Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [3.31 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Criminal Case Conferencing Trial Repeal Bill 2011. Criminal case conferencing was designed as a case management process to encourage early plea negotiations in criminal cases before committal for trial. It was envisaged that forcing defence and prosecutors to participate in early conference negotiations, supported by the early disclosure of evidence, would reduce the number of guilty pleas entered on the eve of criminal trials. A guilty plea decided upon on the courthouse steps avoids a trial, but does not avoid hours of costly trial preparation for both sides, the costs associated with summoning jurors and booking court time, as well as extended uncertainty and anxiety for witnesses and victims.

A statewide administrative pilot of conferencing commenced for charges in indictable matters laid from 1 January 2006 where the accused was legally aided. The scheme involved conferences held between the prosecution and the accused's Legal Aid representatives on a voluntary basis to facilitate a plea. Anecdotal evidence from this trial was that it had appeared to reduce late guilty pleas; however, there was little hard data to support these conclusions. The legislative trial of conferencing commenced in May 2008. The legislation sets out a process for the service of briefs and conferencing prior to committal. The legislation restricts sentence discounts where a person pleads guilty after they have been committed for trial. The legislative trial only applies to committal matters heard in the Downing Centre and Central Local Courts.

The legislative trial was extended in April 2009 to enable a more comprehensive evaluation by the Bureau of Crime Statistics and Research [BOCSAR]. The evaluation, completed in 2010, found little evidence that the scheme had produced a direct impact on the outcomes measured, except a modest decrease in trial registrations in the Sydney District Court in criminal case conference matters. Trial registrations were increasing in the court prior to the introduction of the scheme, but this trend was reversed and registrations began to decrease after the commencement of the scheme. The Bureau of Crime Statistics and Research estimated that there was a reduction of 23 trial registrations in the year following the introduction of compulsory conferencing.

The Bureau of Crime Statistics and Research also found that, whilst there was some evidence that the ratio of trial registrations to sentence registrations also improved, this effect was also seen in the comparison court. Hence, any impact could not be directly attributed to the trial scheme. Improved results were also detected in the proportion of matters proceeding to trial, but, again, these were not statistically significant. Moreover, there were a high number of matters not yet finalised which meant no overall conclusion could be reached with any certainty.

Anecdotal evidence also indicated that implementation of the trial was initially inconsistent, with the formal requirements of the Act not consistently applied for some months; even following the initial months of the trial, conferences were not being held in all matters despite the compulsory nature of the scheme; and, disappointingly, there remained a high proportion

of matters committed for trial that concluded with a guilty plea shortly before the trial.

After the release of the Bureau of Crime Statistics and Research report, the conferencing scheme was extended on a number of occasions to facilitate ongoing discussions between the Office of the Director of Public Prosecutions and Treasury regarding the future of additional funding to the Department of Public Prosecutions to support improved implementation of the scheme. Ultimately it was determined that the results of the trial no longer justified the resources that were required to fund the department's participation. A regulation was made in October which prevented new matters becoming subject to the scheme from 8 October. This bill will formally end the scheme.

I turn now to the substantive provisions of the bill. Section 3 formally repeals both the trial Act and its supporting regulation. Schedule 1 provides for transitional provisions for those matters that have already commenced and but for the repeal would be subject to the scheme. These transitional provisions will be located in the Crimes (Sentencing Procedure) Act 1999, allowing the complete repeal of the trial Act. The provisions make clear that the obligations under the Act—including participating in conferences—will cease to apply from the commencement of the repeal Act. This will immediately reduce the burden on the Office of the Director of Public Prosecutions and Legal Aid to attend conferences for every committal matter.

However, in recognition that some matters may have progressed to various stages of the conferencing process, with the possibility that they would have led to an early plea, the transitional provisions protect an offender's entitlement to a discount of 25 per cent where their matters commenced prior to 8 October 2011 and they enter a plea of guilty prior to committal. To remove such an entitlement where negotiations on charges had commenced on the understanding they would be subject to the scheme would be unfair to the defence, and risk delaying the finalisation of matters that may have benefited from the scheme. Where an offender has entered a plea of guilty after committal for trial but before the repeal date, the transitional provisions provide that any discount for their guilty plea will still be limited as it would have been under the trial Act. The transitional provisions also provide that the protections on admissibility and disclosure of matters already discussed in conference will remain, again recognising that some matters may have progressed to such a point in good faith.

Removing the scheme appears unlikely to have a significant impact upon the criminal justice system, given the limited impacts observed in the Bureau of Crime Statistics and Research evaluation. Whilst removing the restriction on the sentence discount for guilty pleas entered after committal may be thought to reduce the incentive for the accused to cooperate early in the prosecution process, the current guideline judgement for guilty plea discounts, *Regina v Thomson & Houlton [2000] NSWCCA 309*, will continue to apply, which indicates that when determining the utilitarian value of a plea the timing of the plea is the primary consideration. This will ensure that the late entry of the plea will be taken into account in determining the appropriateness of a discount on sentence.

Further, one of the aims of the trial was to achieve cultural change, encouraging criminal practitioners to actively discuss matters prior to committal with a view to narrowing the charges and issues that need to be contested at trial. It is envisaged that such discussions will continue in relation to most matters, even without the legislative requirement that they take place in all matters. Informal discussions with Legal Aid and the Office of the Director of Public Prosecutions indicate that there is interest in pursuing discussions to encourage the positive aspects of this early interaction in appropriate matters. The Department of Attorney

General and Justice will facilitate such discussions, where necessary, and continue to monitor outcomes to determine whether other policy initiatives might be available to reduce the number of late guilty pleas. I commend the bill to the House.

Debate adjourned on motion by the Hon. Adam Searle and set down as an order of the day for a future day.