



NSW Legislative Assembly Hansard

Crimes and Courts Legislation Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 29 November 2005.

Second Reading

Mr BOB DEBUS (Blue Mountains—Attorney General, Minister for the Environment, and Minister for the Arts) [4.54 p.m.]: I move:

That this bill be now read a second time.

This bill makes a number of miscellaneous amendments to the criminal law and court procedure that are designed to improve the administration of the justice system. The principal amendments are made to the Bail Act 1978, the Drug Court Act 1998, the Law Enforcement (Powers and Responsibilities) Act 2002 and the Electronic Transactions Act 2000. Schedules 1 and 2 to the bill amend the Bail Act 1978 and the Bail Regulation 1999, following the passage of the Commonwealth Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005, which creates a new regime of Commonwealth drug offences.

First, it deletes offences relating to illegal drug importation from the Customs Act 1901 of the Commonwealth. Secondly, it adds a new part to the Criminal Code of the Commonwealth called serious drug offences. That part both replicates the old offences under the Customs Act, and creates an extensive number of new Commonwealth drug offences. The new Criminal Code drug offences are not limited to conduct that has a drug importation or exportation element. Included in the new part of the Criminal Code is a full range of offences relating to illegal drug activity. Among other offences, the Commonwealth Act creates new offences of trafficking controlled drugs, supplying precursors with the knowledge that they will be made into controlled drugs, and procuring children to traffic, import or export controlled drugs.

The relevant changes to the Commonwealth drug offences take effect on 6 December 2005. Under the New South Wales Bail Act, Commonwealth drug importation offences currently carry a presumption against bail when the quantity of drugs involved would be sufficient to carry a presumption against bail if the alleged offender had been charged with one of the drug supply or manufacturing offences in the New South Wales Drug Misuse and Trafficking Act. Schedules 1 and 2 to the bill amend the Bail Act to remove a reference to deleted Commonwealth Customs Act offences and insert a reference to the new Commonwealth drug offences in the Criminal Code. The policy behind the amendments is that criminal behaviour which attracted a presumption against bail under the old regime will continue to attract a presumption against bail under the new regime.

Similarly, for offences in the mid range of seriousness, drug-related crime that has no presumption in favour of bail now will continue to have no presumption in favour of bail, regardless of whether it is charged under existing New South Wales law or the new Commonwealth law. Schedule 6 to the bill amends the definition of "serious narcotics offence" in the Listening Devices Act 1984 to accurately refer to the new Commonwealth offences. Schedule 3 to the bill amends the Drug Court Act 1998 in relation to compulsory drug treatment orders.

In 2004 the Government passed an Act to provide the legislative basis for the Compulsory Drug Treatment Correctional Centre, which will commence in early 2006. The scheme will allow the Drug Court of New South Wales to make compulsory drug treatment orders in relation to offenders who have already been sentenced to imprisonment in the ordinary court system, provided the offenders have a drug dependency and meet other criteria, such as having a remaining non-parole period of between 18 months and three years on their sentence. Offenders subject to such treatment orders will receive intensive drug treatment within the Compulsory Drug Treatment Correctional Centre and, if successful in the first two phases of that treatment, will be eligible for home detention while undergoing the third phase of treatment.

The amendments made by schedule 3 to the bill are twofold. First, the bill amends the Drug Court Act to provide for where an appeal court has allowed a sentence appeal and imposed a new sentence. The amendment makes it clear that, when considering whether to refer the offender to the Drug Court for it to decide whether to make a treatment order, the court must consider the offender's eligibility after the new sentence is handed down, not before. Alternatively, if the appellant is already subject to a treatment order the appeal court need not make an unnecessary second referral to the Drug Court. Second, the bill amends the Drug Court Act to remove any doubt that a decision of a sentencing court to refer an offender to the Drug Court for it to consider whether to make a treatment order cannot be appealed.

Schedule 4 to the bill amends the Electronic Transactions Act 2000 to facilitate the greater use of technology in the courtroom through the use of electronic case management, or ECM, courts. The amendment allows ECM courts to be used in any hearings other than those at which oral evidence is to be received. An ECM court is a virtual courtroom that allows a judicial officer to consider and determine issues while communicating

electronically with the parties. Initially, ECM courts will operate through CourtLink in certain proceedings in the Supreme Court and the Court of Criminal Appeal.

Schedule 5 to the bill amends the Law Enforcement (Powers and Responsibilities) Act 2002. That Act commences operation on 1 December 2005. The commencement of the Act will be a significant event because for the first time the vast bulk of powers that police exercise will be in one Act, rather than in a range of disparate Acts. As police and other relevant agencies prepared for the commencement of the Law Enforcement (Powers and Responsibilities) Act it became apparent that some relatively minor amendments needed to be made to ensure that the Act operates as it was intended to. The most significant of those amendments cover two topics: they amend the provisions of the Act that deal with duration and extension of warrants, and they make changes to the new crime scene warrants scheme created in Part 7 of the Act.

The bill proposes that the provisions of the Act that deal with duration and extension of warrants will be divided into separate sections, and the relevant rules will be set out more clearly. The bill does so by omitting current section 73 of the Act, which covers both duration and extension of warrants. Instead, the bill inserts a new section 73, which addresses how long each warrant has effect, and a new section 73A, which addresses which types of warrants may be extended and how they may be extended. The greater clarity offered by these new sections will benefit both police officers, who apply for warrants and extensions to warrants, and authorised officers, who must decide whether to grant their applications.

There was concern that the crime scene warrant powers in Part 7 of the Act as currently drafted might be interpreted to require that the police officer who established the crime scene must remain on the crime scene at all times. Such an interpretation would present major operational problems. For example, a junior general duties police officer may come across the scene of a major homicide. The proper role of the general duties officer will generally be to secure the scene and protect the evidence at the scene until specialist homicide police arrive, at which point the junior officer will continue with usual duties, notwithstanding that it was the junior general duties officer who established the crime scene.

It would be pointless and impractical to require that junior officer to remain at the crime scene, and theoretically in charge of it, although he or she has no ongoing role in the investigation. The amendments will clarify that, provided a police officer has lawfully established a crime scene, another police officer may exercise crime scene powers if allowed to do so by the Law Enforcement (Powers and Responsibilities) Act. They will also clarify that specialist crime scene officers who are not police officers but who are employed by NSW Police may lawfully perform their duties at crime scenes, once the crime scene has been established. A concern has been raised that the part as now drafted might be interpreted to require that only the individual police officer who was intending to exercise crime scene powers could apply for a crime scene warrant and be named in that warrant.

Officers actively involved in the investigation of a case are often busy at the crime scene urgently making measurements, taking photographs, taking statements and so on before that evidence is no longer available. It would be impractical to require one of those officers to leave the crime scene and prepare an application for a crime scene warrant, with all investigative activity ceasing while the application for the warrant is prepared. The amendments make it clear that an officer may apply for a crime scene warrant on behalf of another police officer or officers, and that the crime scene warrant, once issued, may authorise any police officer, not just a particular named police officer, to exercise crime scene powers.

Schedule 5 to the bill makes other amendments to the Law Enforcement (Powers and Responsibilities) Act of a more minor or technical nature. Schedule 7 to the bill makes a minor consequential amendment to the Independent Commission Against Corruption Act 1988. The amendments to the Law Enforcement (Powers and Responsibilities) Act will help to ensure a smooth transition when that Act commences on 1 December 2005. I commend the bill to the House.