners, that might be a different issue between South Australia, the Northern Territory and Western Australia but we do not think it is safe to make that assumption.

Hon TJORN SIBMA: At this stage, it might be a known unknown in the Rumsfeld-ian ontological and empirical framework. What are the limiting factors? Does the government require a corresponding bill in either the dispatching or receiving jurisdiction? I am going to assume that the answer to that question is yes. If that is the case, which jurisdictions would be able to effect transfer given the situation now?

Hon MATTHEW SWINBOURN: Clause 200 refers to a corresponding law. I just identified to the member the corresponding laws that would exist in South Australia and Victoria, but we are not aware at this stage of any corresponding laws in other jurisdictions. Any intention to transfer between those jurisdictions would require negotiation. I understand that in relation to prisoners, there are established processes for those negotiations. South Australia and Victoria, because of their existing provisions, will fall under those provisions, and then later, other states could be prescribed if they move in terms of their laws.

Clause put and passed.

Clauses 200 to 225 put and passed.

Clause 226: Disclosure of information between supporting agencies —

Hon TJORN SIBMA: On occasion throughout debating this bill, I have drawn attention to the need for there to be a seamless exchange of information that is relevant to the management of these offenders if, indeed, the intent of this bill is to be faithfully discharged and the paramount principle of community safety observed. I take some heart from the clarifications provided at division 4 of part 13. But does clause 226, as it relates to the disclosure of information between supporting agencies, exclude the potential for a non-government service provider to be considered as a supporting agency in the management or discharge of function under this legislation?

Hon MATTHEW SWINBOURN: It is essentially limited to government agencies either at a state or commonwealth level. Under clause 219, the definition of a "supporting agency" is described at paragraph (t) as —

> a public sector body, or public office, prescribed for the purposes of this definition;

Obviously, there is a list and then it contemplates other public sector bodies or officers. Paragraph (u) states —

> a body or public office of the Commonwealth, or of a participating jurisdiction …

The most obvious participating jurisdiction outside of Australia would be New Zealand, I would have thought, or the United Kingdom, but we are speculating to some degree there—sorry, it is Australian jurisdictions; scratch that. It is Victoria and those sorts of states. We could share the information, but not the NGOs to which the member referred. They would not be covered by those provisions in clause 226.

The tribunal has the power to inform itself. It could call for information from those NGOs, but the agencies cannot share information in the same way. That is a protection mechanism for the people covered under this particular provision. It is not meant to be exclusionary for NGOs that might hold important information, but it is highly sensitive information and we still have to protect the privacy of the supervised persons in that regard.

Clause put and passed.

Clauses 227 to 259 put and passed.

Clause 260: Application of this Subdivision —

Hon TJORN SIBMA: I beg again the parliamentary secretary's indulgence to take these kinds of questions at this part of the bill, but it is probably the appropriate part having reflected on the discussions we have had on the application of limiting terms and the like. I will ask an inelegant question about the transition to the new act. What expectation might the community have of the continuing custody or management of the existing 56 individuals who are on some kind of order and currently subject to the Prisons Act?

Hon MATTHEW SWINBOURN: I can cover a bit here that perhaps goes beyond what the member asked about and might anticipate some of his other questions.

Hon Tjorn Sibma: If I might, without pre-empting you, I think the most complete answer would be very useful.

Hon MATTHEW SWINBOURN: We have already talked about the cohort of people who are subject to the manslaughter and murder custody orders. Their limiting term will be life. The expectation is that those people will have a term that is for their natural life, and that will be subject to the review mechanisms that exist from the Supreme Court, which we talked about. Determining a person's limiting term is a matter for the court and it would not be appropriate for the department to pre-empt decisions of the court in that regard. The court will have a range of information available to it to inform its decision-making that includes information about the offence that caused the person to be subject to the custody order and sentencing precedents to inform a likely term.

It is also important to remember that 27 of the current 56 persons are subject to a custody order due to murder or manslaughter. They will therefore have a deemed limiting term of life unless an application is made to the court for a different limiting term to be set.

Hon Tjorn Sibma: In terms of compartmentalising the case load here, we have already dealt with half of the class by effectively the expectation that life is their limiting term and —

Hon MATTHEW SWINBOURN: That is right.

Hon Tjorn Sibma: — in the ordinary parlance they will not be released onto the streets.

Hon MATTHEW SWINBOURN: No, and neither will the other particular groups until they have been subjected to the process of the court. On the commencement of this act, people will not suddenly walk free of any obligation. It should give members of the community comfort to know that there will be a process that involves the assessment of risk and all those sorts of factors. That hopefully addresses the member's question.

Hon TJORN SIBMA: Despite the pretty constructive debate on this bill, at least in this chamber, there will always be a measure of anxiety in the community about this class of people whom the general public is perhaps not aware of to the degree that we are. I want the government to avoid this legislation being misrepresented in a way that would stoke anxiety or fear that when the operation of an indefinite custodial order ceases, effectively, a class of individuals who have committed offences will be released unsupported into the community by virtue of the fact that they have, in the ordinary parlance, served their time. No doubt many of those people now are beyond the point at which a parallel application of a relevant custodial term would have been served—potentially two or three times over, if the parliamentary secretary understands my drift. What is the government's expectation around the management of the other half of the case load now that we have dealt with the murder and manslaughter cohort?

Hon MATTHEW SWINBOURN: I think that type of anxiety is one side of the coin. The other side of the coin is the anxiety of people who are aware of people who are inappropriately continuing to be held in an indefinite arrangement. Again, there has been a maturity around the debate on this bill. Neither of us has appealed to the extremes on these matters, and I certainly appreciate that. It would not be unreasonable to suggest that some of the current supervised persons have served their likely limiting term. However, a person having served their limiting term will not necessarily mean they will be immediately released once the bill is operational. Consideration will be given to the need for an extended order when the release of a person would pose an ongoing risk to the community, which is the people we are interested in here. The Mental Impairment Review Tribunal will report to the Attorney General on the need for an extended order and the Attorney General will make an application to the court if that is necessary. The Attorney General will report to the board and the decision of the Supreme Court will be informed by experts and other reports about other people. I think a degree of comfort can be taken that people who should be continually under confinement will continue to be and those who should be released back into the community and free of supervision because they have, effectively, been held in a form of detention longer than they would have faced had they been committed will be able to get back into the community.

Clause put and passed.

Clauses 261 to 279 put and passed.

Clause 280: *Bail Act 1982* amended —

Hon TJORN SIBMA: I will use this occasion not so much to ask a direct question but rather to make a comment on part 15 in its entirety. I acknowledge that this part extends from clause 280 to, I think, clause 412. The obvious magnitude of the impact that this bill will have on the statute book is not to be underestimated. Bearing in mind the validation bill that we dealt with yesterday, I once again encourage the government to proceed with some caution on this. This is not advice from the cheap seats; I would not otherwise have provided it. It was, though, one of the reasons that I unsuccessfully sought to have the bill referred to a committee. I encourage caution and studious application in this regard, and I am sure I will get it, at least from the parliamentary secretary.

Hon MATTHEW SWINBOURN: The member's comments are noted and the very senior advisers here have heard what the member had to say. Thank you.

Clause put and passed.

Clauses 281 to 412 put and passed.

Schedule 1 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) [6.16 pm]: I move —

That the bill be now read a third time.

I will be very brief. I would like to express our appreciation. Hon Tjorn Sibma indicated in the second reading debate his appreciation for the assistance that he received from the Attorney General's office. I express my appreciation for the collegial manner in which we have proceeded on this very important piece of legislation and record for the benefit of posterity my appreciation for our advisers as well.

Question put and passed.

Bill read a third time and passed.