

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Industrial Relations) [5.04 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Criminal Legislation Amendment Bill 2009. The bill makes a number of miscellaneous amendments to legislation relating to crimes, criminal procedure and other matters to improve the administration of the justice system in New South Wales. I turn now to the detail of the bill. Schedule 1.1 amends the Child Protection (Offenders Registration) Act 2000. This amendment specifies that a registrable person must make an initial report of their relevant information to the Commissioner of Police within seven days of being sentenced for a registrable offence. This must be done whether the person has previously been required to report or not. The amendment addresses an anomaly whereby offenders, who had never before been sentenced in relation to a registrable offence, had seven days in which to report to the Commissioner of Police, whereas repeat offenders, whose reporting period in relation to a registrable offence had expired, were given 28 days within which to report.

Schedule 1.2 amends the Confiscation of Proceeds of Crime Act 1989 in relation to the cultivation of prohibited plants. Section 23A of the Drug Misuse and Trafficking Act 1985 governs offences of enhanced cultivation of prohibited plants in the presence of children when more than a small quantity of a prohibited plant is involved. This amendment provides that an offence under this section is a drug trafficking offence for the purposes of the Confiscation of Proceeds of Crime Act 1989. Schedule 1.3 amends the Crimes Act 1900 to include the additional circumstance of aggravation of breaking and entering in respect of the offences of sexual intercourse with a child under the age of 10 and sexual intercourse with a child aged between 10 and 16 years. I do not need to remind members of the House of the recent shocking case that took place in Grafton in which an offender broke into the house of a victim's grandmother and sexually assaulted a four-year-old girl. The community expects harsh penalties for people who commit these types of heinous crimes, and the amendment meets those expectations. Offenders will be subject to severe penalties, including life imprisonment, when the victim is under the age of 10 years.

Schedule 1.4 amends the Crimes (Domestic and Personal Violence) Act 2007 to create two offences. One is the offence of attempting to stalk or intimidate another person with the intention of causing the other person to fear physical or mental harm, and the second offence is attempting to contravene a prohibition or restriction specified in an apprehended violence order. Any person who attempts to commit either of these two offences will be liable to the same penalty as applies if the person had committed the offence itself. These amendments will provide greater protection to victims of domestic violence by criminalising the conduct of these persons who have attempted to commit such serious offences. The penalty sends a strong message to potential offenders that if they attempt to commit an offence, they will be liable to the same penalties to which they would be liable if they had committed the offence.

Item [1] of schedule 1.5 removes an incorrect reference to a child under 10 from item 9B of the table to division 1A of part 4 of the Crimes (Sentencing Procedure) Act 1999. This item provides for a standard non-parole period in relation to the offence of aggravated indecent assault under section 61M (2) of the Crimes Act 1900. That subsection was recently amended by the Crimes Amendment (Sexual Offences) Act 2008 so that the subsection now applies to all children under 16 years, rather than just to children under 10 years. Items [2] to [5] of schedule 1.5 also amend the Crimes (Sentencing Procedure) Act 1999. These items increase the membership of the New South Wales Sentencing Council from 13 to 15 members. The two additional members will be appointed by the Attorney General. One of the new members will have expertise or experience in criminal law or sentencing, and the other will have academic or research expertise, or experience of relevance to the functions of the Sentencing Council. These additional appointments will complement the current membership of the Sentencing Council, which also consists of members with experience or expertise in law enforcement, Aboriginal justice matters, corrective services, juvenile justice, criminal law and sentencing. Of the four representatives of the general community who also are members of the council, two have experience or expertise in matters associated with victims of crime.

Schedule 1.6 amends the Criminal Procedure Act 1986 to provide that the Ombudsman's report on the impact of penalty notices upon Aboriginal and Torres Strait Islander communities under section 344A of that Act is to be provided to the Attorney General and the Minister for Police by 31 August 2009 rather than by 31 May 2009. Schedule 1.7 amends the Inclosed Lands Protection Act 1901. Item [2] removes the two-month limit for the commencement of criminal proceedings under that Act. Section 179 of the Criminal Procedure Act 1986 will now apply in respect of any such proceedings, requiring them to be commenced within six months after the offence is alleged to have been committed. This is the same time limit for the commencement of proceedings that currently applies to other similar offences contained in the Summary Offences Act 1988, such as offensive conduct, offensive language and unauthorised entry of a vehicle or boat. Item [3] amends the Inclosed Lands Protection

Act 1901 to provide for particulars to be furnished to the defendant who is charged with an offence under that Act.

Schedule 1.8 [1] amends the Law Enforcement (Powers and Responsibilities) Act 2002 to update a cross-reference to a renumbered provision. Item [2] amends the same Act as a result of the repeal of the Liquor Act 1982 and its replacement by the Liquor Act 2007. Item [5] amends section 198 of the Law Enforcement (Powers and Responsibilities) Act 2002. This section provides police officers with the power to give directions relating to the dispersal of groups of intoxicated persons in public places. Currently, for the purposes of this section, an intoxicated person is a person who appears to be seriously affected by alcohol or any drug. This definition will be replaced by the definition found in the Liquor Act 2007 but will refer to intoxication caused by both drugs and alcohol.

Under this definition, a person is intoxicated if their speech, balance, coordination or behaviour is noticeably affected and it is reasonable in the circumstances to believe that affected speech, balance, coordination or behaviour is a result of the consumption of alcohol or any drug. This will enable police to utilise their move-on powers when they believe on reasonable grounds that the person's behaviour as a result of intoxication is likely to cause injury to any other person or persons, damage to property or otherwise gives rise to a risk to public safety. This is an important reform. It gives police an early intervention power that will enable them to defuse potentially dangerous situations before they escalate into more serious incidents.

I will illustrate how this reform will contribute to practical policing with an example provided by police. One can easily envisage the all too common scene in which a group of football fans have returned from a lunchtime match after their team has lost and they are hanging around a shopping centre. They have clearly been drinking and their conduct is boisterous and noisy. Police are monitoring the situation and are alive to the fact that their mood has the potential to turn nasty, and that if this occurs shoppers and property are at risk. Notwithstanding the volatility of the situation, as persons within the group are still perfectly mobile and moderately coherent police may not feel that the circumstances meet the current test, which is seriously affected by alcohol, and are therefore not able to disperse them. However, with this reform police will have the power to disperse the group or move them away from the shopping centre and the public on the basis that their speech, balance, coordination or behaviour is noticeably affected and that they believe on reasonable grounds that the behaviour is likely to cause injury to another person or persons, damage to property or otherwise gives rise to risk to public safety. A uniform definition between the Law Enforcement (Powers and Responsibilities) Act 2002 and the Liquor Act 2007 will greatly assist police involved in alcohol enforcement operations.

Schedule 1.9 is a consequential amendment to section 37 (b) of the Mental Health (Forensic Provisions) Act 1990 as a result of amendments to that Act by the Mental Health Act 2007 concerning the role of the Mental Health Review Tribunal in ordering the release of persons detained following a not-guilty finding on the basis of mental illness. This bill is another example of the Government's continuing efforts to ensure that adequate laws are in place to keep the community safe. I commend the bill to the House.