CRIMES LEGISLATION AMENDMENT BILL 2013

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

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [4.48 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes Legislation Amendment Bill 2013. The purpose of the bill is to make miscellaneous amendments to criminal legislation, as part of the Government's regular legislative review and monitoring program. The bill amends a number of Acts to improve the efficiency and operation of the State's criminal laws. I will now outline each of the amendments in turn. Item [1.1] of schedule 1 amends the Bail Act 1978 to clarify in section 44 of that Act that a magistrate may review a bail decision of the President of the Children's Court made in the Children's Court jurisdiction. Section 44 of the Bail Act provides powers for particular judicial officers to review the bail decisions of other judicial officers. Currently, section 44 (2) provides that a magistrate may review a bail decision of an authorised officer, magistrate, including the reviewing magistrate, or authorised justice.

Under the Children's Court Act 1987, the President of the Children's Court must be a District Court judge, and continues to sit and determine matters, including bail matters, in the Children's Court as a District Court judge, not as a magistrate. On that basis, under section 44 (2), a magistrate sitting in the Children's Court does not have the power to review a bail decision of the president. The amendment will clarify that bail decisions made by the president in the Children's Court are reviewable by magistrates. This amendment was requested by the President of the Children's Court to ensure that his bail decisions can be reviewed by magistrates of that court without the matter having to go to a higher court. This issue will not arise under the new Bail Act 2013, which does not incorporate a scheme of review for bail decisions. Instead, that Act generally provides powers to hear further bail applications, following an initial bail decision, to particular courts rather than to particular judicial officers, subject to limited exceptions.

Whilst it is anticipated that the new Bail Act will commence in May 2014, it is important that this issue be resolved urgently so that magistrates in the Children's Court can review a bail decision made by the President of the Children's Court whilst sitting in that jurisdiction. Item [1.2] of schedule 1 amends the requirement specified in part 29 of schedule 11 to the Crimes Act 1900 for the Ombudsman to prepare a report on the amended consorting provisions contained in that Act. Currently, part 29 requires the report to be prepared as soon as practicable after the end of the period of two years from their commencement, which was in April 2012. This bill amends the reporting period to three years. The amended consorting provisions in section 93X of the Crimes Act were introduced to modernise the old consorting offence in that Act. They are aimed at deterring people from associating within a criminal environment.

A person is guilty of an offence under section 93X if they consort with others as described in that section. However, before a person can be charged, the section requires that they be warned about their conduct on at least two occasions. Due to limitations with the NSW Police Force's Computerised Operational Policing System, known as COPS, the police have thus far been unable to collate data on the number of warnings that have been issued. This means that there is currently insufficient data available for the Ombudsman to conduct a proper review of the provisions. The police are implementing enhancements to Computerised Operational Policing System to rectify these data issues. The Ombudsman has requested that the prescribed review period be increased to three years. This will provide sufficient time to resolve the data issues so that the Ombudsman can prepare an informed report. The proposed amendment extending the reporting period to three years will require the Ombudsman to report as soon as practicable after April 2015.

Item [1] of schedule 1.3 amends the Crimes (Forensic Procedures) Act 2000 to change the reference to "the police officer" in section 21 (2) of that Act to "the senior police officer". Section 21 provides that a senior police officer may make a non-intimate forensic procedure order by telephone, radio, and other means of transmission. When an order is made in this way, section 21 (2) requires the senior police officer to ensure that the suspect—or their legal representative or interview friend—is given an opportunity to speak to the police officer. The intention of the provisions is that the suspect, their legal representative or interview friend be given an opportunity to speak to the senior police officer making the order, not some other officer. The amendment will clarify this intention. Items [2] and [3] of schedule 1.3 amend section 26 of the Crimes (Forensic Procedures) Act to make clear that applications to a court for an order to carry out a forensic procedure can be heard in the absence of the suspect.

Item [4] amends section 30 of the Crimes (Forensic Procedures) Act to make this intent clear by providing that an order for a forensic procedure may be made in the presence of the suspect or ex parte—that is, without the suspect—at the discretion of the magistrate hearing the application. Currently, sections 26 and 30 of the Crimes (Forensic Procedures) Act provide that the application and any order are to be made in the presence of the suspect, subject to any contrary order made by the magistrate. Allowing the magistrate to make a contrary order may already provide for ex parte applications and orders, however, the proposed amendments are intended to make this clear. The clarification is required as difficulties arise when the suspect being investigated is in another State or Territory at the time an order is sought by the police. This can create difficulties if the police are required to bring the suspect to a New South Wales court to make an application for an order. Clarifying that an ex parte application can be heard and determined will overcome these difficulties and minimise unnecessary travel or extradition procedures for suspects.

Items [5] and [6] make amendments that are consequential to providing for ex parte hearings. Clause [5] amends section 30 to maintain the current requirement for an interview friend to be present for certain vulnerable suspects if the suspect appears in person for an application hearing. Vulnerable suspects include a child, incapable person, or anyone who identifies as an Aboriginal person or Torres Strait Islander. Item [6] provides that a suspect is only required

to be asked whether they identify as an Aboriginal person or Torres Strait Islander at the beginning of an application hearing if they are physically present at the hearing. None of the proposed amendments removes a suspect's right to be represented by a legal practitioner at a hearing, whether or not they are present.

Item [1] of schedule 1.4 amends section 25 of the Crimes (High Risk Offenders) Act 2006 to provide an additional means for the Attorney General to obtain documents, reports, or any other information relating to an offender from a court. The section currently requires that the Attorney General obtain such material by order in writing. The proposed amendment will provide the Attorney General with a power to obtain such material from a court by request rather than by order in writing. Item [2] of schedule 1.4 amends section 25 (3) to provide that material obtained in this way is admissible in proceedings under the Crimes (High Risk Offenders) Act, as it currently is when obtained by order. Item 1.5 of schedule 1 amends section 294D of the Criminal Procedure Act 1986 to clarify that the protections of part 5 division 1 of that Act apply to sexual offence witnesses when they give any type of evidence in proceedings in respect of a prescribed sexual offence.

These protections are currently available to all complainants who give evidence in trials for prescribed sexual offences. For example, unless the court orders otherwise, their evidence is to be given in a closed court, or remotely via closed-circuit television facilities. Section 294D (2A) now extends these protections to sexual offence witnesses. Sexual offence witnesses are witnesses in proceedings other than the complainant who give evidence in relation to prescribed sexual offences alleged to have been committed against them by the accused—for example, as tendency evidence. The Sexual Assault Review Committee has advised the Government that section 294D (2A) is only being applied to sexual offence witnesses when they give evidence about certain offences or acts, as set out in sections 294D (2) (a) and (b), committed against them by the accused.

On this interpretation, the protections are not available when sexual offence witnesses give other types of evidence such as context evidence. This creates an anomaly whereby a sexual assault witness may not be afforded the same protections that were available to them as a complainant when they gave the same evidence against the same accused in an earlier trial. The proposed amendment to section 294D of the Criminal Procedure Act will clarify the intended application of the protections to both complainants and sexual offence witnesses, irrespective of the nature of the evidence that they give in proceedings.

Item [1.6] of schedule 1 amends the Interpretation Act 1987 to clarify that a reference in any New South Wales Act to an offence punishable by imprisonment for a specified term or more includes a reference to common law offences and those punishable by life imprisonment. Currently, there are a number of provisions in various New South Wales Acts that refer to serious indictable offences, serious criminal offences, or serious crime-related activity, which are defined by the period of imprisonment available for the offence or activity. For example, section 21 (1) of the Interpretation Act defines "serious indictable offence" as "an indictable offence punishable by imprisonment for life or for a term of 5 years or more". The definition

of "serious criminal offence" in section 6 (d) of the Criminal Assets Recovery Act 1990 includes "an offence that is punishable by 5 years or more".

However, these definitions do not specifically refer to common law offences such as conspiring to commit an offence. For these offences, the penalty is considered "at large"; that is, there is no limit on the maximum term of imprisonment that can be imposed. Given that the maximum penalty is available, common law offences should be captured by any provision that refers to an offence punishable by imprisonment for a specified term or more. The proposed amendment to the Interpretation Act will make this clear. There is also inconsistency between the definitions as to whether they include offences punishable by life imprisonment. For example, the definition of "serious indictable offence" in the Interpretation Act includes life imprisonment, whereas a definition of "serious criminal offence" in the Criminal Assets Recovery Act does not. The amendment will clarify that offences carrying life imprisonment are captured by these definitions. These reforms do not represent a change to the types of offences captured by terms such as "serious indictable offence". Rather, they simply make clear that these definitions apply the common law offences and the offences carrying life imprisonment. 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.