Bail Amendment Bill.

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [8.46 p.m.]: I move:

That this bill be now read a second time.

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

Leave not granted.

The Government is pleased to introduce the Bail Amendment Bill, which amends the Bail Act 1978 to provide for three things: first, to prevent a person who is accused of murder from being granted bail other than in exceptional circumstances; second, to prevent a person who is accused of a serious personal violence offence and who has previously been convicted of a serious personal violence offence from being granted bail other than in exceptional circumstances; and third, to introduce a procedure whereby a decision of a magistrate or an authorised justice to grant bail to a person accused of a serious offence is stayed or deferred pending a review of that decision by the Supreme Court. The bill continues our ongoing reform of bail law, which began last July with the introduction of the Bail (Repeat Offenders) Bill.

These amendments build on those reforms to further protect victims and the community, particularly women, from serious personal violence offenders. Honourable members will remember the tragic murder of Patricia van Koeverden at Newcastle in April this year by her estranged husband, Toni Bardakos. The community was rightly outraged that he was granted bail, and, tragically, the fears of those who knew him were realised. This bill has been drafted with the input of police and the Attorney General's Department. It will ensure that the court's attention is focused on the elements of serious personal violence in future cases, thus providing greater protection for victims and the community in general. Domestic violence is an endemic problem in our community: a great many cases of domestic assault come before the courts every day.

Anecdotal evidence suggests that domestic violence cases account for more than 30 per cent of Local Court and police time. In 2002 in New South Wales, 24,667 domestic violence assaults were recorded. Across Australia, between 1989 to 1999, male offenders were responsible for killing approximately 94 per cent of adult female victims, and 61 per cent of those killings occurred in an intimate relational context. Approximately 90 per cent of adult women victims of lethal violence who were killed within an intimate context were killed as a result of altercations of a domestic nature, referring to general domestic arguments, desertion or termination of an intimate relationship, and jealousy and/or rivalry. Many researchers have reported that women who attempt to terminate relationships with men are at a greater risk of becoming homicide victims.

To ensure that proper regard is had to matters of domestic violence it is now proposed to amend the Bail Act to strengthen the provisions in relation to personal violence offences. The tragic van Koeverden case has accelerated our bail reform program in relation to serious violent offenders in two respects. Schedule 1 [2] to the bill inserts two new sections into the Bail Act. New section 9C provides that bail should not be granted to any person charged with murder unless there are exceptional circumstances. New section 9D provides that bail should not be granted to any person with a previous conviction for a serious personal violence offence who is subsequently charged with a further serious personal violence offence unless there are exceptional circumstances.

A serious personal violence offence will include a personal violence offence with the same meaning as that in the Crimes Act 1900, which carries a maximum penalty of 10 years imprisonment. It will include manslaughter, kidnapping, sexual assault and serious assaults. Exceptional circumstances will be left to the court to decide on an individual, case-by-case basis. However, as a general guide it might include cases involving a battered wife, or a strong self-defence case or a weak prosecution case. It might also include a case in which the defendant is in urgent need of medical attention or has an intellectual disability, or a case in which the court is satisfied that the offender poses no further threat to the victim or the community.

To ensure sufficient coverage of offences committed outside New South Wales, the definition will be extended to include a similar offence under the law of the Commonwealth or of another State or Territory or of another country. In addition, police are developing a domestic violence checklist for bail which will be handed up to the court when bail is sought in cases involving alleged domestic violence. The checklist will provide a history of the

offender that will offer more information than the standard criminal record of the offender and will provide the court with a more comprehensive basis for risk assessment. The checklist will be developed with experts in domestic violence to particularly highlight the risk of harm to the complainant.

Factors that might be included are first, criminal record or intelligence, including whether any previous convictions of assault were for domestic violence; second, the number and frequency of apprehended violence orders made; third, indications of escalating violence; fourth, threats to harm themselves, their partner or their children; fifth, possession of firearms; sixth, mental health issues; seventh, drug and alcohol issues; and eighth, whether the victim is particularly vulnerable, for example, due to pregnancy or recent separation. Those matters will greatly enhance the court's ability to make a more accurate assessment of the history of the offender and the risk of re-offending whilst on bail.

The above proposal does not dilute or replace the existing factors that must currently be considered by the court under section 32 of the Bail Act when determining bail. It is in addition to those factors. Section 32 criteria must still be considered, including the probability of the accused appearing at court, the interests of the accused and the likelihood of the accused committing another serious offence. If people charged with assault are deemed to be at risk of committing more violent offences, this will be captured in the assessment of the person against the present section 32 criteria.

I turn now to the provisions for a stay of proceedings. The Government's second major reform in this bill is to introduce a stay of proceedings to allow bail decisions of magistrates to be suspended until the Supreme Court has reviewed the magistrate's decision. Those stays will be available only in relation to certain serious charges. That reform fulfils an election commitment announced by the Premier on 2 May 2003.

Schedule 1 [3] to the bill inserts a new section 25A in the Bail Act to stay or defer a defendant's release pending review by a Supreme Court judge when a defendant comes before the Local Court on his or her first appearance for a charge of murder, an offence carrying a life penalty, or a serious child sex offence; when the magistrate or authorised officer decides to release that person on bail; or when a member of the police force or counsel appearing on behalf of the Director of Public Prosecutions [DPP] immediately indicates to the court that an application for a review of the decision will be made under this part. Serious child sex offences are defined as sexual offences that relate to children under the age of 16.

The period of deferral ends when the review by the Supreme Court is completed, or a member of the police force or the DPP files with the bail authority a notice that the prosecution does not desire to proceed with the review; or three business days have elapsed from the commencement of the stay, whichever first occurs. If a person is released because the prosecution does not pursue the review or because of the lapse of time, the conditions of bail are those that would have applied had the person's release not been deferred; that is, the magistrate or authorised justice's original determination stands. Police must seek prior written approval from the Commissioner of Police or his delegate to seek a review if bail is granted.

A protocol between the police and the DPP will be developed whereby the DPP becomes involved in the original bail application wherever possible. This will ensure not only that the best possible case is made for refusal of bail but that the DPP has prior warning that the matter might be stayed pending a review in the Supreme Court. The duration of the stay will be three business days. This will balance the rights of the person to have a swift bail review with the needs of New South Wales Police, the DPP and the Supreme Court to expedite the hearing. The three-business-day proviso overcomes problems that might be caused by weekends and public holidays, while still providing a set and certain time period.

The stay procedure will be available only for the first time bail is granted; that is, if the Supreme Court upholds the bail decision and the person later breaches his or her bail condition or fresh evidence is found, police will be required to go through normal bail review channels and a stay will not be allowed again. The Supreme Court will be able to expedite a bail review in those circumstances. The Government will not simply throw a blanket over the whole issue of bail, as the Coalition's bill attempted to do. It is my view and the view of the Government that the Opposition's proposals were blunt and essentially unworkable. In addition, there was no guarantee under the Coalition's proposals that bail would have been refused in circumstances such as the tragedy that eventually involved the death of Patricia van Koeverden.

The Government's bail reforms are underpinned by the principle that the more serious the alleged offence, the harder it will be to secure bail. The bill addresses this issue more directly by concentrating on people who have been charged with serious violence and have a history of serious violence or have committed an earlier offence and are believed to be likely to do so again. The community is right to expect that it will be protected but, as I have said elsewhere, that has to be done in a framework that continues to observe fundamental principles, such as the presumption of innocence. It is impossible to provide a system of bail determinations that is failsafe unless one dispenses with the presumption of innocence altogether and equates any charge with guilt. That type of injustice would undoubtedly produce effects that would significantly outweigh any narrow benefit.

Charges are not convictions. Not everybody charged with an offence is found guilty, and some charges do not

even proceed. This bill will balance the tensions that are evident in any bail reform process. As I said earlier, this bill continues our ongoing reform of bail law which began in 1998 to tighten bail criteria in relation to serious offenders and was further built upon last July with the introduction of the successful Bail (Repeat Offenders) Bill 2002. The reforms proposed in the present bill do not address the same concerns as last year's successful repeat offender bail laws, which especially targeted offenders who committed frequent but generally less serious offences. Those offenders generally fitted within the presumption-in-favour-of-bail category and therefore were often granted bail.

Our repeat offender provisions removed that presumption in favour of bail, irrespective of the type of offence, if the offender had a previous history. The rise in the remand population and other anecdotal evidence indicate that those changes are having a strong impact. For instance, the number of accused persons on remand has risen by 300 since July 2002. In the six years to the end of 2001 there was a 97 per cent rise, or virtual doubling, in the number of people whose bail was refused in the Local Court. Bail remains a matter of ongoing community concern. The proper balance between the protection of the community and the rights of the accused, who is legally presumed to be innocent, is an important matter that warrants regular monitoring.

The Bail Act has undergone several piecemeal changes since 1978, and has become a complex piece of legislation. In January 2003 the Bail Interdepartmental Working Party was reconvened by officers in the Attorney General's Department to examine the operation of the Bail Act. Members of the working party include representatives from New South Wales Police, the Legal Aid Commission, the Ministry for Police, the New South Wales Office of the Director of Public Prosecutions, Public Defenders, the New South Wales Law Society, the Commonwealth Director of Public Prosecutions, the Deputy Chief Magistrate and senior registry officials from the Supreme Court. The working party is currently preparing a discussion paper that will explore proposals on how to improve the Bail Act, including the simplification and rationalisation of the Act, specific bail provisions relating to juveniles and other categories of vulnerable defendants, and bail regimes in other jurisdictions.

The working party is closely scrutinising proposals to amend the laws pertaining to bail to ensure that the basic principles of justice are adhered to, with a particular emphasis on simplifying the operation of the legislation and improving police procedures. This rationalisation of the Bail Act will also assist the community in understanding bail determinations by the court, and will lead to greater transparency in bail determinations. It is expected that the working party will report its findings in July 2003, with further substantive amendments to the Bail Act to be progressed in the 2003 spring session. I commend the bill to the House.

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