Speech By

Peter Russo

MEMBER FOR TOOHEY

Record of Proceedings, 8 September 2020

PROTECTING QUEENSLANDERS FROM VIOLENT AND CHILD SEX OFFENDERS AMENDMENT BILL

Mr RUSSO (Toohey—ALP) (6.00 pm): I rise to speak against this private member's bill. There is absolutely no need for this legislation, and I will be urging members of this House to vote against this totally unnecessary piece of legislation. The member for Southern Downs indicated the Attorney-General was 'caught out'. I would like to put on record it is an incorrect statement that the Attorney-General was 'caught out' in relation to the DP(SO) Act when dealing with the matter of Robert John Fardon.

In seeking to have this bill passed the LNP argues that there is a need for it, claiming the Palaszczuk Labor government failed to have an adequate plan B to deal with serious repeat and violent offenders like Robert John Fardon. They claim that the protection of the community requires this bill to be passed. As they so often have done, they seek to inflame the community by calling to emotion and prejudice, and they do so on misleading and inaccurate information. They accuse the ALP of playing politics and not putting the safety of vulnerable children first, but the reality is that their own appeals to mob mentality are the worst kind of political games playing. Their type of propaganda needs to be called out for what it is: misleading and misconceived.

Anyone who has gone to the effort of actually reading the publicly accessible judgements of the Supreme Court and the Court of Appeal with respect to Mr Fardon will have already identified that the LNP's criticisms of the existing legislation are entirely misplaced and their call for public mob mentality entirely irresponsible. This type of alarmist approach to legislation and the false reasoning behind it does nothing to make our children safe, but it appeals directly to mob behaviour.

It is important at this point to look at the decision of the Attorney-General for the State of Queensland v. Fardon in a decision handed down by Judge Bowskill on 9 January 2019. The decision deals directly with the current Dangerous Prisoners (Sexual Offenders) Act 2003, sections 13, 19B, 19C and 19D. The judge dismissed the application for a further supervision order and ordered that there be no publication of the decision for a period of seven days. I will now briefly deal with the judge's decision, and I will quote and read from that decision. Judge Bowskill stated that the respondent, Fardon—

... has been subject to, and complied with, a supervision order for the past five years, and been subject to various orders for detention and supervision under the *Dangerous Prisoners (Sexual Offenders) Act* 2003 for the past 15 years ... the respondent is now 70 years of age, and has not been convicted of any criminal offences for the past 30 years ... demonstrated abstinence from alcohol and drugs for many years ... and his positive and sustained engagement with his treating psychologist ...

The judgement further stated—

... the application for a further supervision order is pressed on the primary basis that the respondent presents an unacceptable risk of committing a serious sexual offence, due to the potentially stressful and destabilising effect on him of trying to find independent accommodation absent a supervision order, and dealing with media scrutiny and attendant community vigilantism as a result of his notoriety—where the evidence of three psychiatrists is that even in the face of such stressful circumstances, the risk of the respondent sexually reoffending is low ...

The committee recommended that the bill not be passed. On 16 October 2018 the committee invited stakeholders and subscribers to make written submissions on the bill. Three submissions were received. The committee received a public briefing from Mr David Janetzki MP, member for Toowoomba South, on 29 October 2018. The committee also received written advice from Mr Janetzki in response to matters raised in submissions on 27 November 2018 and 20 February 2019. The committee held a public hearing on 3 December 2018 to receive evidence from, and ask questions of, a representative from Queensland Advocacy Inc. The Queensland Law Society and the Bar Association of Queensland also provided submissions and evidence.

Currently, section 3 of the act provides that one of the objects of the act is 'to provide for the continued detention in custody or supervised release of a particular class of prisoner to ensure adequate protection of the community.' In relation to the proposed amendment to section 3 of the act, the Bar Association of Queensland considered the existing wording of the legislation to be appropriate. They went on to say—

It is not apparent to what degree (if any) the change to the object of the Act to ensure "*the safety and protection of the community*" would alter the operation of the DPSO Act. Given the substantial body of jurisprudence established under the existing object of the DPSO Act, it is inadvisable, in the Association's view, to alter the object of the Act without substantial reason for doing so.

With respect to the proposed insertion of new section 3A into the act, the Bar Association expressed the view—

... the determination of community expectations and finding an appropriate balance between the competing considerations of the liberty of the person and community protection in any particular case can be given effect to by the judiciary, without the need to designate that the safety and protection of the community must be considered paramount over other competing considerations.

Similarly, the Queensland Law Society submitted that—

... the job of balancing competing interests of community safety and the liberty of an individual appropriately lies with the court. In our view, we do not think that it is necessary to mandate that paramount consideration be given to the safety and protection of the community.

In relation to the current law, a supervision order means a supervision order made under section 13(5)(b) or a further supervision order, being an order made under section 19D. The proposed amendments provide that in deciding whether there is an unacceptable risk the court must not have regard to the means of managing the risk or the likely impact of a division 3 order on the prisoner. The Bar Association stated—

The express removal of any consideration of the "*means of managing the risk*" or the "*likely impact of a division 3 order on the prisoner*" is antithetical to the proper administration of justice. The practical ability to engage a prisoner in the community or administer an order are appropriate considerations and consideration of them is necessary in order to make an assessment of whether the community can be protected from risk.

The Queensland Law Society shared similar views, submitting that the matters proposed to be removed from consideration by a court are important considerations that should inform the making of division 3 orders. It is essential to consider these matters to ensure the objects of the DP(SO) Act are achieved. To remove these considerations is at odds with the proper administration of justice. The drafting in proposed (4B) of 'is less than more than likely than not' is not sufficiently clear or precise for legislation of this nature.

The current law provides that, if the court makes a supervision order, the order must state the period for which it is to have effect. It specifies certain matters a court must not have regard to when fixing the period. It also provides that the period cannot end before five years after the making of the order or the end of the prisoner's term of imprisonment, whichever is the later. The Bar Association considered the fixing of the period of a supervision order to be an important safeguard. There are provisions currently in place that allow for the extension of orders in appropriate cases. I oppose the passing of the bill.