Crimes Amendment (Female Genital Mutilation) Bill 2014

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CRIMES AMENDMENT (FEMALE GENITAL MUTILATION) BILL 2014

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [9.03 p.m.], on behalf of the Hon. John Ajaka: 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 bill amends the Crimes Act 1900 to increase the maximum penalty for performing female genital mutilation from 7 years to 21 years imprisonment and to create a new offence of removing a person from New South Wales with the intention of having female genital mutilation performed on that person.

In December 2011 the Commonwealth Government announced a review of Australia's legislative framework criminalising female genital mutilation. In March 2013, the Review of Australia's Female Genital Mutilation legal framework made a number of recommendations aimed at ensuring consistent offences and penalties.

Female genital mutilation involves the partial or total removal of part of the female genitalia. It is an abhorrent practice. There are no health benefits and a number of short- and long-term complications can arise from the practice. The immediate harm to the girl or woman can include severe pain, haemorrhage, tetanus and sepsis. Long-term health problems are associated with the practice.

The World Health Organisation estimates that more than 125 million girls and women alive today have been the victim of female genital mutilation.

New South Wales was the first Australian jurisdiction to introduce the offence of performing female genital mutilation in 1995. The Commonwealth Review found that the New South Wales provisions differed from the provisions later settled on in the Model Criminal Code and other jurisdictions in two respects. First, the maximum penalty of 7 years imprisonment is significantly less than the maximum penalty in the Code and other jurisdictions. Second, New South Wales is the only jurisdiction which does not have a specific removal offence. The removal offences in Victoria and the Northern Territory apply regardless of the age of the person taken from the jurisdiction. All other jurisdictions only apply to taking a child or arranging for a child to be taken from the jurisdiction.

The review recommended that the States and Territories consider adopting consistent penalties for their female genital mutilation offences and broadening the scope of their removal offences so that it applies to any person, regardless of age.

I will now turn to the detail of the bill.

Item [2] of schedule 1 of the bill amends section 45 (1) of the Crimes Act to increase the maximum penalty for performing female genital mutilation from seven years to 21 years imprisonment. This will bring the maximum penalty into line with the penalties applicable for performing female genital mutilation in Western Australia and Tasmania. Since the female genital mutilation offence was introduced in 1995, there has been a steady increase in maximum penalties for offences in New South Wales. Increasing the maximum penalty for female genital mutilation to 21 years also brings the penalty more into line with similar offences in New South Wales such as intentionally causing grievous bodily harm or wounding which carries a maximum penalty of 25 years imprisonment.

Item [4] of schedule 1 of the bill amends the Crimes Act to introduce a new offence of taking a person, or arranging for a person to be taken, from the State with the intention of having female genital mutilation performed on that person.

The offence is not restricted to taking a child or arranging for a child to be taken from New South Wales. It will apply to adults as well. While female genital mutilation is traditionally practised on girls, women can also be forcibly removed or coerced to leave New South Wales to have female genital mutilation performed on them. For example, a woman could be physically escorted by her husband to another country to have female genital mutilation performed on her, or a father could buy a plane ticket for his daughter to go to another country to have female genital mutilation performed on her. Both these acts will be covered by the removal offence. The existing female genital mutilation offence in New

South Wales prohibits the female genital mutilation of women as well as girls and it would be inconsistent for the removal offence not to apply to both children and adults.

An evidentiary provision similar to that which appears in the Model Criminal Code has been included to facilitate proof of intention. It provides a presumption that the person intended female genital mutilation be performed on another if the prosecution proves the person took or arranged to take the other person from New South Wales and female genital mutilation was performed on her while she was outside the State. The accused can lead evidence to rebut this presumption.

Subsection (3) of the proposed section 45A states that the consent of the person to be taken from the State is not a defence to the removal offence. This means a person cannot consent to having female genital mutilation performed on them, or consent to leaving the State to have female genital mutilation performed on them. This is consistent with the removal of consent as a defence for female genital mutilation offences across all Australian jurisdictions and the Model Criminal Code.

Subsection 45A (4) means that the removal offence only applies to female genital mutilation which is an offence under existing section 45 (1) so the medical exemptions in subsections 45 (3), (4) and (7) also apply.

The removal offence will carry a maximum penalty of 21 years imprisonment to ensure consistency with the performing female genital mutilation offence in section 45.

Currently, section 45 (2) provides that the geographical nexus for the offence of performing female genital mutilation is satisfied if the offence is performed on a person who is ordinarily a resident of New South Wales. This captures a person performing female genital mutilation on a New South Wales resident even if the procedure occurred in another country.

Items [1] and [3] of schedule 1 of the bill move this extraterritorial application provision to Part 1A of the Crimes Act which sets out the provisions regarding the geographical jurisdiction of the Crimes Act. The extraterritorial application provision will now also apply to the removal offence. This means it will cover a person removing a resident of New South Wales from the State to have female genital mutilation performed on her and will ensure adequate coverage of the offence.

Schedule 2 of the bill makes a consequential amendment. It provides that a person being charged with the removal offence under section 45A of the Crimes Act will require that the Children's Guardian conduct a risk assessment under the Child Protection (Working with Children) Act 2012.

The Government is committed to ending the practice of female genital mutilation. The Government will run a public awareness campaign to educate young women and the community about these legislative changes and short- and long-term health consequences of this practice. These changes will ensure that people who perform female genital mutilation or take or arrange for a person to be taken from New South Wales to have female genital mutilation performed on them receive appropriate punishment.