Bill introduced on motion by Mr Greg Smith, read a first time and printed.

Second Reading

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [10.12 a.m.]: I move:

> That this bill be now read a second time.

The Government is pleased to introduce the Crimes (Serious Sex Offenders) Amendment Bill 2013, the purpose of which is to extend the existing scheme for the continued detention and extended supervision of serious sex offenders to high-risk violent offenders. The bill also extends the scheme to the commission of serious offences as a child, which are presently excluded from the serious sex offender regime. This extension will apply to high-risk violent offenders and serious sex offenders.

The bill recognises that there are serious violent offenders in our prisons who are nearing the end of their sentences and have made no attempt to rehabilitate themselves or who have made it very clear to authorities that they intend to reoffend when they are released. The bill responds to this danger and ensures the protection of the community from a clear risk. It is not the purpose of the bill to undermine the decisions of judges on sentence. When considering how best to deal with high-risk offenders, Professors Bernadette McSherry and Patrick Keyzer noted that the challenge is in finding:

> A midway point between assuming that all people in a certain group are dangerous and assuming that no one, even those who have declared their intentions of committing crimes, are a danger to others.

The bill represents a balanced response. It provides options for ongoing supervision of highly dangerous offenders—those who have committed extremely serious offences and who meet a high-risk threshold. The bill provides for the assessment of risk, not by a superficial or mathematical exercise, but one undertaken by a judge of the Supreme Court, who will be informed by the reports of clinical experts who have conducted individual examinations of the offender.

The New South Wales Sentencing Council in its report on high- risk violent offenders noted that there is a gap in the New South Wales legislative framework for dealing with high-risk violent offenders. This bill closes that gap by expanding the scheme in place for sex offenders that has been tested in the High Court. It does not try to reinvent the wheel, but picks up these tried provisions and extends them to high-risk violent offenders.

I will now outline each of the amendments in turn. Items [1], [2] and [3] of schedule 1 amend the title of the principal Act to the Crimes (High Risk Offenders) Act and its objects in order to reflect the extension of the Act to high-risk violent offenders and to make consequential amendments. Item [4] of schedule 1 defines expressions used in relation to high-risk violent offenders and makes consequential changes to the existing definitions in the Act to reflect the

addition of these offenders to the scheme. It also changes terminology in the Act from "serious sex offenders" to "high-risk sex offenders". The Act will now consistently apply to high-risk sex and violent offenders—those who are a high risk to the community. Further, it expands the definition of "sex offender" to permit orders to be made against adults convicted of a relevant offence as a child.

A sex offender is defined as being a person who has been sentenced to imprisonment following conviction for a serious sex offence, other than an offence committed as a child. Item [4] amends this definition so that offences committed as a child are no longer excluded. This expansion brings New South Wales into line with other states that have similar schemes. It will only apply to serious offences committed by children where a sentence of imprisonment is imposed. This means offences dealt with in the Children's Court are not qualifying offences, as detention by way of a control order under the Children (Criminal Proceedings) Act does not constitute a sentence of imprisonment for the purposes of the Act.

The definition of "violent offender" will also capture serious violence offences committed as a child. Although the number of offenders likely to be affected by this amendment is very low, it is important that heinous crimes committed as a juvenile do not fall outside the scheme. Item [5] of schedule 1 sets out the definition of a "serious violence offence". As the New South Wales Sentencing Council pointed out, defining who is a high-risk violent offender is a difficult task. The first step in the process is defining which violent offenders are eligible for the scheme. In the case of sex offenders, this is relatively simple: Eligibility is defined by identifying a list of sex-specific offences. However, violence arises from a wide range of human behaviours. The bill has taken a different approach by describing more broadly the activity that is subject to these provisions.

For an offender to be eligible for consideration under the proposed new provisions he or she must have committed an offence with a serious outcome—the death of, or grievous bodily harm to, another person. That physical outcome must be accompanied by a mental element of intending to cause, or being reckless as to causing, actual bodily harm, grievous bodily harm or death. Recklessness as to actual bodily harm has been included as a reflection of recent amendments by this Government to the provisions governing reckless infliction of harm. Those amendments clarified that recklessness is the relevant fault element for those offences. It is appropriate that this fault element should also apply for the purposes of identifying relevant serious violence offences under this scheme.

The definition in the bill also accommodates the fact that in some cases an offender may not have actually caused grievous bodily harm or death. The police may have stopped the offender at the last minute, or the offender may have hired another to commit the physical act for them. Such people should not escape the possibility of being captured by this scheme. The bill, therefore, includes in the definition an attempt, conspiracy or incitement to commit an offence involving grievous bodily harm or death. The bill represents a targeted approach to violent crime. The bill does not extend the possibility of continuing detention and extended supervision to every violent offender in our jails. To qualify, an offence must be a serious indictable offence. A serious indictable offence has the same meaning as it does in the Crimes Act 1900—that is, an indictable offence that is punishable by imprisonment for life or for a term of five years or more. This means, for example, that a person who negligently causes grievous bodily harm will not be eligible. Not only does the mental element of the offence fall short of intention or recklessness, but also the penalty for such an offence is only two years.

Item [6] of schedule 1 provides for the extension of the principal Act to high-risk violent offenders. Under the provisions of the bill an extended supervision order or continuing detention order can be made by the Supreme Court in respect of a high-risk violent offender. An order can be made against a violent offender if the Supreme Court is satisfied to a high degree of probability that the person poses an unacceptable risk of committing a serious violence offence if not kept under supervision. This test replicates the existing test of risk now applied by the Supreme Court for serious sex offenders. In coming to this decision the court must take into account the same listed factors currently taken into account in assessing an application for a serious sex offender order, as relevant. If, having considered all relevant matters, the court considers that the offender is a high-risk violent offender, it may make an extended supervision order. If the court is further satisfied that the offender cannot be adequately supervised under an extended supervision order, the court may make a continuing detention order. The maximum duration of either order is five years.

Items [7] to [35] of schedule 1 remake the provisions of the principal Act with respect to the making and determination of applications and the variation and revocation of orders. The procedures that presently apply to applications and orders for serious sex offenders will remain essentially unchanged and will now also apply to high-risk violent offenders. Additional measures include items [19] and [35], which require the Commissioner of Corrective Services to report annually to the Attorney General on whether he or she considers that an extended supervision or continuing detention order remains necessary. Further, items [18] and [34] clarify that the Supreme Court may revoke an extended supervision or continuing detention order if satisfied that circumstances have changed so as to render the order unnecessary. Item [37] of schedule 1 requires a court to warn a person who is sentenced for a serious violence offence of the application of the Act. Offenders who meet the definition of a violent offender under the Act will be on notice from the earliest possible opportunity that an order may be sought against them at the end of their sentence if they pose a high risk of serious violent reoffending. Offenders will therefore know that there may be implications for refusing to participate in programs that address their offending behaviour.

This is in keeping with the principal Act's objective of encouraging high-risk offenders to undertake rehabilitation. The issuing of a warning under section 25C does not place any obligation on Corrective Services NSW to deal with the offender in a particular way. It will be a matter for Corrective Services to assess each offender and determine how best to address his or her rehabilitative needs. However, the opportunities given to and taken by an offender to participate in rehabilitation programs will be relevant to the Supreme Court in determining an application for an extended supervision or continuing detention order. Item [38] of schedule 1 requires these amendments to be reviewed after a period of three years from their commencement. Items [39] to 40 of schedule 1 deal with savings and transitional matters. The high-risk violent offender scheme will apply to sentences imposed and offences committed before its commencement. This is consistent with the serious sex offender scheme, which also applied retrospectively in this way. Schedule 2 makes consequential amendments to other Acts. We want serious violent offenders to undergo treatment, under extensive supervision, that assists them to reintegrate into the community and obey the law. This legislation will help ensure that dangerous offenders who refuse to undertake rehabilitation during their sentence can be properly supervised in the community and detained if necessary. I commend the bill to the House.

Debate adjourned on motion by Dr Andrew McDonald and set down as an order of the

day for a future day.