

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [4.57 p.m.]: I move:

That this bill be now agreed to in principle.

A report on the operation of the Crimes (Appeal and Review) Act 2001 was tabled in Parliament in August 2008. The report was prepared in accordance with section 120 of the Act, which required the Attorney General to examine whether the Act remains appropriate for securing its objective. The object of the Act is to provide a streamlined and simple appeal process while still affording an appropriate opportunity for aggrieved parties to seek redress against decisions of the court. Public consultation was undertaken in the course of the review.

The report concludes that the Act is largely effective in achieving its objectives. The report contains 17 recommendations, 16 of which involve legislative amendment. This bill will give effect to the majority of these recommendations. Two recommendations are not addressed in this bill. The report recommended that further consultation be undertaken in respect of two matters. First, recommendation 8 proposes that an appeal against a sentence in the Local Court to the District Court should be determined primarily on the transcripts and material that was before the Local Court. At present, an appeal against a sentence is a *de novo* appeal, where the parties are entitled to produce new evidence on appeal that was not before the Local Court. Second, recommendation 9 proposes that an appeal against a sentence imposed by the Local Court should not be set aside unless the sentence was manifestly excessive or, in the case of an appeal by the prosecution, manifestly inadequate. The Attorney General's Department is undertaking further consultation in relation to these matters.

The reforms in this bill have the objective of clarifying and improving the appeal and review processes from the Local Court and Children's Court to the District Court, the Land and Environment Court and the Supreme Court. I now refer to some of the more significant amendments contained in the bill. The first two items in schedule 1 amend the definition of the terms "conviction" and "sentence" in the Act to make it clear that a court is authorised to quash the recording of a conviction when dealing with an appeal against the severity of a sentence. The amendment overcomes the problem raised in a line of authority in the Land and Environment Court, most recently expounded in *Advanced Arbor Service Pty Ltd v Strathfield Municipal Council* [2006] New South Wales LEC 485, in which the court held that in relation to appeals against sentence it was precluded from quashing the conviction and imposing a sentencing order that did not include a conviction. The bill amends section 3 to make it clear that a court when dealing with a severity appeal may set aside the conviction imposed to make a non-conviction sentencing order.

Item 4 rectifies a technical issue referred to in recommendation 14 of the report. Section 11 of the Crimes (Appeal and Review) Act 2001 allows a defendant to lodge an appeal against either the conviction or the sentence. Section 11 does not make specific provision for a single appeal to be lodged against both the conviction and the sentence. Where an appeal against the conviction is unsuccessful then technically a defendant may be precluded from challenging the sentence. This amendment makes it clear that an appeal may be made against both the conviction and sentence. Items 5, 6, 7 and 10 of schedule 1 of the bill give effect to recommendation 2 of the report.

This recommendation achieves two objectives. First, it ensures that the District Court is not placed in the position of conducting an original summary defended hearing in circumstances where there has been no defended hearing in the Local Court. It does this by creating a right for the District Court to set aside a conviction that has been recorded in the absence of the defendant or where the defendant initially entered a guilty plea and remit the matter to the Local Court for a defended hearing. Second, recommendation 2 streamlines the appeal process by providing that if a sentence is imposed in the absence of the defendant then, if a magistrate declines to annul the sentence, the defendant cannot appeal that refusal but may lodge a severity appeal against the sentence in the normal manner. This allows the District Court to bring the matter to finality on appeal without requiring the District Court to remit the case to the Local Court to further exercise its sentencing discretion.

Item 17 of schedule 1 gives effect to recommendation 11 of the report by reinstating during the appeal period any suspension of licence that was in place immediately prior to the determination of proceedings. When a person is charged with a serious driving offence such as driving with the mid or high range prescribed concentration of alcohol or street racing a police officer may suspend the person's licence immediately upon laying charges against the person. The suspension then remains in force until the court determines the charge. If the court finds the offence proven then periods of licence disqualification apply. The underlying purpose of these provisions is to ensure that a person who is charged with a serious traffic offence is immediately taken off the road for the protection of the community.

Section 63 of the Crimes (Appeal and Review) Act stays the execution of certain sentences during an appeal period. The stay ensures that a party is able to seek the reconsideration of the sentence before the District Court before it takes effect. In relation to serious traffic offences, the operation of this provision means that a defendant

who has had his licence suspended leading up to the determination of the case in the Local Court is able to drive during the stay of execution during the appeal period. This acts contrary to the intention of removing serious traffic offenders immediately from the road and protecting the community. Item 17 creates an exception to the stay provision so that the licence sanction remains in force during the appeal period subject to any order of the appeal court. This provision will commence once the Roads and Traffic Authority has made adjustments to its systems to record these outcomes.

Schedule 2.1 of the bill makes amendments to give effect to recommendations 4 and 6 of the report. The purpose of these amendments is to improve the protection afforded to victims of domestic violence when either an appeal or review is made against an apprehended violence order under the Crimes (Domestic and Personal Violence) Act 2007. If an appeal under section 11A is granted by the District Court then the apprehended violence order that is in place is annulled and the proceedings are remitted to the Local Court for a further hearing. During the period between the annulment and the further hearing in the Local Court the victim is not protected by an interim apprehended violence order. This potential gap in protection of victims is addressed by placing an obligation upon the District Court to make an interim order in favour of the victim unless it is satisfied that it is not necessary to do so. The second amendment will create a right for a person who is seeking an apprehended violence order to apply for an annulment of an order dismissing the application if that dismissal was made in their absence. The change is intended to ensure that a person in need of protection is not prevented from seeking an apprehended violence order if the case is dismissed in their absence and their failure to attend was due to illness or misadventure.

The remaining provisions in this bill address a number of other minor technical and procedural issues identified in the report. They improve the operation of the Crimes (Appeal and Review) Act by clarifying provisions that were uncertain and modernising and streamlining provisions that are historic vestiges of the former appeals regime under the Justices Act 1902. The Crimes (Appeal and Review) Act provides an effective and efficient framework for parties aggrieved by decisions of magistrates to seek redress. The District Court finalises more than 90 per cent of all grounds appeals within 12 months of lodgement and 90 per cent of sentencing appeal within six months of lodgement. The provisions in this bill will finetune the operation of the Act to ensure that it continues to provide an effective system for appeals. I commend the bill to the House.