Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007

Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007

Extract from NSW Legislative Council Hansard and Papers Thursday 28 June 2007.

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.07 p.m.], on behalf of the Hon. John Hatzistergos: I move:
That this bill be now read a second time.

I seek leave to incorporate the agreement in principle speech delivered in the other place in *Hansard*.

Leave granted.

The Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007 amends the Summary Offences Act 1988, the Crimes (Administration of Sentences) Act 1999 and the Crimes (Administration of Sentences) Regulation 2001 to make it an offence for an inmate to use a mobile phone in a place of detention—that is, a correctional centre, correctional complex or periodic detention centre within the meaning of the Crimes (Administration of Sentences) Act 1999. Mobile phones represent a serious threat to the security, good order and discipline of a correctional centre. An inmate can use a mobile phone to contact and intimidate correctional centre staff and their families, to contact and intimidate prosecution witnesses, or to organise an escape from custody. In addition to correctional centre-related concerns, an inmate can use a mobile phone to organise or otherwise engage in criminal activity inside or outside a correctional centre.
Mobile phones continue to be trafficked into New South Wales correctional centres despite the fact that the Summary Offences Act 1988 provides significant disincentives to people possessing mobiles in places of detention, as well as bringing, or attempting to bring, them into places of detention. Section 27DA of the Summary Offences Act 1988 states that an inmate must not, without reasonable excuse—proof of which lies with the inmate—have in his or her possession in a place of detention a mobile phone or any part of it, a mobile phone system integrated module [SIM] card or any part of it, or a mobile phone charger or any part of it. It provides for a maximum penalty of imprisonment for two years or 50 penalty units, or both. Under section 27E (2) of that Act a person also faces the same maximum penalty if found guilty of bringing, or attempting to bring, anything into a place of detention when he or she does not have lawful authority to do so. However, in many instances when a mobile is discovered in a correctional centre, the phone is found in a common area of the centre. This means that any number of inmates may have had access to the one phone and may have operated it using their SIM card. Mobile phones are deliberately placed in common areas by inmates to make it difficult to determine to whom the phone actually belongs. Therefore, the Act makes it difficult to prove a charge of possession. The need to expand the

possession offence to also prohibit an inmate from using a mobile phone is illustrated by the example of an inmate contacting a person outside the correctional system at 7.00 p.m. when the inmate was locked in his cell, without access to the centre's controlled telephone system.

The assumption in this case was that the phone call was made by the inmate using an unauthorised mobile phone. When the person who received the phone call from the inmate contacted the Department of Corrective Services to advise of the telephone call from the inmate, no charges could be brought against the inmate under the current legislative provisions because no mobile phone was found in the inmate's possession. It is plausible that an inmate may contact a witness or a victim in a similar manner.

I now turn to the detail of the bill. This bill amends section 27DA of the Summary Offences Act 1988 to enable an inmate to be charged with a criminal offence for the use of a mobile phone, a mobile phone SIM card, a mobile phone charger, or any part of any of those things. The bill amends section 56A of the Crimes (Administration of Sentences) Act 1999 and clause 113B of the Crimes (Administration of Sentences) Regulation 2001 to enable an inmate to be charged with a correctional centre offence for the use of a mobile phone, a mobile phone SIM card, a mobile phone charger, or any part of any of those things

The bill now means an inmate must not, without reasonable excuse, use a mobile phone in a place of detention. This covers the use of a mobile phone, a SIM card or any part of it, and a mobile phone charger or any part of it. In other words, the bill provides that it is no longer necessary to prove possession by an inmate of a mobile phone or part thereof to prove the offence. It is now sufficient to establish that the inmate has used a mobile phone or part thereof which has been found within a place of detention for the inmate to be guilty of the offence. The penalty for the criminal offence of use of a mobile phone or part thereof in places of detention will be the same as the penalty for the existing offence of possession under section 27DA of the Summary Offences Act 1988, that is, an additional custodial penalty of two years or 50 penalty units, or both.

The penalty that a visiting magistrate or general manager of a correctional centre can impose for the correctional centre offence of use of a mobile phone or part thereof will be the same as the penalty for the existing correctional centre offence of possession under section 56A of the Crimes (Administration of Sentences) Act 1999, that is, an inmate may be deprived of withdrawable privileges for up to six months. The expanded offence prohibiting inmates from using mobile phones in places of detention created by the bill will strengthen efforts to reduce the trafficking of mobile phones and contraband into New South Wales correctional centres, thereby improving the security of the New South Wales correctional system. I commend the bill to the House.