Speech By

Daniel Purdie

MEMBER FOR NINDERRY

Record of Proceedings, 8 September 2020

PROTECTING QUEENSLANDERS FROM VIOLENT AND CHILD SEX OFFENDERS AMENDMENT BILL

Second Reading

Mr PURDIE (Ninderry—LNP) (5.31 pm): I move—

That the bill be now read a second time.

The Protecting Queenslanders from Violent and Child Sex Offenders Amendment Bill 2018 is an important bill for Queensland. Let us not forget why the opposition was obliged to introduce it. In August 2018, the Attorney-General's application to extend Robert John Fardon's supervision order was dismissed. In September, we learned of the possibility of Robert John Fardon walking our streets unsupervised. That same month, in a blind panic as they anticipated that the Attorney-General's appeal would fail, they rushed through last-minute amendments to the Police Powers and Responsibilities and Other Legislation Amendment Bill that was before the House—all this for a man who raped a 12-year-old at gunpoint, attempted to rape a girl under 10 and violently raped and assaulted a woman only 20 days after his release from custody. He regularly breaches supervision orders and has been described as an anti-authoritarian psychopath who appears to have no remorse. Robert John Fardon and men like him should remain strictly supervised for life. Queenslanders should not trust paedophiles to self-report to police.

It was obvious that the Palaszczuk Labor government had no plan B when it came to Robert John Fardon, for serious sexual offenders, so they pretended. They legislated a self-reporting system for some of the worst criminals in Queensland history. The purpose of this bill is to amend the Dangerous Prisoners (Sexual Offenders) Act 2003, known as the DP(SO) Act. The bill amends provisions around the framework that governs supervision orders and adds an additional framework which 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 a fixed term; supervision orders are reviewed by the Governor in Council rather than the Supreme Court; and repeat violent and child sex offenders will be monitored even when they are no longer deemed a serious danger to the community. The safety and protection of the community is paramount when making any decision under the DP(SO) Act. 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 court must not state an end date for a supervision order. 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 of the order being 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 considered when making the 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 the 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. 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.

I would like to stress that the supervision orders are still court ordered. The key difference is that they will no longer be fixed for a period of time. In saying that, any court ordered supervision order which is made after the commencement of the act will be reviewed within five years, and any person who is currently subject to a supervision order will have their order reviewed within six months of the end of their order. In other words, an order with a fixed term which was issued by the Supreme Court prior to the legislation commencing will be recognised so there will be no infringement of the court's decision. As members would be aware, the indeterminate supervision order for repeat offenders was introduced as a means of ensuring that at least some safeguards are in place for Queenslanders when a released prisoner no longer qualifies for a court ordered supervision order.

I would like to address the constitutionality of this bill. Prior to drafting the bill, we analysed the judgement of the High Court case of Pollentine v Bleijie 2014 HCA 30. That case involved the High Court's analysis of whether section 18 of the Criminal Law Amendment Act 1945 was invalid on the grounds that it was contrary to chapter III of the Constitution by way of infringing the principles identified in Kable v Director of Public Prosecutions. In short, section 18 of the Criminal Law Amendment Act enables a court to detain an offender in an institution for an indefinite term in which the power to order the release of the prisoner is then transferred to the executive. The High Court in Pollentine held that section 18 was not invalid and therefore the provisions held to be constitutional. The bill reflects the provisions in section 18 of the Criminal Law Amendment Act and incorporates fundamental aspects that the High Court deemed constitutional. Statutory criteria, judicial review and sufficient safeguards were all aspects that went towards upholding the validity of section 18.

Similar to section 18 of the Criminal Law Amendment Act, the Governor in Council must have regard to the same statutory criteria the court had regard to when deciding whether or not the prisoner is a serious danger to the community. Importantly, it requires two psychiatrists to conduct a review and report on the level of risk that the prisoner will commit another serious sexual offence. The High Court reasoned—

> The release is not at the unconfined discretion of the Executive, but dependent upon demonstration by medical opinion of the abatement of the risk of reoffending.

Their Honours reinforced the significance of the executive making a decision upon reference to a stated statutory criteria. This bill has been drafted in such a way that the Governor in Council cannot act with unrestricted discretion when deciding whether to continue or end a released prisoner's supervision order.

Similar to section 18 of the Criminal Law Amendment Act, any decision is judicially reviewable. There is nothing in the Judicial Review Act 1992 or DP(SO) Act excluding judicial review of a decision of the Governor in Council. In the absence of such an exclusion, as the Governor in Council's decision is a decision of an administrative nature it will be captured by the Judicial Review Act.

The High Court justices in Pollentine highlighted that the decision to terminate or not to terminate detention was to be made according to the criterion which admits of judicial review, in which the court viewed favourably. The High Court observed that the decisions about absolute or conditional release of a person detained under section 18 are made by the executive and not by a court. Their Honours went on to say that 'it by no means follows, however, that the provisions of section 18 are incompatible with or repugnant to the institutional integrity of the state courts'.

Unlike the provisions contained in the Criminal Law Amendment (Public Interest Declarations) Amendment Act 2013 that were held unconstitutional by the Supreme Court in Attorney-General (Queensland) v Lawrence, this bill does not contain a provision that expressly restricts judicial review of a decision of the minister and Governor in Council to decisions as affected by jurisdictional error and does not include provisions that are divorced from any statutory criteria such as those that are required to be applied by the Supreme Court in determining whether a DP(SO)A order should be made.

Ultimately, when we take away the legal issues, what any Queensland government must do is protect its people. This is something that the Palaszczuk Labor government has failed to do for the last five years. That is why the opposition believe that this bill must be passed. It will serve to protect

Queensland's most vulnerable citizens, it will send the message that the community will never tolerate offending of this nature. It will guarantee that monsters like Robert John Fardon will never ever be able to hurt another woman or child again. I urge the House to support the bill.