Criminal Procedure Amendment (Summary Proceedings for Indictable Offences) Bill 2016

Second Reading

The Hon. DAVID CLARKE (14:55): On behalf of the Hon. John Ajaka: I move:

That this bill be now moved a second time.

The Government is pleased to introduce the Criminal Procedure Amendment (Summary Proceedings for Indictable Offences) Bill 2016. The purpose of the bill is to allow four strictly indictable breaking and entering offences, which currently must be heard in the District Court, to be heard in the Local Court. The Government is committed to delivering fast, fair and accessible justice for the people of New South Wales. One of the most distressing parts of the court process can be the time it takes for a case to be finalised in court. The period of time between an offence and sentencing is stressful not only for victims whose lives are impacted while they wait for the case to be resolved but also for witnesses who are expected to recall the detail of their evidence, and for accused persons who await a verdict on their guilt or innocence.

This bill aims to reduce court delays for all participants in the criminal justice system by ensuring that criminal offences are dealt with by the most appropriate court. Criminal cases are dealt with in the Local Court, District Court or Supreme Court, depending on the type of the offence. Criminal offences fall into three categories. First, offences categorised as summary are the least serious criminal matters in New South Wales. Those offences must be dealt with in the Local Court and carry a maximum penalty of two years imprisonment or less. Secondly, indictable offences that are dealt with in the Local Court, except where an election is made for the matter to be heard in the District Court, are known as table offences because they are listed in two tables in schedule 1 of the Criminal Procedure Act 1986. For table one offences, which are more serious, an election may be made by either the prosecutor or the defendant. For table two offences, which are less serious, an election may only be made by the prosecutor.

Strictly indictable offences fall into the third category, which must be dealt with in the District Court or Supreme Court. The District Court and Supreme Court are best suited to deal with the most serious matters because they have jury trials and larger sentencing jurisdictions than the Local Court. In its 2011 report entitled "An Examination of Sentencing Powers of the Local Court in NSW", the Sentencing Council recommended that a general review of the Crimes Act 1900 be undertaken to determine whether any additional offences should be included in the tables, being the second category of offences. That review was undertaken by the Department of Justice in close consultation with stakeholders, including the NSW Police Force, Sentencing Council, Office of the Director of Public Prosecutions, Legal Aid, Public Defenders, Chief Judge of the District Court, Chief Magistrate of the Local Court, the New South Wales Bar Association and the Law Society of New South Wales.

Having considered the review undertaken by the Department of Justice and the views expressed by stakeholders, the Government proposes in this bill to move four breaking and entering offences from the category of strictly indictable offences, which must be heard in the District Court, to the category of table offences, which can be heard in the Local Court.

This will allow the less serious examples of alleged offending in relation to those four offences to be heard and finalised in the Local Court. Therefore, prosecutors will be able to choose which

court—either the Local Court or the District Court—is the most appropriate forum to hear and determine these cases.

The Local Court currently deals with the vast majority of criminal cases in New South Wales and resolves matters quickly and efficiently. In 2015 the New South Wales Local Court was recognised in the Productivity Commission's "Report on Government Services", published on 6 February 2015, as the most efficient court in the nation with the lowest backlog and highest percentage of cases finalised within 12 months. It is also the most accessible legal jurisdiction in New South Wales, with courts located and regular sittings held across the State. Unlike the District Court, the Local Court does not hold committal proceedings for matters in its own jurisdiction, has more flexibility in its timetables and procedures, does not have jury trials, and allows accused persons who cannot afford a lawyer to access duty solicitor services—urgent, on-the-spot legal advice provided by Legal Aid—at the court.

According to data collected by the Bureau of Crime Statistics and Research [BOCSAR], it takes an average of 11.6 months for a case to be finalised in the District Court compared with four months in the Local Court. In these circumstances, it makes sense to use the Local Court where appropriate. However, fast justice must never be achieved at the expense of fair justice. Unlike the District Court, the Local Court has a limit on its sentencing jurisdiction, being a maximum of two years imprisonment for a single offence and a maximum of five years imprisonment for multiple offences. The four break and enter offences that the bill will re-categorise as table 1 offences carry penalties of more than two years imprisonment. Similarly, the existing table offences, of which there are hundreds, are serious criminal offences, with many carrying a maximum penalty of 10 years imprisonment or more.

Importantly, allowing an offence to be heard in the Local Court does not mean that it must be heard in the Local Court. The most serious cases will still be heard in the District Court following an election from the prosecution. The making of an election by the prosecution in relation to table offences is governed by the protocol between the NSW Police Force and the Office of the Director of Public Prosecutions signed in January 2016. Where New South Wales police prosecutors are of the view that a matter is serious enough to warrant a sentence that exceeds the two year sentencing jurisdiction of the Local Court, the Office of the Director of Public Prosecutions may refer the matter to the District Court.

Importantly, for those matters that will be heard in the Local Court as a result of this bill, no impact on sentencing outcomes is anticipated. BOCSAR sentencing statistics over the years 2012 to 2015 show that a large majority—on average, 90 per cent—of sentences currently imposed by the District Court for the four offences that are the subject of the bill were within the Local Court sentencing scope of two years imprisonment, or five years for multiple offences. BOCSAR will monitor any change in the sentences given in the Local Court and District Court for similar cases before and after the reform, and monitor any change in the timing or incidence of guilty pleas.

The data collected by BOCSAR will then be used by the Department of Justice to conduct a review of the reform one year after its commencement. That review will evaluate any impact on sentencing outcomes as well as the workload of the Local Court, District Court and justice agencies. I note that the Government has committed to fund one additional magistrate and two police prosecutors to deal with the increased workload in the Local Court. Once the review has been undertaken the Government will consider whether the reform should be expanded to make

additional offences table offences. This approach is important to ensure that there are no unforeseen impacts caused by the reforms in the bill.

I have already touched on some of the expected benefits of this reform to the community, which are wide ranging. To summarise, first—and most significantly—delay and uncertainty will be reduced for victims and witnesses, whose lives are impacted while they wait for matters to be resolved, which can be achieved faster in the Local Court. Secondly, victims and witnesses will avoid the trauma of giving evidence twice, as matters finalised in the Local Court do not go through a committal proceeding to test the sufficiency of the evidence. By comparison, when a case is dealt with in the District Court, victims and witnesses can be called to give evidence during the committal proceeding in the Local Court and potentially again in the District Court.

Thirdly, the accused will receive justice faster. Those who are convicted and sentenced will have quicker access to support and supervision for rehabilitation. A person on remand cannot access rehabilitation assistance provided by Corrective Services NSW. Therefore, imposing sentences at an earlier time allows offenders to participate in programs addressing their criminogenic needs sooner. Furthermore, an innocent accused may be acquitted earlier. The bill will contribute to alleviating the pressure on the criminal justice system, including the District Court criminal trial backlog. Moving the four offences is estimated to reduce the criminal trial backlog by approximately 25 trials per year. This in turn creates capacity in the District Court to focus on more serious criminal offending. This reform complements other recent Government efforts to reduce the District Court criminal trial backlog.

In December 2015 the Attorney General announced a $20 million package for more than 250 extra sitting weeks over 18 months from January 2016 to June 2017 for the District Court. The package includes funding for two new District Court judges appointed in March 2016 and two additional public defenders to be located in Port Macquarie and Tamworth, who will work across an area including Armidale, Port Macquarie, Tamworth and Taree. Last month's budget included a further $39 million package that included three additional District Court judges—one based at Wagga Wagga, one in the New England region and one in Sydney—and more prosecutors and public defenders.

Importantly, the appointment of the five new judges from the two funding packages was accompanied by funding to Justice agencies and court staff to support the new judges. This equates to five new sheriff officers, five associates, five jury attendants and five reporting services monitors. This ensures each judge can sit in a fully functioning and secure courtroom. Taken together with this bill, these measures will improve our criminal justice system. I emphasise that this reform has strong support from stakeholders, including the NSW Police Force, Sentencing Council, Office of the Director of Public Prosecutions, Legal Aid, Public Defenders, the Chief Judge of the District Court, the Chief Magistrate of the Local Court, the Bar Association and the Law Society.

I now turn to the detail of the bill. The key provision, clause 3 of schedule 1, amends table 1 of schedule 1 to the Criminal Procedure Act 1986 to include sections 109 (2), 111 (2), 112 (2) and 113 (2) of the Crimes Act 1900. These offences are: aggravated breaking out of dwelling house after committing, or entering with intent to commit, a serious indictable offence, which is section 109 (2) of the Crimes Act 1900; aggravated entering of dwelling house with intent to commit a serious indictable offence, section 111 (2) of the Crimes Act 1900; aggravated breaking and entering any dwelling house or other building and committing a serious indictable offence, or being in any dwelling house or other building and committing any serious indictable offence

therein and breaking out of the dwelling house or other building, section 112 (2), Crimes Act 1900; and aggravated breaking and entering any dwelling house or other building with intent to commit any serious indictable offence therein, section113 (2) of the Crimes Act 1900.

These offences will be heard by the Local Court only if the serious indictable offence alleged is stealing or intentionally or recklessly damaging or destroying property; the value of the property stolen or destroyed, or the value of the damage to the property, does not exceed $60,000; and the only circumstance of aggravation is that the alleged offender is in the company of another person or persons.

A transitional provision in clause 4 provides that the amendments will apply only to charges laid after the commencement of the Act.

The bill also makes minor amendments in the nature of statute law revision. Clauses 1 and 2 of the bill correct a drafting oversight from 2007 when the term "maliciously" was replaced with the more modern concepts of "intentionally" and "recklessly" in the Crimes Act 1900. The 2007 amending Act, the Crimes Amendment Act 2007, did not update cross-references to the revised Crimes Act 1900 offences in section 348 of the Criminal Procedure Act 1986 or references to "maliciously" in clauses 6, 7 and 8 of table 1 of schedule 1 to the Criminal Procedure Act 1986. This has created a discrepancy between the language in the Crimes Act 1900 and the language in the Criminal Procedure Act 1986. Parliamentary Counsel's Office has confirmed this was a drafting oversight and we now have an opportunity to remedy it.

A transitional provision in clause 4 will make clear the Parliament's intention in 2007 to modernise the language of the criminal law for all subsequent proceedings and provides the ability to deal with historical charges that have an element of maliciousness as a table offence. The bill will commence on proclamation to allow time for police and court computer systems to be adjusted to accommodate the reform. It is anticipated that the changes in this bill will come into force in October 2016. The inclusion of these offences in table 1 will ensure that more serious offences that call for higher penalties will continue to be dealt with by the District Court while matters that fall within the sentencing jurisdiction of the Local Court can be disposed of expeditiously.

With this bill the Government is working to ensure that the justice system is fast, fair and accessible. Delays put victims under stress, make it harder for victims to recall key details, and deplete the resources of the justice system. Benefits from these legislative measures will flow to all participants in the criminal justice system and will also assist in tackling the District Court criminal trials backlog. This is a sensible proposal that is supported by all stakeholders. I commend the bill to the House.