

**CRIMES (SENTENCING PROCEDURE) AMENDMENT (PROVISIONAL
SENTENCING FOR CHILDREN) BILL 2013**

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PROOF

Bill introduced on motion by Mr Greg Smith, read a first time and printed.

Second Reading

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [4.00 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Bill 2013. The purpose of the bill is to introduce a scheme for the provisional sentencing of children who are convicted of murder. Murder is the most serious crime that can be committed in our community and the Government is determined to provide sentencing courts with the tools needed to properly sentence those who have committed this extremely grave offence. It is particularly important that courts, when sentencing for murder, are able to assess an offender's future dangerousness and prospects of rehabilitation so that these considerations can be properly reflected in the sentence imposed.

However, sentencing young offenders, particularly for a crime as serious as murder, can pose particular challenges for sentencing courts. In the case of *R v SLD*, Justice James Wood noted the limitations of ordinary sentencing principles when determining the length of a sentence for a child murderer. The sentencing process requires consideration of an offender's likelihood of reoffending and prospects of rehabilitation. However, the human mind develops rapidly during childhood years, making it hard for a judge at the time of the initial sentence to determine a young person's rehabilitation prospects or the likelihood that he or she will reoffend. Following Justice Wood's decision in *R v SLD*, research and consultation was commissioned by the NSW Sentencing Council and a paper entitled "Provisional Sentencing For Children" was produced. The council ultimately recommended the introduction of provisional sentences for child murderers in New South Wales.

This bill implements that recommendation. The amendments enable a court, when sentencing a person who was under the age of 16 at the time of the offence and who is still a juvenile at the time of sentence, to impose a term of imprisonment on a provisional basis. A provisional sentence can be imposed only if the court considers that insufficient information is available at the time of sentence to assess relevant matters going to the likelihood of reoffending and/or the offender's prospects of rehabilitation. The bill provides that a provisional sentence can be periodically reassessed by the court and a final sentence must be imposed on the offender within five years. This will provide the court with an opportunity to keep track of the offender's personal development and progress in custody so it can make a better assessment of the child's future dangerousness before confirming his or her final sentence.

I will now outline each of the amendments in turn. Item [1] of schedule 1 inserts new division 2A into the Crimes (Sentencing Procedure) Act 1999, which contains the substantive provisions governing provisional sentencing. New section 60B provides that the provisional sentencing scheme applies when a court is sentencing an offender who is under 18 years of

age to imprisonment for the offence of murder if the offender was less than 16 years of age when the offence was committed. The court can impose a provisional sentence if it considers that it cannot, at the time of sentencing, satisfactorily assess the offender's prospects of rehabilitation or likelihood of reoffending because it is not clear whether the offender has or is likely to develop a serious personality or a psychiatric disorder or a serious cognitive impairment.

New section 60C provides that in determining whether or not to impose a provisional sentence, the court may have regard to a case plan prepared by the body responsible for the detention of the offender. The case plan will set out the way in which the offender will be managed in custody and the services and rehabilitation programs that will be offered to him or her. New section 60D provides that a provisional sentence is a sentence that is subject to review and redetermination but is not to be regarded as a sentence for an indeterminate period. Section 60E provides that all provisional sentences must be reviewed at least every two years and otherwise as often as the court considers appropriate. When reviewing a sentence, the court will receive reports from the body responsible for the detention of the offender, outlining the care and treatment the offender has received in custody and the psychiatric, cognitive and psychological development of the offender. Other people or organisations that have responsibilities related to the care and treatment of the offender may also be requested to provide a progress report. Wherever practicable, a progress review is to be undertaken by the same court and the same judge who imposed the sentence.

New section 60G provides that following a review the court may impose a final sentence or decline to impose a final sentence. However, under section 60H, a final sentence must be imposed within five years of the date on which the provisional sentence was imposed and at least one year before the expiry of the non-parole period for the provisional sentence. A court imposes a final sentence either by setting aside the provisional sentence and substituting another sentence as the final sentence or by confirming the provisional sentence as the final sentence. The final sentence is taken to have commenced on the day on which the provisional sentence commenced. It must not exceed the term of the provisional sentence.

New section 60I provides that both provisional sentences and final sentences are subject to appeal under the Criminal Appeal Act 1912. On appeal against a provisional sentence, a court may substitute a new provisional sentence or a final sentence. Item [3] of schedule 1 provides that the new scheme of provisional sentencing applies to offences committed before the commencement of the scheme, but only to sentences imposed after its commencement. The changes to the law set out in the bill will enable judges to make more informed decisions about the detention of young people convicted of murder. In doing so, it will promote the protection of the community and uphold the integrity of the justice system. I commend the bill to the House.

Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.