CRIMES (HIGH RISK OFFENDERS) AMENDMENT BILL 2016

First Reading

Bill introduced on motion by Ms Gabrielle Upton, read a first time and printed.

Second Reading

Ms GABRIELLE UPTON (Vaucluse—Attorney General) (16:36): I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes (High Risk Offenders) Amendment Bill 2016. The bill will amend the Crimes (High Risk Offenders) Act 2006 to clarify how the existing scheme for continued detention and extended supervision applies to offenders serving sentences of imprisonment for violent offences. This bill is another demonstration of my commitment as Attorney General, and the commitment of this Government, to protect the safety of our community.

The Act enables the State to apply to the Supreme Court for preventative orders to supervise or detain high-risk violent or sex offenders who pose an unacceptable risk of committing a serious violence or serious sexual offence on their release from imprisonment into the community. The primary objective of the Act is to ensure the safety and protection of the community. A further objective is to encourage high-risk violent and sex offenders to undertake rehabilitation. The extended supervision and continuing detention of offenders is to manage a very small cohort of high-risk offenders after their sentences end.

As Attorney General, I take very seriously my responsibility for making applications on behalf of the State to the Supreme Court for orders to supervise or detain high-risk offenders. The offenders I am asked to consider for such applications have demonstrated a capacity to commit unspeakable crimes. I read the evidence about their past horrendous offending, and about their unwillingness or inability to rehabilitate while in prison. I am presented with expert reports about the very high risk that they will reoffend. In some cases the offender has even made it clear to authorities that they intend to reoffend when they are released. It is this close personal experience of the offenders' behaviour that has left in me in no doubt of the need for a strong and robust regime for the post-sentence detention and supervision of high-risk offenders in this State.

When introduced in 2006, the Act originally applied only to high-risk sex offenders. In 2013 this Government recognised the need to extend the regime to high-risk violent offenders, who can pose an equally concerning risk to community safety. The Act already covers high-risk violent offenders who are serving sentences for imprisonment for offences that involve conduct that causes the death of another person or grievous bodily harm. The persons must have intended to cause the death of another person or grievous or actual bodily harm or be reckless as to whether they do so. The bill will clarify that the Act applies to violent offenders who have been imprisoned for the offences of: wounding with intent to cause grievous bodily harm, manslaughter by unlawful and dangerous act, and murder that occurs in the course of committing another serious crime, known as constructive murder.

The offences have maximum penalties similar to those already clearly covered by the Act. The bill addresses limitations where some very violent crimes, such as shootings and stabbings, are potentially not covered by the Act due to the technical elements of the offence the person was charged with. The Act was intended to cover these types of offending; however, a technical limitation in the drafting of the Act has recently been identified. In some individual cases, there are no distinguishing features between these offences and the offences currently covered by the Act—the nature of the violent offending of people who have been imprisoned for these offences is sometimes just as serious in nature as that of offenders currently covered by the Act. There is a concern that the present definition of "serious violence offence" in the Act could apply haphazardly to some criminal offences but not to others of objectively greater seriousness.

The Government is committed to ensuring that the community is protected from the high risk of reoffending posed by such individuals. The amendments will enable offenders who pose an unacceptable risk of committing further violent offences to either be detained for a set period after their sentence ends or be subject to supervision by Corrective Services in the community. I would like to make it very clear that this bill does not make every violent offender subject to the Act. These orders continue to be for the ongoing supervision of dangerous offenders who have committed

extremely serious offences and who have been assessed by experts and by the Supreme Court, on my application, as meeting an unacceptable risk threshold. The serious violence offences the subject of this bill are all serious indictable offences—they are offences which are punishable by imprisonment for 25 years or life.

The regime under the Act is used for only a small number of offenders in the most serious cases. Only one continuing detention order and nine extended supervision orders have been made since the provisions were introduced in 2013. The bill is not intended to result in a significant increase in the number of people who are subject to extended supervision or continued detention. The people who need to be subject to these orders to protect the community are identifiable through a risk assessment process, including consideration by the High Risk Offender Assessment Committee established by this Government in 2014.

The committee is chaired by the Commissioner of Corrective Services and comprises representatives which include members of justice, law enforcement and human services agencies. The Supreme Court ultimately determines whether an order should be made. In assessing whether an extended supervision order or continuing detention order is needed, a person's offences are looked at alongside other factors, including their criminal history, their pattern of offending behaviour, psychiatric and psychological issues, institutional behaviour and the offender's attempts to rehabilitate, including through participation in programs in prison. Expert evidence, including reports by independent psychiatrists and psychologists who have examined the offender, is provided to the Supreme Court to inform its decision on the offender's risk of reoffending.

When offenders are detained, they are regularly reviewed by a clinical committee and referred to programs to address the causes of their offending. Offenders supervised in the community are subject to conditions imposed by the court, such as regular reporting to Corrective Services NSW, electronic monitoring and participation in treatment and rehabilitation programs. Breaching such a supervisory order is a criminal offence punishable by five years imprisonment, a $55,000 fine, or both. These orders are also regularly reviewed by Corrective Services to ensure that they are still appropriate.

A broader statutory review of the Crimes (High Risk Offenders) Act is now underway to examine whether the Act is achieving its policy objectives. In undertaking that review, I have asked the Department of Justice to consider, and consult with stakeholders broadly in relation to, options for better managing high-risk offenders and whether the factors the Supreme Court is required to consider in making an order for continuing detention or extended supervision align with the Act's objectives. That report is due to be completed by March 2017. The amendments in the bill before the House today are being progressed in advance of that broader statutory review, as limitations in the Act pose a real and immediate threat to community safety.

I would like to take this opportunity to thank the stakeholders consulted in the drafting of this bill in New South Wales, including the Bar Association, the Law Society, Legal Aid, the Office of the Director of Public Prosecutions, the police, the Public Defenders Office and the Serious Offenders Review Council. I now turn to the detailed provisions of the bill. Item [1] of the bill would amend the definition of "serious violence offence" in section 5A of the Act. The definition of "serious violence offence" effectively defines who is a high-risk violent offender. It does so in two ways. First, to be considered a high-risk violent offender, the person must have been sentenced to imprisonment for a serious violence offence. Secondly, the court must be satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious violence offence if he or she is not kept under supervision.

Item [1] would clarify that the Act covers some types of murder that occur during the commission of a serious crime, such as during an armed robbery. This is referred to as constructive murder. Other types of murder are already serious violence offences. Constructive murder often involves the offender engaging in violent acts. Courts have consistently held that constructive murder is just as serious as other types of murder. Item [1] also clarifies that reckless conduct that causes the death of another person also includes a reference to manslaughter caused by an unlawful and dangerous act. The offence of manslaughter by unlawful and dangerous act can also involve acts that amount to serious violence. While often this offence occurs as a one-off error of judgement, unfortunately for some offenders the offence forms part of a pattern of recurring violence.

Finally, the bill clarifies that a serious indictable offence that is constituted by a person engaging in conduct that causes grievous bodily harm includes conduct that wounds another person. The person must still have intended to cause the death of another person or grievous bodily harm. In practice, offenders are often convicted of the offence of wounding when the harm caused was

grievous bodily harm. This is because it is easier for the prosecutor to prove the offence of wounding, and the same maximum penalty applies. This is creating a limitation in the Act whereby people who have engaged in the same criminal conduct, such as shooting or stabbing someone, are either covered or not covered by the Act depending on the offence they were charged with and convicted of.

Currently, an offender who is convicted of attempting to cause grievous bodily harm but who in fact did not harm the victim would be covered by the Act, but an offender who is convicted of actually wounding the victim would not be covered. This bill will address these limitations by clarifying that applications can be made in respect of offenders serving sentences of imprisonment for the offence of wounding with intent to cause grievous bodily harm. It is the offenders who are serving sentences of imprisonment for wounding—but who intended to cause grievous bodily harm—to which it is envisaged that the Act would now apply in practice.

Item [2] deals with savings and transitional matters. It provides that the amended definition of "serious violence offence" will apply to sentences imposed and offences committed before the amendments commence. This is consistent with the high-risk violent and sex offender schemes which also applied to pre-existing offences in this way when they were introduced. This bill will commence on the date of assent. By clarifying the Act's application, the bill ensures the Act fulfils community expectations of what serious violence offences should be covered. With this bill, the Government is promptly responding to newly identified potential limitations in the Act that pose a real and clear threat to community safety. As Attorney General and as a member of the Baird Government, I will not allow the community to be placed at risk. The safety of our community is paramount. I commend the bill to the House.

Debate adjourned.