



## NSW Legislative Council Hansard

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

Extract from NSW Legislative Council Hansard and Papers Thursday 5 May 2005.

#### Second Reading

**The Hon. TONY KELLY** (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [9.25 p.m.]: I move:

That this bill be now read a second time.

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

#### Leave granted.

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 "truth in sentencing" legislation, passed in 1989, all offenders serving indeterminate life sentences were entitled to apply to the court after 8 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 had 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 current regime for redetermination of those never to 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.

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 ambiguity is through an appropriate legislative amendment.

Accordingly, the object of this 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, item [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, item [3] ensures that Blessington is covered by the current 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
- that where a non-parole period is fixed on a redetermination, parole cannot be granted except where 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 particular offender.

I am confident that all members of the House will welcome the opportunity to resolve this doubt and put an end to the perpetual ordeal of the Balding family. I commend the bill to the House.