

Legislative Council

Hansard

Wednesday 19 June 2024

The President, Mr Farrell, took the Chair at 11 a.m., acknowledged the Traditional People and read Prayers.

[excerpt...]

CHILD SAFETY REFORM IMPLEMENTATION MONITOR BILL 2024 (No. 14)

Second Reading

[6.05 p.m.]

Ms WEBB (Nelson) - Mr President, I am very pleased to be rising to speak on this bill today. It is tangible progress in delivering on the recommendations that were made in the commission of inquiry final report, and it is a very important piece of that puzzle. It feels significant that we are progressing this, and it can be given effect as soon as possible. We acknowledge and thank those in the community for their contribution to getting the commission of inquiry underway, and ensuring that it was a significant piece of work that delivered such an extensive suite of recommendations with the intention to make real change.

We owe so much to those people, for what they gave and for what it costs them personally - whether they were victim/survivors; family and carers for those people; or whistleblowers from within our state service. All of them did so much. And now it is our turn to deliver on it. This is an important piece of that puzzle, and I hope that they feel that we are now finally stepping up to the plate to move things forward at our end, based on what they have provided us.

I appreciate the briefing provided to us today from the staff and the department. Lots of questions were answered. I also know that this bill was well-discussed in the other place and that many questions were put and answers received there, which has helped to clarify some issues. I particularly appreciate the member for Hobart's contribution that we have just heard. It was quite extensive and covered a lot of areas. I am not going to go into as much detail as the member for Hobart, but I will pick up on a few areas that will cross over with her remarks, as important to have at the forefront of our mind when there are still perhaps some areas of concern or unanswered questions.

I do not want that to take away from the fact that I see this bill as quite faithfully giving effect to what was intended in the recommendation by the commissioners on this matter of an implementation monitor. In some ways it even goes a little further than what was explicitly in the recommendation, and that is very pleasing to see. Unfortunately, probably in one important way it does not quite align. That is been touched on and I will also talk about that - the matter of the independence of the entity. But, overall it is a faithful vehicle to progress the recommendation made by the commissioners.

It is clear why we need to contemplate an implementation monitor that sits independently from the government and those within the bureaucracy who are implementing recommendations. The commissioners made it very clear in their final report that we have a well-established pattern in this state. We have reviews, we have investigations, inquiries and

the like, and they come out with recommendations. Those recommendations then follow a couple of well-trodden paths. One might be to be put on a shelf and not get implemented at all. That is one outcome we have seen again and again, and the commissioners refer to that in the report. That is utterly unacceptable. It is absolutely insult to injury, when you go to the trouble of a review or an investigation or inquiry; it is undertaken in good faith; experts who are involved in it deliver thoughtful, evidence-based recommendations; and then they lapse on a shelf. It would be criminal for us to see that happen in relation to the commission of inquiry recommendations. Hence, we need a monitor.

Another pathway that we have seen again and again too is where, from the same sorts of inquiries or reviews or investigations, we have recommendations on fairly structural things or bureaucratic things, and it is a bit like window dressing. Departments or agencies readily take their laundry list of things, and the government readily gets up in this place and reports on this laundry list of things that are being done and given effect to and yet there is no outcome achieved that was the intent. We have not seen reform of outcomes, just busy work in relation to recommendations made. That also is an utter tragedy when we see that and it is incredibly harmful because it provides the implication that progress has been made and perhaps, for example, safety has been enhanced or put in place. But if that is not true, and what we have just pointed to is a big long list of 'busy work' then we have left people in a worse position than they were before because we have effectively gaslit them. It is unacceptable.

There is a particular example of that that I will draw attention to here because it is relevant in this place when we are now talking about ensuring we avoid doing it with the commission of inquiry, and that was in the area of youth justice.

We saw the Noetic report provided from experts, from a group called Noetic. I believe it was in 2016. It related to was youth justice in this state and it talked about options and the key option was to close AYDC. The government chose not to do that.

The other option was to create a more therapeutic environment there, and we then saw years of the responsible minister - who for much of that time is still the responsible minister now - get up in places like parliament but also in the media or to other stakeholders in the public domain and run through lists of actions being taken to create a more therapeutic environment at AYDC. This is from the time of that report in 2016 through until - let us draw a line at when the commission of inquiry was called in 2021. There is a five-year period and there would be happy reporting of progress being made of creating a more therapeutic environment, and yet what we know now from the commission of inquiry, is that across that whole period of time, children in that environment continued to be brutalised and abused emotionally, sexually, physically.

We were given the impression that improvement was occurring but now we know through another process that it was not, certainly anywhere near sufficiently to the intention when those things were recommended through that Noetic report. That is why we absolutely, and why the commissioners took great care to, identify this as such an important piece of the puzzle in ensuring real change from the commission of inquiry process.

We cannot have ministers get up and read out laundry lists of busy work being done that are having no tangible impact and delivering no greater protection to vulnerable children.

It is heartening to see that the commissioners looked to other jurisdictions and other similarly sensitive and complex areas of reform and sought to be informed by models for monitoring implementation that might be worth considering here, and found such a model in Victoria with the Family Violence Implementation Monitor.

There is always a greater level of comfort when we are developing a new mechanism such as this if we can look to a similar model elsewhere and see that it has been used and has been regarded as being effective. The commissioners provided that alongside their recommendation as good guidance and that is incredibly positive. I recognise there are ways that we have followed that model and, in some ways, we have diverted, but that is natural too because it is a circumstance all of its own that we are also creating here in our state.

I am pleased that we are here and we are debating this bill and I look forward to it passing - which I hope and believe it will - and being given effect too.

As the member for Launceston commented, the person who is recruited into this role will be absolutely crucial for its ultimate impact and success. No doubt, that is going to be a recruitment that is undertaken with great care and sensitivity. The other side of that is that we know from the bill and from the briefings and discussions we have had that it is both Houses of parliament that provide the oversight to this role ultimately, and to whom this role is answerable. We will all play a role in an ongoing way to ensure that there is success in this model and that we are ensuring accountability to the person who is undertaking this key role as monitor.

I will not go through the content exhaustively. I appreciate the contribution provided by the member for Hobart covering many areas. I want to pick up and repeat a couple of them, because they remain somewhat concerning. One relates to the matter of independence for the independent monitor role. The commissioners were quite clear about it sitting outside of the State Service and being able to be an agency unto itself. That has not occurred, and my understanding is that essentially establishing a separate agency would then impose on that agency the need, as an agency, to undertake various activities, reporting, auditing, risk management activities and the like, bureaucratic things. It was deemed that for an agency that may ultimately be half a dozen people in its size and staffing, that is a lot of bureaucracy to put around it, in and of itself.

There was some cost potentially involved in that. I thought the figure mentioned did not sound like an unreasonable investment to make, quite frankly. I am not going to mention the figure that was mentioned in the briefing because we were provided with a breakdown of that and I cannot verify that as the absolute figure, but we were provided with a figure for what it might cost to put that reporting, auditing and risk management, et cetera, bureaucracy around the agency if it were to stand alone.

Quite frankly, for the quantum of what that might have been, it would have been worth it to do that. It is a small investment in the big scheme of things. No-one would have noticed if in our state budget we spent that in order to make sure this was genuinely a separate independent agency. However, that has not been done in this bill. To my mind, it is not a reason not to support the bill. I just find it unfortunate. It will be interesting to see, going forward, as this parliament interacts with the monitor and with the operations of the monitor and the staff associated with the role as well, and particularly as the joint committee relating to the implementation of the commission's recommendations, also interacts quite distinctly with this monitor role and those involved. It will be interesting to see if we can identify any issues relating to independence, given that rather than be an entirely separate agency sitting outside the State Service, it will be part of the Department of Justice.

Given that decision, and while I would have preferred a different decision was made, I can see efforts are being made within that to try to ensure a degree of independence to the greatest extent possible. I understand that people who may be employed to work under and with the monitor role will be state servants. That does not necessarily mean they are going to

be seconded from elsewhere. I understand from the briefings that they can be employed in an open way from wherever. It is just that when they come to work for the monitor, they will become state servants employed by the Department of Justice and then directed into whatever role they have been employed to do under the monitor functions.

It is not ideal. When I first read the section of the bill that refers to this, on a quick reading, it almost reads like they might even be part-time, doing other things in the State Service and working for the monitor. However, when you read it more carefully, you can see - and we were reassured in the briefing - that is not the case. There is no expectation that people would be working in other State Service roles while also working in these roles, just that they will be employed. Their status will be that of being a state servant.

The thing that is also concerning is appropriate and adequate funding. Again, it is because we have got form in this state when it comes to our statutory roles and statutory entities.

To some extent, the bill explicitly protects the remuneration of the monitor and ensures that influence from the government of the day or from the from the state service, cannot be brought to bear on the monitor through manipulation of remuneration for the monitor. That does not necessarily reassure us about remuneration for undertaking the full functions under the full staffing that might be there.

It is probably worth the Leader, if possible, in summing up, making some remarks about how we might have confidence and then how we might be able to scrutinise the appropriate and adequate funding for the entirety of the functions. My understanding is we will be scrutinising that in budget time, potentially as a separate line item. The monitor presumably will appear in budget Estimates scrutiny. I would hope the monitor will be able to interact directly with the relevant committee undertaking budget estimate process.

However, we have to flag right here, right now, the constant refrain we hear from many of our other statutory entities here, oversight entities of similar nature, is they are not adequately funded to undertake their role. That is a failure of integrity here. It is a failure of our integrity systems and mechanisms because it is almost worse to have an integrity or oversight entity of some sort in place, who on paper and under statute, has a role to play and then cannot fully or to an adequate degree do that role to undertake and deliver the outcomes of that role because of a lack of funding which often ends up looking like a lack of staff.

That is entirely unacceptable. It gives the veneer that we have appropriate mechanisms in place while in fact failing to deliver on the expected outcomes of those mechanisms. It would be absolutely horrifying to see that play out in this circumstance.

Two other areas I retain concerns about, which have been mentioned, but I will reiterate them here as concerns, relate to the issue of information being able to be requested and called for by the monitor but then denied on the basis, for example, of privilege of some sort. The member for Hobart mentioned the integrity commission submission made on the draft bill raising this as an issue. This is an issue we even have here as a parliament and as a chamber, where we have no mechanism in place to adjudicate disputes about claims of privilege.

No one is arguing the monitor should be able to request privileged information. The issue here is if the monitor requests information and then an agency denies the request on the basis the information is privileged. If there is a question there and the monitor believes perhaps that may not be the case, how can the monitor prosecute a challenge to that denial of information? There is nothing here I can see in the bill that provides for how a dispute of that

kind over a claim of privilege can be adjudicated. We do not have one here in the parliament to offer as a mechanism either.

It is problematic on this area in particular because we know that information has been hidden, disappeared and has been inappropriately obscured through things like claims of privilege in the past. The commission itself identified numerous occasions where things were not appropriately reported, made visible, transparent or provided. I remain concerned about that issue. It will be one that this place as the oversight body of the monitor and certainly, the joint committee that will be interacting with the monitor quite closely. We will be looking carefully to that, to see whether there is anything more that needs to be done down the track. That is a guess at this stage, but I suspect that is what is going to happen.

I was pleased to have advice provided through the briefings. I was concerned about whether this entity would be constrained to seeking legal advice only through the office of the Solicitor-General. However, I looked at the debate and the discussion in the other place and found that appears to have been addressed. I was pleased to hear that in the briefing as well. Perhaps it can be confirmed that this entity will be free to seek legal advice where it chooses and will not be constrained?

Mrs Hiscutt - Through you, Mr President, that is correct.

Ms WEBB - Yes. It will not be constrained to only utilising advice from the office of the Solicitor-General, and it will not have to consult with the Treasurer or the Attorney-General in order to seek legal advice elsewhere. Thank you for confirming that, Leader, that is particularly important.

Another area of concern, that was also raised by various people who made submissions on the draft bill, was that there were no offences or penalties for not providing information or not responding to this monitor. I understand there is an argument that would not be appropriate because this is a monitoring body, not an investigatory body, and so it does not necessarily need powers or warrant there being offences or penalties for not responding.

I consider it is important that there should be some negative outcome for an agency or a state servant failing to comply with a request from this monitor, or falling short in full and transparent interactions with this monitor. At best, it seems it will be reported in an annual report that a request was made and no response was forthcoming, or a less than comprehensive response was forthcoming.

Being reported in an annual report is no terrible outcome. It is no penalty. It is not particularly negative. There is no consequence to it and that is of concern. I can see circumstances in which the pain of being named in an annual report, which we can probably assess as relatively small, would not outweigh the pain that might be there if something was comprehensively provided that they might otherwise prefer to keep quietly hidden.

To some extent, that sounds conspiratorial, which is a shame. It also sounds as though I am assuming the worst of our public service, and that would be very unfortunate because we know so many of them are doing their best and delivering such great service and outcomes to our state.

However, because of the commission of inquiry we also know that repeatedly and in systematic and systemic ways across many agencies, that has not been the case. We have had state servants fail in their duty again and again - not just as one bad apple, or as one-off oversights or oopsies. The commission has identified systematic and systemic failures. That is the basis on which we are working; that is what we are trying to change, and that is why

consider being named in an annual report is a fairly weak outcome for anytime we may see a failure of full, frank, transparent, comprehensive engagement with this monitor.

I do not have a solution to suggest for it. I know we could say that we have a State Service code of conduct, we have all sorts of ways that the State Service is understood, and, by convention, meant to behave. Would that we could fully feel confident on that basis. However, this bill is here because we have not been able to be fully confident. I am concerned about that issue. It will be one to monitor over time, as we see how people respond to requests from the monitor for information and to the sorts of investigations that the monitor is going to be doing.

I look forward to a relatively quick recruitment. I hope we can find someone fabulous for this role, and get them in place as quickly as possible so they can begin the work - for a start, developing a framework to underpin their monitoring function. That is one of the first tasks that the bill lays out, and it is to be done in within 12 months. It will be very important and the consultation going into that will be crucial to ensuring that it is comprehensive and it is effective. I know that it will likely go to the principles that will underpin the work that the monitor is going to do. Some submissions have suggested that the principles should be in the bill, but I believe they can be responsive and dynamic within a framework context. It will be very pleasing to see all this be put in place over the next 12 months.

That covers the areas I wished to highlight as some of the concerns I still hold relating to this bill and the monitor and the entity that will be created by it. However, I will conclude by reiterating how very positive it is to be here giving effect to this crucial recommendation from the commission of inquiry. I am pleased to see that we are not just going to be implementing recommendations with no oversight and consequence to them not being given effect. This monitor will be the way we can assure ourselves in this place, as representatives of our communities, that real change is occurring. We need to at all times keep at the forefront of our awareness that when we talk about real change occurring in this space, what we are talking about is children in all parts of government institutions across this state, being safer.

Ms Forrest - Eventually just safe, full stop.

Ms WEBB - Safe, full stop - absolutely. It is about that outcome. It is not just about busy, busy activity, it is not just about a laundry list of tasks to tick off. It is about whether we have made kids safe in Tasmania. I hope that this work undertaken by the monitor will be able to give us confidence to be able to say, 'Yes' to that.

Mrs Hiscutt - While the member is on her feet, I am aware we did have one more speaker who is not going to speak for very long. Then we will move to the Committee stage. I do not think that will take a long time, but members may know if they are going to ask a lot of questions. Can I please have an indication - do you want to stop for a dinner break or do we push on? It is my personal preference to push on. What do members think?

Ms Forrest - It is okay for those who have had a break at lunchtime. Some of us have not. I do not want to be going until 8.00 p.m. or 9.00 p.m. without a break, I can tell you that.

Ms Webb - Through you, Mr President, the Committee stage often takes a while in this place. The member for Hobart is new and has not yet experienced many bills of any complexity going through here. We do the work during Committee stage here, and many times the members do have questions and the Committee stage can take quite a while.

Mrs Hiscutt - I ask the member to adjourn the debate.

Ms WEBB (Nelson) - Mr President, I move - That the debate be adjourned.

SUSPENSION OF SITTING

Resumed from above.

Ms WEBB (Nelson) - Mr President, I had almost completed my contribution. It was fortunate to have that time to reconsider, as I have shared with members a possible amendment to consider. I will mention it briefly and we may deal with it when we are in the committee stage. It is a small amendment to Schedule 2, relating to the time frame in which the minister must advise the parliament about the suspension or removal of the implementation monitor, should that occur. I am proposing to bring that time frame down a little as I believe we would want to be informed of it as soon as possible. We may discuss that when we get to that schedule of the bill in the committee stage.

Other than that, I have finished my contribution. I am happy to support the bill.