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Extension of Covid Provisions – Not all are justified

Posted on 11 March 2022

Legislative Assembly 10 March 2022

Mr MORRIS (Mornington) (11:54): It is a pleasure to rise to join the debate on the Justice Legislation Amendment (Trial by Judge Alone and Other Matters) Bill 2022.

It is interesting, the words that dominate that title are 'trial by judge alone' of course, but when you dig into the detail of the bill that is but one aspect. It is clearly the headline aspect, but I think there are other matters in there that are perhaps a lot more concerning than that one, particularly given the time-limited nature of the bill. I guess that highlights the issue that I raised yesterday.

I do not intend to spin the wheels on it, but there are, I think, some legitimate questions to be asked about this bill. The manner in which we deal with legislation in this place precludes it, and the scrutiny of legislation by the house is diminished by the processes we are currently following.

I also want to acknowledge the briefing that was provided by the Attorney's office to the member for Malvern and I think the member for South-West Coast and myself. Briefings do not always actually provide information, but the briefing that was provided in this case was genuine and collegiate, and I think a number of other ministers' offices could learn from the approach taken by the Attorney on this bill.

With regard to the trial by judge alone, of course these are matters that have already been dealt with in 2020 at the start of the pandemic. We have pretty much had this framework in place, and it has worked okay.

The principle of trial by jury, as others have said, is a particularly important one. It is one of the cornerstones of the British legal system that we have inherited, and it is a process that I think needs to be protected. Alternatives should not be considered lightly; that is for sure.

But in the case of the trials that occurred in the previous period, I understand there were 60 applications to the County Court and 51 were granted. There were six applications to the Supreme Court; six of those were granted. Iin the case of the Supreme Court four were resolved and two proceeded to trial. I am not sure of the numbers on the County Court.

So we are not talking about enormous numbers, but it is important that the principles, as I

said, of trial by jury be retained. And, of course, as I mentioned at the start of my contribution, this is one of those time-limited—well, they are all time-limited—provisions, but this is particularly time limited, so I think in this case it is probably an acceptable provision.

I want to then move on to the amendments that deal with the changes to the Children, Youth and Families Act 2005, and there are essentially provisions that were added to that act back in 2020 which were to be repealed on 26 April this year, and this bill will extend that repeal date further. Interestingly, not all of those provisions that were to be repealed on 26 April are being extended, but the majority are, and there are a couple of provisions in here that do concern me.

There are provisions relating to allowing a person to attend a hearing via AV link. That is fine. I certainly do not have an issue with that, but there are some provisions relating to, effectively, the sidelining of bail justices and the time lines in which these hearings need to be dealt with that are of concern. We have heard again and again from the government side of the pressures on the courts.

We have heard from this side repeatedly concerns about the resources provided to the courts. Both legitimate, so why on earth are we sidelining bail justices in this process? They are being completely sidelined. They are taken out. So where in the principal act a court has to hear an application—for example, for an interim accommodation order—within 24 hours, and there are other sections where similar things apply, the fallback position built into the legislation is a bail justice. The extension of these provisions removes bail justices.

The other aspect which is particularly concerning to me is that the act under normal circumstances, in normal times, would say these matters need to be dealt with within 24 hours. The current position as a result of the changes that were made in 2020, and which will be extended by this bill, is that the matters must be dealt with not within 24 hours but within one working day.

If it is Monday to Tuesday, it is clearly not a great issue, but if it is Friday to Monday, then it is a significant extension, and that again does concern me. Perhaps in 2020 those sorts of things could be justified. Given the circumstances we now find ourselves in, those sorts of provisions cannot be justified, particularly as we are dealing—given this is the Children, Youth and Families Act—with kids, and they do not need to be kept hanging around for an extra two days. I think that is a matter of concern as well.

There are some changes under the Evidence (Miscellaneous Provisions) Act 1958 with regard to AV links. I think they are reasonable. Others have talked about the deferral of the de novo changes. Frankly it staggers me that this is still hanging around. I can recall in some of the very first sections on committee reports that I sat through as a new member in 2006 and 2007 the then member for, I think, Ballarat East talking about the de novo appeals, because that was one of the few committee reports that could actually be talked about. And he did it again and again and again. So this thing has been on foot for 16 years at least—probably a lot more. When is it going to end?

Originally the provisions that apply to this were going to come into effect in July 2021. That was extended at the start of last year to 2023. Now we are talking 2025. I think that really is way too long.

There are also some concerns with regard to the Crimes (Mental Impairment and Unfitness

to be Tried) Act 1997. They are essentially of a legal nature, and as I am not legally trained, I am not going to wade into those waters, but I do draw the attention of members to the Scrutiny of Acts and Regulations Committee report, particularly page 12 of the Alert Digest, which provides some detail.

There are also some interesting interpretations by the courts as to when these sorts of interventions are justified and how a person with a disability might be treated, and it lays out the concerns there.

Essentially the issue, though, is that up to a year after royal assent a court may specify a longer period that it considers reasonable for when a special hearing may be held. I think that is a reasonable concern, and it is certainly one of the issues that I would have liked to have the opportunity to pursue with the minister had we gone into consideration in detail.

The final point I want to comment on is the issue that was spoken about by the member for South Wast Coast, and that others have mentioned too, and that is the changes to the Occupational Health and Safety Act 2004.

The situation here is that, just to get the words entirely accurate, if an employee in retail or hospitality forgets to wear a mask, then they are automatically deemed to have engaged in an act which is an immediate risk to health and safety.

So if someone in a supermarket wears their mask under their nose or just cannot stand having it on and takes it off for a few minutes and a WorkSafe Victoria inspector happens to see them, then that is deemed an immediate risk to health and safety. But if I am in the same supermarket and in the same area, as a customer, without a mask, as I am permitted to be, that is not a risk. That is a complete and utter nonsense.

And it is not as if it is a 10-cent fine; the penalties for these matters are significant and potentially catastrophic for a business. So why are these provisions being included, and why do we have such inconsistency between a permitted action on behalf of a customer and effectively a serious breach that could close down the business on the other hand?

There are some significant issues in this bill.