Bail Amendment (Firearms and Property Offences) Bill.

Second Reading

Mr JOHN WATKINS (Ryde—Minister for Police) [9.22 p.m.]: I move:

That this bill be now read a second time.

I seek the leave of the House to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the *Bail Amendment (Firearms and Property Offences) Bill 2003.* The bill amends the *Bail Act 1978* to strengthen the provisions in relation to property offenders and in relation to serious firearm offences. The bill also tightens specific administrative requirements within the Act.

As announced by the Premier, these amendments form 'Stage 2' of the bail amendments this year. They build upon previous amendments in relation to serious personal violence offenders and address certain community concerns in relation to recent firearm offences. They were substantially adopted from a report produced by an internal working party.

I now turn to the provisions of the bill.

Firearms Offences

Schedule 1 [2] inserts proposed section 8B into the *Bail Act*, which provides for a presumption against the granting of bail for persons accused of certain serious firearms and weapons offences.

Currently there is only one exception to the presumption in favour of bail for firearm offences, namely offences under s. 7 of the *Firearms Act 1996* that relate to prohibited firearms and pistols.

There are, however, a number of other serious firearm offences apart from s. 7 that relate to prohibited firearms, pistols and danger to the public.

The Government wishes to send a clear message that the possession of prohibited firearms and pistols is an extremely serious matter.

The offences that fall within the definition of 'serious firearm offences' include:

• offences within the *Firearms Act 1996* relating to prohibited weapons and pistols and to ongoing dealing offences;

• offences within the *Crimes Act 1900* relating to using a firearm in a way that endangers the safety of the public;

• and the new offences created by the *Crimes Legislation Amendment (Public Safety) Act 2003.*

These new offences include:

s. 93GA Firing at dwelling-houses or buildings (max. 14 years imprisonment).

s. 93I(2) Aggravated possession of an unregistered firearm in a public place (max. 14 years imprisonment);
s. 154D Stealing firearms (max. 14 years imprisonment)

s. 51BB Selling firearms on an ongoing basis (max. 20 years imprisonment)

Repeat Property Offenders

Schedule 1 [2] also inserts proposed section 8C, which provides for a presumption against bail for a 'repeat property offender'.

A repeat property offender is defined as a person who has one or more convictions in the past two years, at least one of which is robbery or burglary related, and who has two or more outstanding charges which are robbery or burglary related.

These provisions specifically target persons who commit more offences while on bail. The proposal is based on the strategy that by identifying certain categories of offences charged in combination with the criminal history of the person charged, high-risk persons may be identified and incapacitated thereby preventing them from offending in the future.

Criminology research has repeatedly shown that a small percentage of offenders are responsible for a large percentage of crime. This is especially the case in relation to property offences.

Repeat property offenders often have serious drug problems. This drug problem is usually the central cause of their offending behaviour where persons commit many property and theft related offences in order to fund their drug habit.

The relevant offences to which this new provision applies are offences under the *Crimes Act 1900* relating to robbery or stealing from a person, armed robbery of a person, armed robbery and wounding of a person, demanding property with menaces, breaking and entering a place of worship, breaking out of a dwelling house after committing an offence, breaking and entering and assaulting with intent to murder, entering a dwelling-house with intent to commit a serious indictable offence, breaking and entering a dwelling-house, stealing property in a dwelling-house with menaces, stealing a motor vehicle and car-jacking.

The two or more offences of which the person is accused must not arise out of the same circumstances.

Incapacitation of repeat property offenders through remand in custody has the benefit to the community for the period the offender is in custody.

The Government also recognises however, that more long-term benefits can be gained if efforts are directed towards rehabilitating offenders once they have been identified. This may be achieved by addressing the cause of the persons offending, for instance a heroin dependency.

Cabinet has given its imprimatur for the establishment of an interdepartmental working group to investigate the expansion or trialling of a range of evidence-based programs that are demonstrated as effective at reducing recidivism.

These programs aim to reduce the number of "repeat offenders" and/or the number of persons receiving custodial sentences potentially ameliorating an upturn in prisoner numbers. This will deliver long-term benefits to the community.

The working group will be convened by the Attorney General's Department and include representatives from Department of Corrective Services, the Probation and Parole Service, NSW Police, NSW Health, Department of Juvenile Justice, and the Department of Ageing Disability and Home Care.

The working group will be reporting to Cabinet within six months on a range of programs and proposals as well as any other programs targeted towards repeat offenders. These programs may include:

(1) Intensive supervision and case management programs for repeat offenders based on similar programs in the UK for parolees.

(2) Fast tracking the implementation of the MERIT program at major Sydney Local Courts;

(3) Preparation of remanded repeat offenders for priority entry into the proposed Drug Treatment Correctional Centre and/or the Drug Court;

Schedule 1 [1] and [3]–[5] make amendments consequential on the enactment of proposed sections 8B and 8C.

The House will recall that in Budget Session this year the Government introduced the *Bail Amendment Bill 2003* which introduced new provisions into the *Bail Act* that ensured that repeat serious personal violence offenders would only receive bail in exceptional circumstances. There is some degree of overlap between the offences covered by the current s. 9D (serious personal violence offences) and the proposed s. 8C (repeat property offenders), this is because offences like robbery have elements of both serious personal violence offences and serious property offences. In circumstances where both s.8C and s.9D apply the bill provides, in **Schedule 1 [6]**, that s.9D and the test of exceptional circumstances will prevail.

Schedule 1 [8] makes it clear that an authorized officer or court making a bail determination in relation to these new sections (s.8B and s. 8C) can consider other matters they accept as being relevant in addition to the criteria set out in section 32 of the Bail Act.

Schedule 1 [9] requires an authorized officer or court to record, or cause to be recorded, the reasons for granting bail to a person accused of an offence to which the new provisions, creating a presumption against the granting of bail apply, as well as the provisions relating to exceptional circumstances

Fail To Appear

Schedule 1[11] removes the prohibition of persons who are convicted *ex parte, or in their absence,* from being

charged with a fail to appear offence contained in section 52 of the Bail Act.
Section 51 of the Act creates an offence of "fail to appear" which carries a maximum penalty of 3 years imprisonment. A defence of reasonable excuse exists, the proof of which lies upon the person charged with the offence.

The current section 9B of the Act already removes the presumption in favour of bail for those persons who have previously been convicted of the offence of fail to appear.

If a person fails to appear in answer to their bail, one option open to the court is to convict the person in their absence. This is done pursuant to s. 196 of the *Criminal Procedure Act 1986*. Once the person is convicted the Court orders that a warrant issue for that person's arrest for the purposes of bringing them before the court so that a sentence may be imposed, this warrant is commonly called a "conviction warrant". These are issued under s. 25 of the *Crimes (Sentencing Procedure) Act 1999.*

Section 52 of the Act currently contains a prohibition that prevents a person who has failed to appear and who has been convicted of the substantive offence in their absence from also being charged with the offence of "fail to appear" under s. 51. This prohibition was based on a concept of double jeopardy, in that a person has received punishment for their failure to appear by way of being convicted for their substantive offence.

It is proposed that this prohibition be removed so that a sentence can be imposed for the conviction on the substantive offence and in addition the person can also be charged with fail to appear as a separate charge.

It is clear that the two instances of criminality should be dealt with separately. There is an expectation in our society that if you are required to turn up to court you should do so.

This amendment does not in any way prevent a person from making an application that the conviction be set aside under s. 12 of the *Crimes (Local Courts and Review) Act 2001*.

OR

from contesting the charge of fail to appear if they have a reasonable excuse for their non-appearance.

These amendments will build on recent procedural improvements made by the Police in relation to fail to appear matters. Since 7 July 2003 the Local Court has informed the Police Warrant Indexing Unit of all fail to appear matters. This allows NSW Police to create a court attendance notice for the "fail to appear" charge which is then stored in the Computerised Operational Police System (COPS).

If the person comes to the attention of police again in some other way, the COPS system will indicate that the person should also be charged with fail to appear.

Previously police had no way of knowing that a person had an outstanding fail to appear matter. This procedure will now ensure that all persons who fail to appear in answer to their bail without a reasonable excuse will be prosecuted.

Persons Arrested On Conviction Warrants

It is also proposed that some priority should be given to the finalisation of sentences for persons arrested on a "conviction warrant".

Schedule 1 [7] removes the right of police officers to grant police bail to persons arrested on a warrant to bring them before the court for sentencing, except in exceptional circumstances. This will ensure that people are brought before the courts for sentence rather than released on bail.

Schedule 2 Amendment of Criminal Procedure Act 1986

The bill also amends the *Criminal Procedure Act 1986* to insert a new s.317A which requires proceedings to be dealt with as expeditiously as possible where a person has been arrested on a conviction warrant. This amendment is contained in Schedule 2 of the bill.

The intention of this amendment is for persons who are awaiting sentence to be dealt with as quickly as possible. It is in the interests of the community that a person receives punishment for matters for which they have been found guilty and it will also reduce the opportunity of persons awaiting sentence committing further offences while on bail.

Surety

It is proposed that upon conviction on a charge of "fail to appear" the full amount specified in any bail undertaking be forfeited.

Once the automatic forfeiture order occurs the other sections relating to enforcement of bail agreement in Part 7A of the Act will apply.

These provisions require that persons affected by the forfeiture order must be informed that the order has been made. They then have 28 days to lodge with the Court a formal objection to the confirmation of the forfeiture order. The Court must hold a hearing if any objections are lodged to the confirmation of the forfeiture order.

Division Three of Part 7A of the *Bail Act* creates a further safeguard in relation to forfeiture by providing that a person may make an application up to 12 months after the confirmation of the forfeiture order to set aside the forfeiture order.

Schedule 1 [26] inserts a new s.63 which relates to the disposition of sureties. Where there is money being held as security by the Court the judicial officer should be required to consider making an order as to the disposition of the money at the finalisation of the matter. That is that it should either be forfeited or returned to the person who provided the security. Courts may decide not to make an order at this stage, for example, a person may be contesting a fail to appear charge, and a court may decide that no order should be made until the finalisation of that matter. This addresses an issue raised by Local Courts where registries are left holding securities for matters which have been finalised.

Local Court registries also often experience difficulty in returning security money once a matter has been finalised. At the time of the lodgement of the security and the provision of information, the surety should be asked to agree to a method to return the money at the finalisation of the matter (assuming of course that the security is not subsequently forfeited). Based on this undertaking to return the money at finalisation the acceptable person should have the responsibility of informing the Court of any change of address. In this way the Court will be able to send a notice to the person at finalisation informing them that the money can be collected from the court registry, or, they can have the money returned to them by way of cheque to their present address. In the future it may also be possible to return the money to them by electronic funds transfer (EFT).

Schedule 1 [9] therefore enables an officer or court with whom money or security is deposited pursuant to a bail condition to require the person who provides it to provide information, or to agree to a means to enable the return of the money or security to the person if it is required to be returned.

Appeals Against Forfeiture Orders

It is currently unclear as to which court shall hear appeals against forfeiture orders. The matter is complicated as a forfeiture order can be made by any court.

Schedule 1 [14] confers jurisdiction on Local Courts to hear all objections to forfeiture orders made by any court. Currently, an objection must be made to the court that made the forfeiture order. The amendments do not affect the right to object orally to the court that made the forfeiture order if the person affected by the order appears before that court.

This amendment will have a number of benefits:

(1) It will preserve an appellants right of review. For example it is presently unclear where a forfeiture order made by the Court of Criminal Appeal would be reviewed.

(2) It will relieve the superior courts of a review of an administrative bail decision.

(3) It will make applications to set aside forfeiture orders more accessible to people in regional and rural areas where the Supreme and District Court may not sit.

Section 53D of the Act requires that an appeal against a forfeiture order must be heard in the court in which the objection to the confirmation of the forfeiture order was made. It is proposed to remove this requirement. Sureties do not necessarily live near the court which made a forfeiture order and the removal of this provision will improve access to appeal mechanisms if people are adversely affected by forfeitures.

I commend the bill to the House.