



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)
Mr G Thomson (Assistant Committee Secretary)

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

TRANSCRIPT OF PROCEEDINGS

MONDAY, 3 DECEMBER 2018

Brisbane

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The committee met at 12.00 pm.

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

On 19 September 2018 the member for Toowoomba South, Mr David Janetzki MP, introduced the Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018 to the parliament. The parliament has referred the bill to the Legal Affairs and Community Safety Committee for examination, with a reporting date of 19 March 2019. The purpose of today is to hear evidence from stakeholders as part of the committee's inquiry. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence.

These proceedings are similar to parliament and subject to the Legislative Assembly's standing rules and orders. In this regard I remind members of the public that under the standing orders the public may be admitted to, or excluded from, the hearing at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to the chair's 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 by the media and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent mode. The program for today has been published on the committee's web page and there are hard copies available from the committee staff.

COLLYER, Mr Nick, Systems Advocacy, Queensland Advocacy Inc.

CHAIR: Good afternoon. I invite you to make an opening statement, after which the committee members may have some questions for you.

Mr Collyer: Thank you, Mr Chair. I am here representing Queensland Advocacy Inc. I am also the father of two children—a girl and a boy, now grown up—and am about to have a granddaughter, so I care deeply about the safety of the community and, in particular, about the safety of my daughter and my granddaughter. I am not here as an expert around sexual offending. I am not a lawyer, a psychiatrist or a psychologist who specialises in sexuality.

As politicians you have great community awareness so you probably know this already, but I think it bears repeating that you only need to google some quick statistics, backed up by credible authorities like the ABS and the Australian Institute of Health and Welfare, to see a very different picture from the one we see in the media that is all about awful predators like Robert John Fardon or Brett Peter Cowan, who killed Daniel Morcombe. Despite what we hear and see in the media—the sensationalising of violent abduction, sexual assault and murder that helps to sell advertising space online, on air and in print—the different picture boils down to something simple, which is that sexual violence is all around us.

It is important to note, I think, that if we care about sexual violence and if we want to make communities safer, the permanent locking up or stringent surveillance of sex offenders is not going to be the whole solution because that solution focuses on stranger danger. Stranger danger is, in part, a distraction from the real sources of sexual violence to the point that stranger danger and responding only to stranger danger becomes the problem.

Sexual abuse makes us uncomfortable and scared so it is a natural response, according to psychologists, to respond by finding something that will make us feel in control—so a sense of control when it comes to something as scary as sexual abuse. A wilful blindness to the truth creates a smokescreen, a smokescreen that helps sex offenders continue to go on undetected. Stranger danger makes us feel in control because it makes us feel that there is something we can do about it: 'Avoid talking to or having anything to do with strangers and you will be okay. All we need to do is to avoid them and teach our children and the people we love to avoid them, too.'

For the vast majority of victims of sexual abuse, it is not about the stranger hiding in the dark alleyway or the paedophile in the playground. Most sexual assaults and rapes are committed by someone the victim knows. Among victims aged 18 to 19, two-thirds had a prior relationship with the offender. Most child sexual abuse is committed by men—90 per cent—and by persons known to the child—70 to 90 per cent—with family members constituting one-third to one-half of the perpetrators against girls and 10 to 20 per cent of the perpetrators against boys. According to one study, one in six Australian women were physically or sexually abused by the age of 15, one in three Australian women have experienced physical violence since the age of 15 and on average one Australian woman is murdered per week by her current or her former partner.

Violent sexual offences are occurring in people's homes to young girls and boys whom we know. Just on the statistics, every one of us knows children who are being subjected to the offences that we are talking about. Having said that, I am an advocate here for people with disabilities. I work at Queensland Advocacy Inc., which is just over the river—a disability advocacy agency and CLC for people with disabilities. Our mental health legal service represents people mostly with intellectual or psychosocial disabilities who are on treatment authorities or on forensic orders. Our human rights legal service represents people who are on guardianship or administration orders or subject to restrictive practices, and our justice support service supports people with intellectual disabilities who are in trouble with the criminal justice system. We also have a NDIS appeals support service. I do systemic advocacy using our knowledge and understanding from those services to inform our submissions to government and campaign around any kind of discrimination of and disadvantage to people with disabilities.

People with disability are overrepresented in the criminal justice system as victims but also as suspects, offenders, prisoners and repeat prisoners. About 10 per cent of prisoners have intellectual disability, including brain injury and foetal alcohol syndrome. That is about five times the rate of the general population. The recidivism of prisoners with intellectual disability is about twice that of other prisoners. Offences committed by people with intellectual disability tend to be low level and less serious, often associated with problematic sexual behaviours like public masturbation, exhibitionism, voyeurism and sexual threats. Research suggests that penetration and physical violence are less common.

Much of the problem around sexual behaviour of people with intellectual disability is related to the fact that historically people with intellectual disability have lived in segregated environments and they have been treated as perpetual children who are asexual in nature. Segregated environments start with special group homes and congregate care facilities and continue through life in special schools, special education units within schools and sheltered workshops. People with intellectual disability still struggle to find their way into mainstream education. One recent study found that 70 per cent of the parents of children with intellectual disability have been told that the school they applied to was unsuitable for their child and they should move on to another. This is known as gatekeeping. Integration into the workplace is no better for people with intellectual disabilities, with employment rates of people with disabilities in general running at about half of people without disabilities.

The infantilisation of people with intellectual disability has contributed, and still does, to the view that people with intellectual disability do not need sex education, training or instruction in appropriate behaviour. Our Criminal Code still makes it unlawful for any person to have intimate relations with a person with impairment of the mind, which is effectively people with intellectual disability. As I said, I am not a lawyer so I can only make general comments around the specific scope of the legislation. I understand that any adult who is convicted of two or more serious sexual offences and is imprisoned for any offence at all will have to wear a monitoring device, have to report to a Queensland Corrective Services officer every month, not leave Queensland without permission and have psych exams every three years. We are concerned that there is a lack of differentiation between a person with intellectual impairment who has interest and curiosity about children because of segregation and lack of opportunity for adult relationships, and we believe it is unjustly harsh to deal with such people in those circumstances as a predator.

Secondly about the bill, we see that there is a possibility for double punishment as all current court ordered supervision orders will automatically convert to indefinite orders. QAI represents many people who are on forensic orders, which are in effect indefinite detention. One of our clients spent a total of 35 years in forensic detention, where he died recently, in relation to a minor sexual offence. The tendency is for the tribunal which reviews forensic orders to repeatedly err on the side of caution, which is detention.

About monitoring devices, we point out that they are not a guarantee of safety. While they can malfunction, and we know of instances where they have, they are an imperfect measure. With regard to rehabilitation, rehabilitation is linked to becoming invested in the people around the person. That is

difficult, if not impossible, for anyone wearing a brand that identifies them as the most heinous person imaginable. If we want people with disabilities to always see other people as vulnerable and human, we must treat people with disabilities as human too.

In conclusion, more has to be done at the front end to improve the lives of people, to recognise that people with intellectual disability can still be sexual beings just like anyone else and be householders and parents with the right support.

As mentioned before, in Queensland we have a section of the Criminal Code that makes it unlawful for anyone to have intimate relations with people with impairment of the mind, which we believe is discriminatory. Now that we have an NDIS, we would like to see the NDIS extended to people with disabilities in prison. Apart from the fact that it is in a prison, it is an ideal opportunity to do one-on-one behaviour support for offenders, including offenders who have been convicted of sex related crimes. Queensland Corrective Services has an excellent NDIS engagement plan, but we would like to see more resources put into effecting that plan so that people can receive in-prison and post-prison support that will reduce the risk of recidivism.

Mr LISTER: Mr Collyer, thank you for coming in this morning and for representing Queensland Advocacy Inc. I note from your submission and from some of the things you have said in your evidence today that you are concerned about relatively minor offences, which are more correlated with people with an intellectual disability, falling into the net under this bill. In your submission your group stated—

... we note that the bill:

- Covers too broad a range of repeat offences and fails to distinguish between relatively minor repeat offences and serious repeat offences

Are you aware that, in relation to offenders of serious sex offences under this bill, serious sex offences are defined in the DP(SO) Act as meaning an offence of a sexual nature, whether committed in Queensland or outside of Queensland, (a) involving violence or (b) against children? That is the definition of serious sex offences we are talking about. Does that still cause you concern?

Mr Collyer: As I said, I am not a lawyer so I do not know the specifics of it. I think there is still a possibility that some behaviours that may be more to do with a person's lack of experience or understanding of appropriate sexual behaviour may be captured by the bill.

CHAIR: You have stated that you are not a lawyer and your submission is quite clear. Is it fair to make the comment that your submission is based on your experience of working with people with disabilities who are currently in prison?

Mr Collyer: Yes, currently in prison and particularly those on forensic orders. Our Mental Health Legal Service represents people who are on forensic orders at the Mental Health Review Tribunal when their forensic orders are reviewed.

CHAIR: Are you able to put a figure on the number of clients you are dealing with?

Mr Collyer: I think the Mental Health Legal Service has a case load of 120-odd people per year. I understand that there are something like 50 or 60 people on forensic orders disability and about 600 people on forensic orders generally in Queensland.

CHAIR: How many of that cohort would currently be in custody?

Mr Collyer: Of the people on forensic orders disability, I think it is about 30 but I am not 100 per cent sure about that.

CHAIR: So that is 30 out of about 600 people?

Mr Collyer: Forensic orders disability is a smaller number of about 50 or 60 in total. It is about half of those.

CHAIR: About 50 per cent?

Mr Collyer: Yes.

CHAIR: I know it is hard because each case is different, but what is the longest term of imprisonment that one of those persons might be serving?

Mr Collyer: As you know, a person on a forensic order is a person who has not gone through the regular criminal justice process because they are determined to be of unsound mind or not fit to plead. I am sorry: what was the specific question again?

CHAIR: I am trying to work out how many people with a disability would be in the current corrective services system.

Mr Collyer: There are about 7,000 prisoners in Queensland at the moment and about 10 per cent would have an intellectual disability. I do not know what proportion of those would be in custody in relation to sexual offences. Ten per cent is the rough estimate. Then, of course, there are other people with disability as well. That does not include people with psychosocial disabilities.

Mrs McMAHON: Your submission states that you are concerned about the disproportionate number of offenders affected by this legislation being people with disabilities. Do you know the percentage of people who have been convicted of sexual offences who would fall into that category of people with disabilities?

Mr Collyer: I do not know numbers, but I do know that people with intellectual impairments are over-represented in relation to sexual offences. I do not think I say numbers in the submission either, but there is a little bit of discussion about people with intellectual disability and sexual offending there. The general point I would like to make is that often that sexual offending is related to the front end, where kids with intellectual disability are brought up in segregated environments. We do not recognise that we infantilise kids with intellectual disabilities and so we do not think they need sexual education.

Mrs McMAHON: The flipside of that, then, is: do we have an indication of victims of sexual offences who have a disability?

Mr Collyer: Yes. Again, I do not know numbers, but certainly children with intellectual disability are also over-represented as victims because of their vulnerability as kids who do not understand a lot about sexuality because they have not had a lot of sexual education and because they are in segregated environments where they are vulnerable.

Mrs McMAHON: Could you comment on the implications of this bill on rehabilitation?

Mr Collyer: I do not know a lot about rehabilitation. As I said in my comments, it is so important for rehabilitation that people with intellectual disability specifically—I cannot comment generally—live as normal a life as possible, both before and after.

Mr ANDREW: You talked about the segregation of people with intellectual disabilities. Have you seen any situations involving intellectually disabled people where there has been ongoing abuse or secret abuse going on within the framework of their school or institution?

Mr Collyer: Not personally, but certainly the Commonwealth inquiry into sexual abuse in institutions has a lot to say about the abuse of children with intellectual disabilities in segregated environments. It makes a lot of recommendations in relation to that.

Mr ANDREW: It is certainly an alarming thing. I have witnessed some of that myself. Some of these people need to be taken away from those places. There are a lot of vulnerable people who are subjected to that.

Mr Collyer: There is going to be a new quality and safeguards regime under the NDIS and we are very hopeful that that will pick up potential abusers.

Mr McDONALD: You mentioned that you believe the bill imposes a double-jeopardy or double-punishment situation. Are you against the Dangerous Prisoners (Sexual Offenders) Act and other forms of legislation that impose detention and supervision after the sentence has ceased?

Mr Collyer: No, I am not against it. QAI is not against it. We are making a special plea for the treatment of offenders who have intellectual disabilities on a case-by-case basis.

CHAIR: You talk about reliance on monitoring devices and your concerns around them. Can you expand on that for the committee?

Mr Collyer: I said that because of a comment that our principal solicitor made to me that there were some monitoring problems when that was first taken away from Queensland Corrective Services a few years ago. If you would like me to, I could follow up on that and let the committee know.

CHAIR: I do not need you to do that. You talk about the bill preventing the rehabilitation of offenders by denying them privacy and encouraging vigilante action. Could you expand on that for me?

Mr Collyer: The wearing of a monitoring device immediately marks out a person as different. It makes it very difficult for that person to ever think of themselves as anything other than a paedophile and offender. It makes it impossible for that person—again, I am talking about people with an intellectual disability—to have relatively normal relationships with other people.

CHAIR: And the vigilante aspects that you referred to?

Mr Collyer: If the monitoring device were identified by a member of the public it could lead to vigilante action.

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CHAIR: There being no further questions, that concludes the hearing this afternoon. Thank you very much, Mr Collyer, for appearing today. Thank you to our parliamentary staff and our Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare the public hearing for the committee's inquiry into the Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018 closed.

The committee adjourned at 12.27 pm.