Speech By

Hon. Mark Ryan

MEMBER FOR MORAYFIELD

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EVIDENCE AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. MT RYAN (Morayfield—ALP) (Minister for Police and Corrective Services and Minister for Fire and Emergency Services) (4.50 pm), in reply: On behalf of the Attorney-General, I would like to begin by thanking members for their contributions to the debate on the Evidence and Other Legislation Amendment Bill 2021. As the Attorney-General has advised the House, the bill contains important amendments ensuring the justice system is contemporary and responsive to community expectations.

I would like to now take the opportunity to respond to a number of matters which have been raised by members during the course of the debate. Firstly, some members have asked why the shield laws as proposed in this amending bill do not apply to the Crime and Corruption Commission. Can I start by advising that the government has committed to extending shield laws to the Crime and Corruption Commission, but it is a complicated matter. If it was as easy as the non-government members of this House would tell you it is then we would go ahead and do it straightaway. However, it is not that simple.

The amendments moved by the non-government members are overly simplistic and fail to properly appreciate, let alone understand or consider, the existing framework of privileges applying under the Crime and Corruption Act. They would, in fact, add a further and significant layer of complexity and confusion and exacerbate the problem that the Parliamentary Crime and Corruption Committee is trying to resolve in recommending the review of chapters 3 and 4 of the Crime and Corruption Act. In fact, the amendments proposed to be moved by the non-government members will amend the definition of relevant proceeding to expand it from a proceeding before a court of record to a hearing conducted by the Crime and Corruption Commission and omit the exclusion relating to proceedings under the Crime and Corruption Act. The definition of disclosure requirement is also amended to remove a reference to a court of record. However, there are still various references within the shield law provisions to a court, for example, section 14W. The Crime and Corruption Commission is not a court of record and it is unclear how the amendments would operate with the broad definition of court and proceeding in schedule 3 of the Evidence Act.

In addition, the existing approach in the Crime and Corruption Act to issues of privilege is fragmented and confusing. Not only do different privileges apply in different ways across all of the functions; the different approach to drafting within substantive provisions across the Crime and Corruption Act, including whether or not privilege is dealt with as a reasonable excuse and how it is abrogated, adds to the complexity and confusion. There are also multiple pathways through which a claim of privilege is considered. The amendments proposed to be moved to the bill are in direct conflict with the definition of privilege in the Crime and Corruption Act. The Crime and Corruption Act does not recognise journalist privilege but the Evidence Act would. This would give rise to significant uncertainty for journalists and the Crime and Corruption Commission. Adding to this confusion is the current ability

of a journalist to refuse to comply with a Crime and Corruption Commission requirement on the basis that they have a reasonable excuse founded on confidentiality, which is potentially available in some context already under the Crime and Corruption Act.

The interaction between journalist privilege and confidentiality is also unclear. Further, even if the amendments had the desired effect, there are several unresolved issues, including that the Crime and Corruption Commission has powers to compel the production of information of documents outside the context of a hearing and the Crime and Corruption Act allows for noncompliance on the basis of a valid claim of privilege. The proposed amendments do not appear to anticipate journalist privilege outside or unconnected with a hearing. In addition, the proposed amendments do not provide for an appeal in relation to a Crime and Corruption Commission decision about a claim of privilege to the Supreme Court, whereas the Crime and Corruption Act provides for this. It is arguable that the proposed amendments will remove the ability for any appeal for review by the Supreme Court in relation to the Crime and Corruption Commission's consideration of journalistic privilege.

Further, the government acknowledges the support by stakeholders for extending shield laws to the Crime and Corruption Commission and the strong arguments in favour of this. The government is very open to the application of shield laws to the Crime and Corruption Commission and no decision has yet been made that they should not apply. The amendments in this bill have always been the first step. Application to the Crime and Corruption Commission work is underway, but as the amendments proposed to be moved by non-government members clearly demonstrate, it is also important that the amendments not be rushed because we need to make sure we get it right. The recent case involving a journalist and the Crime and Corruption Commission lends further weight to the government's position and highlights why careful consideration and consultation with a wide range of stakeholders and experts is fundamental to giving certainty for all involved.

The Attorney-General has already canvassed in her speech to the parliament the many complexities and the way the government plans to take this issue forward. The review of chapters 3 and 4 is an extremely complex piece of work, but it is on track and the Department of Justice and Attorney-General has been working with the Crime and Corruption Commission towards its finalisation. Frankly, the proposed non-government amendments do not address all of the issues which I have just outlined, which is why they should be opposed.

With respect to the matters raised by members in the debate about videorecorded evidence and police training and matters raised in the statement of reservation in the committee report, I will provide some further comments now. The new section 103E of the Evidence Act defines a trained police officer as a police officer who has successfully completed a training course, approved by the police commissioner, for the purpose of taking recorded statements. An amendment to this definition is proposed to be moved during consideration in detail of the bill to further provide that the training course must be in domestic and family violence. Domestic and family violence training course is not further defined in the bill because, quite frankly, it would be foolish to do so. The proposed method intends to futureproof the definition and allow the nature of the required training to be adapted as our understanding of the impacts of domestic and family violence develops or to address relevant findings of the evaluation of the pilot.

The videorecorded evidence provisions in the bill will commence on a day to be fixed by proclamation to allow sufficient time for implementation activities to occur, including police training and the development of relevant procedures and guidelines around the taking of recorded statements. As I said in my contribution to this debate, the Police Service is well advanced with that training, and the development of those procedures and guidelines and will be in a position for the trial to commence soon after the passing of this bill.

Access to a fair trial for defendants was also a topic raised by members during the debate. As outlined in the explanatory notes for the bill, the development of a time limited pilot, which will be subject to an independent evaluation, is intended to enable evidence about the victims' experience and potential for unintended consequences for both victims and the accused, together with other practical and financial impacts for courts, police and prosecutors, to be properly assessed. A key focus of the evaluation will be the impact of the use of recorded statements on the number of guilty pleas and the reasons for any change. There are also a range of safeguards in the bill which will act to ensure that an accused person can continue to receive a fair trial despite the departure from the usual rules of evidence that apply in criminal proceedings arising from the use of videorecorded statements.

During this debate members also raised the issue of the interplay of the Justices Act with the videorecorded evidence proposals contained in the bill. I can advise that the new section 103I of the Evidence Act deals with admissibility of recorded statements in a committal proceeding. The starting point for conducting committal proceedings under section 110A of the Justices Act is that a written

statement of a prosecution witness must be admitted as evidence without the witness being required to appear at the committal proceeding to give evidence unless a direction under section 83A(5AA) has been made.

New section 103I operates to ensure that a transcript of a recorded statement may be admissible in the proceeding as if it were admitted as a written statement under section 110A of the Justices Act. The provision states that section 110A applies as though subsection 6C(c) of that section, which includes the requirement for the statement to be signed, were omitted.

I start by acknowledging the very important and deeply moving contribution to this debate by the member for Cooper yesterday in relation to the coronial recommendation amendments which we all heard. I thank her for sharing her lived experience with the chamber. It is so important to hear about the real impact that this legislation can have on families and the community more broadly.

With respect to the questions raised by members about time limits, I note that the Department of Justice and Attorney-General spoke about this issue at the committee hearing. They noted that the imposition of a strict time limit represents a risk to an accused's right to a fair trial and effectively imposes a disclosure obligation. While the Criminal Code imposes disclosure obligations on the prosecution, defendants in criminal trials have the benefit of important principles restricting the extent to which aspects of their defence have to be disclosed. Those principles include the burden of proof of the charges, which always falls on the prosecution, the right to silence and the defendant's right not to be compelled to give self-incriminating evidence.

At present, there is no requirement for defendants to outline their defences or procedural, evidentiary or other issues that might arise during the trial in advance, with the exception of the special matters required under sections 590A, 590B and 590C of the Criminal Code. These sections require defendants to give notice of particulars of three aspects of their defences in advance of the trial: the first being alibi evidence, then expert evidence and evidence of a representation under section 93B of the Evidence Act 1977, which relates to hearsay evidence of statements by people who are dead or mentally or physically incapable of giving the evidence.

Given the inherent complexity of the issue, the fixing of an arbitrary time frame also risks being unable to appropriately account for the many scenarios and contingencies that arise in homicide matters, noting that contests in relation to the identity of human remains are rare and the issues encountered during Daniel Morcombe's case were understood not to be demonstrative of a larger systemic issue.

As foreshadowed by the Attorney-General, on her behalf I intend to move amendments to the Evidence and Other Legislation Amendment Bill 2021. These amendments respond to issues raised by submitters during the Legal Affairs and Safety Committee's inquiry on the bill and the recommendations made by the committee in its report as well as making a minor technical correction to the bill. I understand that those amendments have already been circulated and, of course, will be moved at the appropriate time. In respect of those amendments, I make the following comments.

Amendment 1 will amend clause 33 of the bill to insert subsection (3A) into new section 14ZF, which deals with decisions on applications. New subsection (3A) specifies that, in an application for a determination of an objection to the inspection, copying or seizing of a document or thing authorised under a search warrant, the person seeking to deal with the sealed or stored document or thing—that is, the authorised officer, chief executive of the entity that appointed the authorised officer or a delegate of the chief executive, or another person prescribed by regulation—bears the onus of proving, on the balance of probabilities, that the public interest in disclosing the informant's identity outweighs the prescribed matters mentioned in new section 14Y(1)(a) and (b).

Amendment 2 is a clarifying amendment to new section 14ZF in clause 33 that stipulates that the decision referred to in new section 14ZF(4) is reference to the decision under section 14ZF(3).

The remaining three amendments relate to provisions in the bill in support of a legislative framework for a pilot enabling videorecorded statements taken by trained police officers to be used as adult victims' evidence-in-chief in domestic and family violence related criminal proceedings. The third amendment amends new section 93AC of the Evidence Act in clause 36 by replacing the incorrect reference to section 93 criminal statement in subsection (1) with the correct reference to section 93A, criminal statement.

The fourth amendment addresses concerns raised by a submitter to the committee's inquiry into the bill and responds to the third recommendation in the committee's report. The amendment amends the definition of domestic violence offence under new section 103B in clause 37 by clarifying that both limbs of this definition under paragraphs (a) and (b) can be read separately; in other words, they do not both need to be satisfied in order to meet the definition of domestic violence offence.

The fifth amendment also addresses concerns raised by submitters to the committee's inquiry into the bill as well as in the statement of reservation to the committee's report. Amendment 5 amends new section 103E(4) in clause 37 to provide that a trained police officer means a police officer who has successfully completed a domestic and family violence training course approved by the commissioner for the purpose of taking recorded statements.

Once again, on behalf of the Attorney-General, I thank all members for their contributions to the debate. I also thank all of the stakeholders who participated in the committee process and were involved in the consultation processes leading up to the development of the bill. I thank the committee members, the secretariat and all members of the community for their interest in this matter. There are good reforms contained in this bill and I encourage all members to support it. I commend the bill to the House.