



## NSW Legislative Assembly Hansard

### Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 4 May 2005.

#### Second Reading

**Mr BOB DEBUS** (Blue Mountains—Attorney General, and Minister for the Environment) [12.07 p.m.]: I move:

That this bill be now read a second time.

The Government has continuously stated that it would protect the community forever from never-to-be-released prisoners. That includes the killers of Janine Balding, Anita Cobby and Virginia Morse. Under the so-called truth in sentencing legislation passed in 1989, all offenders serving indeterminate life sentences were entitled to apply to the court after eight years for the establishment of a definite sentence, with a minimum non-parole period and a maximum sentence. The Government has, in the past, amended sentencing legislation to make it perfectly clear that notwithstanding the provisions of the 1989 legislation in the case of the very small number of offenders where the courts have previously recommended that an offender should never be released, that recommendation should be enforced.

A recent decision of the Supreme Court in *R v Blessington* has held that an offender with a section 13A application that was pending as at 8 May 1997 is not subject to the present rules for redetermination. The decision also canvassed the possibility that Blessington, and by extension any others who have not yet had their application determined, might now be able to appeal the sentencing court's recommendation that they never be released. They would therefore be excluded from the application of the present regime for redetermination of those never-to-be-released offenders. The Government believes that the intention of the legislation passed by this Parliament was clear. We have sought advice from the Solicitor General, who has advised that there is some prospect of a successful appeal in consequence of this recent decision.

But the people of New South Wales, and the Balding family in particular, deserve certainty. Both the Solicitor General and the Director of Public Prosecutions believe that the best way to deliver that certainty and remove any ambiguity created by the court case I have mentioned is through an appropriate legislative amendment. Accordingly, the object of the bill is to amend the Crimes (Sentencing Procedure) Act 1999 and the Crimes (Administration of Sentences) Act 1999 to ensure that the present regime, as it applies to non-release offenders, extends to all non-release offenders. Schedule 1 [1] ensures that the quashing of the setting aside of a never-to-be-released recommendation by an appeal court would not remove Blessington or any of the other never-to-be-released offenders from the scheme. Schedule 1 [3] ensures that Blessington is covered by the present regime applying to never-to-be-released prisoners.

This will ensure that the current regime works uniformly and that all never-to-be-released prisoners will not be eligible to have their sentence redetermined until they have served at least 30 years. If a non-parole period is fixed on a redetermination, the offender may not receive a fixed term; and when a non-parole period is fixed on a redetermination, parole cannot be granted except when the offender is in imminent danger of dying, or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, and has demonstrated that he or she does not pose a risk to the community.

The amendments proposed in schedule 2 ensure that section 154A of the Crimes (Administration of Sentences) Act 1999 applies to a never-to-be-released offender regardless of whether the non-release recommendation has been quashed, set aside, or called into question. The amendments remove any possible ambiguity in relation to the application of the law in respect of any offender. I am confident that all members of the House will welcome the opportunity to resolve this doubt and put an end to what, as I have said, seems to be the perpetual ordeal of the Balding family. I commend the bill to the House.