NSW Legislative Assembly Hansard (Proof)

Crimes (Serious Sex Offenders) Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 29 March 2006 (Proof).

Second Reading

Mr CARL SCULLY (Smithfield—Minister for Police) [7.32 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Crimes (Serious Sex Offenders) Bill. The Government has shown its strong and ongoing commitment to the protection of the community from sex offenders. It has introduced the toughest substantive child sexual assault offences in Australia that ensure that offenders are incapacitated for long periods of time if convicted. It has introduced an offence under section 11G of the Summary Offences Act 1988 that provides that a person who is a convicted child sexual offender and who loiters near a school, or a public place regularly frequented by children, can be sentenced to imprisonment for up to two years. It has established the Child Protection (Offenders Registration) Act 2000 (NSW), which creates a scheme of sex offender registration.

New South Wales also championed the development of a national registration scheme. Further, the Child Protection (Offenders Prohibition Orders) Act 2004 (NSW) is a new tool to allow police to stop re-offending before it happens. The scheme provides for court orders prohibiting certain offenders who pose a risk to the lives or sexual safety of children from engaging in specified conduct. The Government has also introduced employment screening for people working with children.

One particular concern that is dealt with by this scheme relates to a handful of high-risk, hard-core offenders who have not made any attempt to rehabilitate whilst in prison. These offenders make up a very small percentage of the prison population, yet their behaviour poses a very real threat to the public. These concerns are compounded where the offender never qualifies for parole and is released at the end of their sentence totally unsupervised. The bill addresses this problem by allowing this small group of high-risk offenders to be placed on extended supervision, or, in only the very worst cases, kept in custody. The Department of Corrective Services has advised that only a small number of offenders would fall into this very high-risk category.

Whilst legislation of this kind is a first for New South Wales, a number of other jurisdictions have enacted laws directed at serious high-risk sex offenders that provide for a variety of options including mandated treatment, community registration, and protracted supervision beyond the duration of a sentence. For example, in July 2004 New Zealand legislation providing for extended supervision commenced operation. Some States in Australia already have similar legislative schemes. The Victorian legislation provides for extended supervision, and the Western Australian Parliament recently passed a bill that allows for the detention and supervision of dangerous sex offenders. Queensland introduced a contemporary legislative regime in June 2003 that provides for both continuing detention orders and extended supervision orders. Significantly, in 2004, when the Queensland legislation was challenged in the High Court in the case of Fardon v Attorney-General for the State of Queensland, the validity of the legislation was upheld.

I turn now to the detail of the bill. Clause 3 sets out the objects of the bill, which are to provide for the extended supervision and continuing detention of serious sex offenders so as to ensure the safety and protection of the community, and to facilitate the rehabilitation of such offenders. Clause 5 defines the expressions "serious sex offence" and "offence of a sexual nature" for the purposes of the proposed Act. These will be the most important terms in the Act.

A serious sexual offence is defined as a sexual offence that carries a maximum penalty of seven years imprisonment or more and was committed against a child, or committed against an adult in circumstances of aggravation. This definition includes all sexual assaults, including aggravated indecent assault, which carries a maximum penalty of seven years imprisonment. The definition also includes serious sexual offences committed against adults where there is a circumstance of aggravation, such as the offender was in company, the offender used corporeal violence, the offender used a weapon, the victim was a vulnerable person, the offender held a position of authority over the victim, or the offender detained the victim.

The offence of "administer stupefying drug with intent to commit an indictable offence"—section 38 of the Crimes Act 1900—will also be included where the indictable offence is a serious sexual offence. "Offences of a sexual nature" will include anything below the seven-year maximum term, such as the possession of child pornography. These definitions capture the worst sexual recidivists in our system.

The Attorney General will be able to seek two types of orders: extended supervision orders, dealt with under

part 2; and continuing detention orders, dealt with under part 3. The procedures for applying for both orders are the same. Clauses 6 and 14 enable the Attorney General to apply to the Supreme Court for extended supervision orders and continuing detention orders respectively. Continuing detention orders will only be applied for where there are no other effective methods of managing the offender's high risk of re-offence.

It is appropriate that the Attorney General, as the first law officer of the State, consider any proposal to make an application—following advice from the Commissioner of Corrective Services to the Minister for Justice—before matters are filed in the Supreme Court. Such an application may not be made until the last six months of the offender's current custody or supervision, and must be supported by specified documentation. This is important because it means that the application must be well thought out and have a sound basis. The documentation must address the matters to which the Supreme Court must have regard when considering whether an order should be made. The documentation also must include a report by a psychiatrist, a psychologist or a medical practitioner that assesses the offender's risk of reoffending.

Clauses 7 and 15 require an application to be served on a sex offender within two business days after it is filed, for a preliminary hearing to be conducted within 28 days after it is filed, and for a decision to be made as to whether there is a case against the offender. It is important to note that the Attorney General will have the same disclosure requirements in these matters as the prosecution does in criminal matters, meaning that all relevant matters, whether favourable or unfavourable, will be disclosed. This will ensure that applications based on selective evidence are not made, and it will also serve to shorten the discovery process that usually occurs in other matters. If a prima facie case is made out in the application, the Supreme Court is to make an order for two psychiatrists to examine the offender and report independently. The appointment of two court-appointed psychiatrists is an important aspect of the scheme. It allows for a fair and independent medical opinion to be expressed. The psychiatrists will not be State employees, but will be private members of the Royal Australian and New Zealand College of Psychiatrists and the court will appoint them. As noted above, an offender is entitled to call his or her own evidence if he or she wishes.

Clauses 8 and 16 enable the Supreme Court to make interim supervision or detention orders so that an offender can be kept under supervision or in detention pending determination of an application. This power is important in cases where it appears that the offender's period of custody or supervision will expire before the proceedings are determined. It allows the offender to be detained for up to 28 days, but upon renewal of the order the total period for which an offender can be kept under interim supervision is three months. This limit will ensure that people are not held on rolling orders, and will encourage expeditious determination of these matters. Clause 9 provides that the Supreme Court may make an extended supervision order only if it is satisfied to a high degree of probability that the offender is likely to commit a further serious sex offence if he or she is not kept under supervision. The test for making a continuing detention order is contained in clause 17. Before making a continuing detention order the Supreme Court must decide that a supervision order would not be sufficient to deal with the risk of a prisoner reoffending. It may make a continuing detention order only if it is satisfied to a high degree of probability that the offender is likely to commit a further serious sex offence if he or she is not kept in custody.

Clauses 9 (3) and 17 (4) contain a non-exhaustive list of matters the court must consider before making an order, including reports from psychiatrists and the results of any assessment prepared in relation to determining the likelihood of the offender committing a further serious sex offence. The indicia are meant to guide the court in distinguishing the small number of high-risk offenders who have not made any attempt to rehabilitate whilst in prison. Clauses 10 and 18 provide that the maximum term for either order is five years, but nothing prevents the Attorney General from making further applications so long as the principal test continues to be satisfied. Clause 7 specifies the kind of conditions that can be imposed on a supervision order, which are similar to those that a person on parole may be placed on. Clause 12 makes it an offence punishable by a fine of 100 penalty units or imprisoned for two years, or both, for a person to fail to comply with the requirements of a supervision order.

Clauses 13 and 19 enable the Supreme Court to vary or revoke a supervision order or detention order upon the application of either party, and also requires the Commissioner of Corrective Services to provide the Attorney General with annual reports on each offender. This power will deal with any changes in circumstances. Clause 20 enables the Supreme Court to issue a warrant of committal to give effect to a detention order. Part 4 deals with Supreme Court proceedings. Clause 21 provides that proceedings under the proposed Act are civil proceedings to be conducted in accordance with the law relating to civil proceedings. Clause 22 enables an appeal to be made to the Court of Appeal against any determination made by the Supreme Court under the proposed Act. This right applies to both parties, and specifies 28 days as the time frame for the appeal to be lodged. The appeal may be on the ground of an error of fact or law, or a combination of both. Clause 23 provides that no order for costs may be made against an offender in relation to proceedings under the proposed Act. This would not be appropriate, despite the civil nature of the proceedings, given the fact that the proceedings always will be commenced by the Attorney General and the unique nature of the proceedings.

Clause 24 preserves the jurisdiction of the Supreme Court, apart from the proposed Act. Part 5 deals with miscellaneous matters. Clause 25 creates a power for the Attorney General to require documents that are relevant to these applications. Relevant material may be held by a number of bodies and organisations. Clause

32 provides for a review of the proposed Act at the end of three years from the date of assent. Since the legislation is unprecedented in New South Wales the Government is dedicating to ensuring that it is being used appropriately, and achieving what it is designed to accomplish. In summary, I stress that it is vital that there be legal mechanisms to protect the community from serious sex offenders. The bill is another demonstration of the Government's dedication to ensuring the safety of the community from offenders who already have demonstrated their capacity to commit horrendous and unacceptable crimes, and where there is compelling and cogent evidence that they are likely to do so again. I commend the bill to the House.