LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PS Russo MP (Chair)
Mr JP Lister MP
Mr SSJ Andrew MP
Mr JJ McDonald MP
Mrs MF McMahon MP
Ms CP McMillan MP

Staff present:

Ms R Easten (Committee Secretary)
Ms K Longworth (Assistant Committee Secretary)
Ms M Westcott (Assistant Committee Secretary)

PUBLIC BRIEFING—INQUIRY INTO THE PROTECTING QUEENSLANDERS FROM VIOLENT AND CHILD SEX OFFENDERS AMENDMENT BILL 2018

TRANSCRIPT OF PROCEEDINGS

MONDAY, 29 OCTOBER 2018

Brisbane

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The committee met at 8.15 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018. My name is Peter Russo. I am the member for Toohey and chair of the committee. With me here today are: James Lister, the member for Southern Downs and deputy-chair; Stephen Andrew, the member for Mirani; James McDonald, the member for Lockyer; Melissa McMahon, the member for Macalister; and Corrine McMillan, the member for Mansfield.

On 19 September 2018, Mr David Janetzki, the member for Toowoomba South, introduced into the parliament the Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018. The parliament has referred the bill to the committee for examination, with a reporting date of 19 March 2019. The purpose of the briefing today is to assist the committee with its examination of the bill.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required.

All those present today should note that it is possible you might be filmed or photographed during the proceedings. These images may be posted on the parliament's website or social media sites. Only the committee and invited officers may participate in the proceedings. As these are parliamentary proceedings, any person may be excluded from the hearing at my discretion or by order of the committee. I ask everyone present to turn mobiles phones off or to silent mode.

JANETZKI, Mr David, Member for Toowoomba South, Parliament of Queensland

CHAIR: I welcome Mr David Janetzki, the member for Toowoomba South, who has been invited to brief the committee on the bill. Good morning. I invite you to make a brief opening statement of no more than five minutes, after which committee members will have some questions for you.

Mr Janetzki: Thank you, Chairman, for the opportunity to be here today. I also thank you for the early start to the committee proceedings this morning. I appreciate it. It is a busy day. I will commence by giving a brief opening statement.

It is pleasure to be here today to discuss the Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018. The purpose of the bill is to amend the Dangerous Prisoners (Sexual Offenders) Act 2003. The bill amends provisions around the framework that governs supervision orders and adds an additional framework that applies to repeat sex offenders who are no longer subject to a court ordered supervision order.

The purpose of the bill is to introduce a framework so that: court ordered supervision orders are indeterminate rather than fixed term; supervision orders are reviewed by the Governor in Council, rather than the Supreme Court; repeat serious sexual offenders will be monitored, even when they are no longer deemed a serious danger to the community; and the safety and protection of the community are paramount when making any decisions under the Dangerous Prisoners (Sexual Offenders) Act 2003.

This means that all supervision orders are indeterminate and will operate until the Governor in Council is satisfied that the prisoner is no longer a serious danger to the community. The Governor in Council must review the released prisoner's supervision order. In cases where supervision is ordered after the commencement of the bill, the Governor in Council must review the order within five years after the order is made by the court. For prisoners subject to a supervision order made before the commencement of the bill, the review must be undertaken during the last six months of the supervision order. There will be subsequent annual reviews while the order continues to have effect. In deciding whether a released prisoner is a serious danger to the community, the Governor in Council must have regard to the matters the court considers when making a supervision order.

A new provision is inserted into the DP(SO) Act to ensure that all offenders convicted of two or more serious sexual offences are subject to an indeterminate supervision order by operation of law and without a specific order. A 'repeat offender' is defined in the bill and means an offender who is convicted of two or more serious sexual offences committed by the offender when the offender was an adult. The repeat offender is subject to the indeterminate supervision order until the Attorney-General is satisfied that the supervision order is no longer in the public interest.

Finally, the objects of the DP(SO) Act are amended to ensure that, in making a decision under the act, a person or body must give paramount consideration to the safety and protection of the community. The DP(SO) Act is further amended to ensure that the first and foremost priority is the protection of the community. These provisions reflect the principles introduced in Victoria's recently introduced legislation, the Serious Offenders Act 2018.

Mr LISTER: Why is this necessary?

Mr Janetzki: We have a situation where some of our most serious sexual offenders and serious serial offenders are leaving supervision. There are grave concerns about what that means for community safety right across Queensland. Obviously, the name that precipitated a lot of discussions over the past couple of months is that of Robert John Fardon. It was clear that, once a court decision had been made that the supervision order might be lifted, there would be some discussions held. The government introduced amendments in respect to how they thought it best to cope with the potential release of the supervision order. The opposition had also prepared a plan as to how best to address the growing concern in the community that the supervision order may be lifted. This bill is that response.

What the community need to know more than anything else is that politicians are making their safety a paramount concern. This bill is entirely targeted at bringing that assurance to the people of Queensland. The opposition does not believe that the government's amendments have done that, but the question at hand today is the terms of this bill. It is my argument and my submission that this bill gets the balance right and safeguards and protects the Queensland community.

Mrs McMAHON: Throughout your introduction you made specific reference to the powers of the Governor in Council. For those following at home who do not generally know the lay of land, can you outline to the committee the entity that is the Governor in Council?

Mr Janetzki: The Governor in Council is a group of ministers of the Crown. The group is chaired by the Governor of Queensland. With the composition, generally the quorum will be two ministers of the Crown. In essence, it will comprise most likely the Premier, the Attorney-General and any other ministers who those persons see fit to attend. The Governor in Council is essentially an arm of the executive to give effect to actions of the executive.

Mrs McMAHON: In all these references, for example, it will be the Governor in Council making decisions about whether a prisoner is no longer a serious danger to the community and that will be a group of two politicians?

Mr Janetzki: The comprehensive answer to that is that the way the bill is structured and the framework that has been proposed is around supervision orders of an indeterminate nature, and the court will be making the decision as to the application and the imposition of a supervision order. For example, if a supervision order is made after the commencement of this bill, that first review will be held at a five-year period and thereafter there will be an annual review process. The bill makes it very clear that it is not just a group of politicians making a decision; it will be on the recommendation of two psychiatrists. There will be ongoing medical practitioner intervention in the process.

Mrs McMAHON: I note that you made specific reference to the Governor in Council having the same information that ordinarily a court would have. What is wrong with the judicial system that we have? Do we no longer have faith that our judicial officers can carry out their duties?

Mr Janetzki: I have the utmost respect for and appreciation of the judiciary and the integrity of the Supreme Court and the Court of Appeal. We already have laws in Queensland. The Criminal Law Amendment Act already enables the indeterminate detention of prisoners at Her Majesty's pleasure. That is section 18 of the Criminal Law Amendment Act. Therefore, in Queensland we already have laws. I understand that two or three offenders are currently held indefinitely under those laws. I believe that recently, in September, the Attorney-General made an application in respect of one of those.

Therefore, in Queensland we already have a system whereby prisoners may be detained indefinitely at Her Majesty's pleasure. That involves the use of psychiatric assessments. It is not a question of whether the judiciary has the power or the executive has the power; it is already occurring in Queensland right now under the Criminal Law Amendment Act. The question is getting the balance

right, and there are a range of judicial pronouncements and High Court decisions that go towards that question. My target is to get the balance right between the questions and I believe that the balance is right in this bill.

An important distinction to make here is that we are not talking about questions of indefinite detention; this is indefinite supervision. We are not talking about the deprivation of one's liberty entirely. The executive is just considering the question of the conditions on one's liberty. They are quite different questions that are being asked and are required to be considered.

Mrs McMAHON: You do not believe that the supervision orders have any implications for someone's liberty at all?

Mr Janetzki: They do, absolutely. Like I said, they are conditions on their liberty—absolutely—as opposed to the most serious cases. Laws have been proposed in the past and have been struck down by the Court of Criminal Appeal or affirmed, in the case of a decision like Pollentine, by the High Court. They were questions of detention. The focus of this bill is setting up a new framework around supervision orders.

Mrs McMAHON: Do you have any figures on how many matters an attorney-general and another minister of the Crown would have to review on a regular basis?

Mr Janetzki: That is probably a question properly directed to the Attorney-General.

Mrs McMAHON: You inferred there would be an increased workload on the Attorney-General as a result of reviewing regular supervision orders.

Mr Janetzki: We know that it is no more than a handful of people. My understanding is that there are two or three under the Criminal Law Amendment Act and I believe there are a similar number under the DP(SO)A. I would not submit that there will not be an additional workload for the Attorney-General, but I do not think there would be a great additional workload on the Attorney-General.

Mr McDONALD: Firstly, I would like to commend the shadow Attorney-General for bringing these proposed laws to us. Thank you very much. As a former police officer I know that there are almost 3,000 reportable offenders in the community in Queensland and another 600-odd in custody. These are terrible offenders that really lack honour. One of the concerns that I had with the previous legislation was relying on the honour of somebody who was out in coming forward to their supervisors. Can you explain to us how your bill will improve on that act? Will some of my concerns be allayed?

Mr Janetzki: One of the concerns that I have in relation to the amendments that were moved by the government to the Child Protection Act in September is that it removes Queensland Corrective Services from the process. Taking it out of the DP(SO)A and putting it into the Child Protection Act removes real hardened professionals—they do an amazing job—in Corrective Services who monitor and know how to deal with these offenders. The Child Protection Act amendments turn the onus around onto a monitoring system, so we are going from a supervision system to a monitoring system.

Under the amendments that the government moved, we will now see serious sexual offenders having to report to the police under a de facto honour system. I accept that if there is additional concerning behaviour occurring then action can be taken. I am concerned about the time frame in which that action may be taken, particularly when we are dealing with such serious criminals.

The question of how well men coming off these supervision orders will be monitored is a major question and a major concern. We think there are probably about 2,800 reportable offenders under watch and maybe another 500 or 600 in custody. We know that we probably only have 20-odd police around Queensland who are monitoring them. I understand—and as a former police officer you will know this better than I—that involves sitting behind a desk. They do not have the resources to go out and 'kick the tyres' and keep a close eye on them, so it is a bit more reactive. You are relying on some of the most serious criminals to report what they are doing and where they are, whereas under the supervision order model under the DP(SO)A there is the involvement of Queensland Corrective Services and more hands-on supervision of these most serious criminals.

Ms McMILLAN: Have you obtained specific legal advice about whether or not the proposed amendments are constitutionally valid? If so, who did you consult?

Mr Janetzki: Given the last-minute nature of the amendments to the bill that were proposed, I note that the government itself, with all the resources of the machinery of government, consulted only with bodies within the department. Yes, I did speak about the amendments contained in the bill with some lawyers. I myself am a lawyer.

Ms McMILLAN: Are you a constitutional lawyer?

Mr Janetzki: No, I am a commercial lawyer; however, there has been significant discussion. I expect there will be significant discussion. My opinion is that doing nothing is not an option. We have been at pains to model these provisions on the law that was affirmed in the High Court decision of Pollentine. I do believe there is a growing interface between the judicial and executive arms in respect of these matters. As much as possible. We have modelled this bill on law that was upheld by the High Court in Pollentine and we have moved away from some of the concepts that were struck down by the Court of Appeal in Lawrence. To draw a distinction, what we are talking about here is indeterminate supervision rather than indeterminate detention. I would argue that is a major difference.

Ms McMILLAN: Who was the constitutional lawyer that you consulted or discussed this with?

Mr Janetzki: I will not be going into the details of who I received advice from or who I spoke with. The question of constitutionality—

CHAIR: Mr Janetzki, I would ask you to answer the question. The question was pretty pointed: do you have advice to say that the amendments are constitutionally valid or not?

Mr Janetzki: Chair, you know that no lawyer ever gives a 100 per cent guarantee on any particular piece of advice.

CHAIR: Mr Janetzki, I did not ask for a guarantee. I asked whether you have sought advice as to whether the proposed amendments are constitutionally valid or not.

Mr Janetzki: The position that I have taken and the advice that I have received is that there are strong arguments. There is no guarantee that any law is constitutional. Any law can be challenged at any time. There are strong arguments in support of these provisions simply on the basis of the mirroring, as much as possible—

CHAIR: Do you have legal advice to say that?

Mr Janetzki: Do I have legal advice that says that? I have advice that there are strong merits in the laws that are proposed.

CHAIR: So you do have advice?

Mr Janetzki: Yes, I have spoken with other lawyers.

CHAIR: Do you have advice from a lawyer who says that these proposed amendments are constitutionally valid?

Mr Janetzki: I think I have answered that question. My advice is that there are strong arguments as to the constitutional validity of this bill.

Mrs McMAHON: Do you have a copy that the committee could—

Mr Janetzki: No, I do not have a copy.

CHAIR: Was it written or verbal?

Mr Janetzki: I have spoken with lawyers. I have not taken written advice, no.

CHAIR: Constitutional lawyers?

Mr Janetzki: I have taken advice from lawyers who are well versed in these matters. I do not know how they refer to themselves. After 15 years in the law, I also have opinions.

Mr McDONALD: I would like to hear the end of your answer. You were talking about other matters that were constitutionally challenged, and you said that you have addressed the constitutional matters in your bill in line with those challenges.

Mr Janetzki: I think I just spoke about mirroring, as much as possible, the law that was upheld in Pollentine. One of the questions that has been raised—and it goes to the constitutional question—is about the role of judicial review. In the case of Lawrence, for instance, there was no proposal that there would be any judicial review of decisions. There is nothing in the DP(SO)A and nothing in this bill that would preclude the judicial review of Governor in Council decisions, similar to what was in Pollentine. Pollentine is quite clear that, when there is a delegation of the role of fixing punishment from the judiciary to the executive, that has to be weighed very carefully. In Pollentine the High Court found that the role of medical practitioners, psychiatrists and psychologists was appropriate in the process. There the High Court found that medical involvement in the process was not an inappropriate delegation. Again, we have sought to involve medical practitioners in the process. We have worked very carefully in the construction of this bill to avoid some of the shortcomings of previous attempts in relation to laws of this nature.

CHAIR: As the shadow Attorney-General and someone who wishes to be the first law officer of the state, do you consider it prudent to obtain independent legal advice on draft legislation such as this bill?

Mr Janetzki: The opposition makes no apologies for putting community safety first. Doing nothing is not an option. We are dealing with a serial offender over 50 years. These are all things on the public record: attempted carnal knowledge, rape at gunpoint—

CHAIR: Mr Janetzki, the question was pretty specific: do you consider it prudent to obtain independent legal advice on draft legislation such as this bill?

Mr Janetzki: I do take it very seriously, and it is prudent to do so. I have made perfectly clear the approach to this bill. There are strong arguments to be canvassed. There are strong arguments to be raised in support of the constitutionality of this bill. As I have said, I do not believe that doing nothing is an option when it comes to some of the most serious criminals in Queensland.

CHAIR: The draft legislation leaves me with the firm impression that you do not trust the judicial officers of the state to make decisions in respect of these matters. Quite clearly, it is our judiciary, who are highly skilled in law, who are best placed to make these decisions with the benefit of open justice. Why is it that you do not want the citizens of Queensland to have this protection continued? Do you not trust our judges?

Mr Janetzki: I have the utmost trust and faith in and support for the integrity of the judicial system in Queensland and our judges, who exercise their duties every day. As I have said, the question here is one of mirroring the law in relation to supervision orders, as has been affirmed by the High Court in another Queensland law. The judiciary still makes the decision as to whether to apply a supervision order. That role has not changed and the judiciary will continue to do so. The question is that the judiciary follow a strict statutory criteria under the DP(SO)A—section 13(4), from memory—which applies a whole range of considerations when reaching a decision. The Governor in Council will make a similar assessment against the same statutory criteria. The statutory criteria involve history, past offending, involvement in rehabilitation services and the like—

CHAIR: Did you consult with the Queensland Law Society?

Mr Janetzki: My understanding from the government's own amendments to the Child Protection Act was that the Queensland Law Society was not consulted.

CHAIR: The question was simple and you have avoided it. Did you consult with the Queensland Law Society?

Mr Janetzki: In contrast to the government's approach to their amendments, we notified the Queensland Law Society prior to our announcement and we foreshadowed the introduction of the private member's bill. The Queensland Law Society was given a briefing prior to the private member's bill being introduced.

CHAIR: Did you speak with the Queensland Bar Association?

Mr Janetzki: No. We made the consultation clear in our explanatory notes.

Mr LISTER: This morning we have heard questions regarding the level of trust that you and the opposition have in the judiciary to oversee this sort of thing. My understanding is that the Governor in Council is able to offer a pardon or a commutation of sentence to a convicted person without reference to the judiciary. Would you like to comment on that and how it relates to non-judicial decisions regarding the liberty of persons?

Mr Janetzki: The Governor in Council plays a vital role, and any decisions it makes will be made against the same statutory criteria a member of the judiciary applies when making a supervision order. The role of psychiatric, psychological and other medical reports in that process is vitally important and will be given the most serious consideration by the Governor in Council. Nothing stops the judiciary from making a supervision order as and when they see fit. There is no withdrawing of any of their powers in that regard. What this bill simply seeks to do is mimic, as much as possible, the role played by the Governor in Council under the Criminal Law Amendment Act, using regular reviews and the measuring against of statutory criteria done very soberly and seriously. I believe that at the end of the day it is the best approach to putting the security and safety of Queenslanders first.

CHAIR: Thank you, Mr Janetzki, for appearing this morning. Thank you to our secretariat staff and Hansard. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare this public briefing for the committee's inquiry into the Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018 closed.

The committee adjourned at 8.47 am.