Crimes (Administration of Sentences) Amendment Bill.

Second Reading

Mr NEVILLE NEWELL (Tweed—Parliamentary Secretary) [11.00 a.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

The object of the Crimes (Administration of Sentences) Amendment Bill is to make various amendments to the Crimes (Administration of Sentences) Act 1999, which is the principal Act that governs the administration of certain sentences. The Act is to be amended to provide for a more severe penalty to be imposed on a correctional centre inmate found with a mobile phone. In addition, the amendments will provide for further improvements to the correctional centre discipline system. The amendments will also make other miscellaneous changes to the principal Act and will clarify certain aspects of the operation of the Act. I shall now outline some of the more significant changes proposed to the Act.

The bill proposes to make it a correctional centre offence for an inmate to possess a mobile phone. The bill provides for a range of penalties to be imposed on a correctional centre inmate found with a mobile phone, any part of a mobile phone, a SIM card for a mobile phone, or a charger for a mobile phone. Mobile phones represent a serious threat to the security, good order, and discipline of a correctional centre. An inmate can use a mobile telephone 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 outside a correctional centre. Regrettably, in the current international climate, the activity outside of a correctional centre can include terrorist activity.

On 21 April the Premier announced a range of measures to combat the threat of terrorism. Included in those measures was the proposal for new penalties for possessing a mobile phone in a correctional centre. This bill introduces the new penalties as outlined by the Premier. It is foreseeable that, over the course of time, the State's correctional centres may be required to accommodate a growing number of alleged terrorist inmates. In this era of uncertainty about terrorism, the welfare of those in and outside the correctional system must be protected. A mobile phone that is smuggled into a correctional centre is a possible threat not only to those people in and associated with the correctional system but also to those in the broader community.

The proposed new penalties for possessing a mobile phone in a correctional centre are intended to reduce the risk of a correctional centre inmate accessing a mobile phone while in a place of detention. I assure the House that correctional authorities are continually improving their search practices in respect of mobile phones and other contraband. The reality is, however, that the compact size of mobile phones and the increasingly sophisticated methods used by inmates and their outside associates to introduce mobile phones into correctional centres renders it unlikely that correctional authorities will ever be able to completely prevent the introduction of mobile phones into correctional centres.

The security threat presented by mobile phones is of such significance that I am advised that the Minister for Justice has asked the Department of Corrective Services to investigate other measures to counter this threat. The other measures being investigated include the use of mobile phone jamming equipment. In fact, since July last year the Minister for Justice has been urging the Commonwealth Government to permit the trialling of jamming equipment to block mobile phone use in correctional centres. At present, the use of jamming equipment is prohibited by Commonwealth legislation. The Summary Offences Act 1988 provides a disincentive to persons bringing or attempting to bring anything into a place of detention. A person found guilty of attempting to smuggle a mobile phone into a place of detention could conceivably receive a maximum penalty of two years imprisonment, or 20 penalty units, or both. Paradoxically, a similar sanction cannot be imposed on an inmate who receives and uses a mobile phone. This legislation amends this anomaly.

The Government is of the view that the appropriate authorities should be able to impose a more severe penalty on any inmate found in the possession of a mobile phone. The bill will provide for a range of such penalties. Due to the array of offenders and sentences, there is to be a range of penalties in respect of mobile phones. New section 56A will provide for an inmate to be deprived for up to six months of such withdrawable privileges as the governor of a correctional centre or visiting magistrate determines. The bill makes it a correctional centre offence for an inmate to be in possession of a mobile phone, and provides for the imposition of a penalty within the range of penalties available to a visiting magistrate in respect of a correctional centre offence.

Significantly, the bill also makes it a criminal offence under the Summary Offences Act 1988 for an inmate to have a mobile phone in his or her possession in a place of detention. The bill provides for a maximum penalty for this offence of a term of imprisonment of up to two years to be imposed by a court. The categorisation of a mobile phone offence as

both a correctional centre offence and criminal offence—combined with the range of penalties proposed—provides for flexibility in the manner in which mobile phone related offences will be able to be dealt with. The circumstances surrounding the possession of a mobile phone will determine the manner in which such an offence is pursued. Under the proposals in the bill, the Department of Corrective Services will make a judgement on the seriousness of a mobile phone related offence and act accordingly in bringing proceedings against the inmate concerned.

In addition to penalties for mobile phones, the bill provides for various improvements to the inmate discipline system. The bill creates a single category of correctional centre offence by removing the distinction between a major offence and a minor offence. The bill also amends some of the penalties that may be imposed on an inmate in respect of a correctional centre offence. It is imperative that the correctional system is equipped with a quick and effective internal disciplinary system. The bill proposes to introduce greater flexibility into the inmate discipline system. The current division of offences into major and minor offences does not provide the Department of Corrective Services with the flexibility necessary to deal with each correctional centre offence on its merits. There are occasions on which there are minor versions of major correctional centre offences and vice versa. The inmate discipline system therefore needs to be flexible as perceptions and circumstances surrounding offences can vary.

At present, under section 54 of the Act the governor of a correctional centre must refer an offence with which an inmate is charged to a visiting magistrate for hearing and determination if the offence is a major offence or the offence is a minor offence but the governor considers that because of the serious nature of the offence it should be referred to a visiting magistrate. The failure of an inmate to comply with the requirements of any of six particular clauses in the Crimes (Administration of Sentences) Regulation 2001 constitutes a major offence. The major offence clauses cover such matters as conceal for the purpose of escape, possess drug, and bribery. Members will no doubt appreciate that there is considerable scope in terms of the seriousness of such offences.

The mandatory referral of all so-called major offences to a visiting magistrate cannot be justified. The circumstances surrounding a so-called major offence may not warrant the referral of the matter to a visiting magistrate, with all the associated costs and administrative requirements. In some cases the referral of a matter will be a poor use of limited resources. Further, in some cases the referral of a matter to a visiting magistrate may be inefficient in terms of inmate discipline. For instance, it generally takes longer for a correctional centre offence matter to be finalised through the visiting magistrate process than it does if the governor of a correctional centre hears the matter. Under the current system, it is possible that an inmate who is on remand or an inmate who is serving a short sentence may be released from custody prior to the finalisation of the visiting magistrate hearing process. An occurrence such as this is clearly not in the public interest.

The bill strengthens the inmate discipline system by amending some of the penalties that the governor of a correctional centre or a visiting magistrate may impose on an inmate for the commission of a correctional centre offence. The bill amends section 53 to increase the maximum number of days for which a governor may deprive an inmate of withdrawable privileges. The maximum number of days will be increased from 28 to 56. The bill also amends section 53 to increase from 3 days to 7 days the number of days for which a governor may confine an inmate to his or her cell.

The bill amends section 55 to make provision for a visiting magistrate to hear a charge on a correctional centre offence by way of audio-video link. The Department of Corrective Services currently has audio-visual links at nine correctional centres. Inmates at those nine correctional centres already appear before courts, the Parole Board, and the Serious Offenders Review Council by way of audio-visual link. The penalties that a visiting magistrate may impose for a correctional centre offence are to be increased to reinforce the position of the visiting magistrate within the correctional centre inmate discipline system. The bill amends section 56 to increase the maximum number of days for which a visiting magistrate may deprive an inmate of withdrawable privileges. The maximum number of days will be increased from 56 to 90.

Significantly, up until now a visiting magistrate has been able to extend by up to 28 days the term of an inmate's sentence. This period is increased to up to six months. Importantly, a visiting magistrate will be able to impose a sentence on an inmate of up to six months. This amendment will give visiting magistrates the power to deal with troublesome inmates who are on remand. The bill introduces a further improvement to the inmate discipline process in relation to damage to property by inmates. Of course, the majority of inmates do not damage Department of Corrective Services property, but on some occasions some inmates cause considerable damage. From time to time, for whatever reason, inmates will smash items such as television sets, light fittings, and toilets. The Government is of the view that inmates who damage the department's property should be made to feel the consequences of their actions.

Under section 59, inmates can be ordered to pay compensation for property damage. At present the amount of compensation that a governor can order an inmate to pay is limited to $100. The amount that a visiting magistrate can order an inmate to pay is at the discretion of the visiting magistrate. To recover amounts of more than $100 currently requires the activation of the visiting magistrate process. The bill, therefore, amends section 59 to increase from $100 to $500 the maximum amount of compensation that a governor may require an inmate to pay for loss or damage to property as a result of the inmate committing a correctional centre offence. This increase in limit will bring many property damage matters to a speedier conclusion and will also eliminate the need for the department to activate the visiting magistrate process in respect of relatively low-level matters.

The Government has been progressively tightening the periodic detention scheme for a number of years. In particular, the provisions in respect of non-attendance have been closely scrutinised. The Government's position is that offenders

who flout their periodic detention orders and fail to attend for detention should reap the consequences of their behaviour swiftly and surely. However, the Government also takes the position that an offender who suffers the consequences of failing to attend periodic detention by having his or her periodic detention order revoked should be able to learn a lesson from that experience and have a second chance to comply with the periodic detention order. Accordingly, in the past, the Government has inserted provisions into the Act to give offenders who have had their orders revoked a second chance after serving at least three months of their sentence by way of full-time imprisonment.

The intention of the proposed amendments in respect of section 163 (2) and (2A) is to provide clarification in relation to the second chance provided to such offenders. The amendments to section 163 make it clear that the Parole Board is to revoke a periodic detention order that has been reinstated—after being earlier revoked following an offender's failure to report without leave or exemption on three or more occasions—if the offender fails to report for detention on one more occasion without leave. The amendments also make it clear that, in the case of a periodic detention order that was earlier revoked for some reason other than failure to report, any previous failure to report for periodic detention is carried over on the reinstated order.

Offenders sentenced to full-time imprisonment, periodic detention, home detention and community service can be tested to determine whether the offender has used alcohol or prohibited drugs. The testing technology that the Department of Corrective Services currently utilises to test for prohibited drugs is urine testing. An amendment to section 3 inserts a definition of non-invasive sample. A non-invasive sample is defined to mean samples of specified types of human biological material such as hair and urine, but not blood, that may be utilised to detect prohibited substances. The bill amends section 255 of the Act to provide that on the extension of the non-parole period of a sentence, the date of commencement of a consecutive sentence, which would otherwise commence before the end of the non-parole period of the extended sentence, is extended by the period that the non-parole period is extended. Similarly, a consecutive sentence, which would otherwise commence after the end of the non-parole period of an extended sentence, is extended by the period for which the term is extended. Partly consecutive sentences are possible under section 47 (2) of the Crimes (Sentencing Procedure) Act 1999.

Amendments to clause 3 of schedule 2 of the Act provide for minor amendments to the nomination of the deputy of an official member of the Serious Offenders Review Council. Schedule 3.2 to the bill amends the Criminal Appeal Act 1912. Sections 18 (2) and 25A of the Criminal Appeal Act 1912 state that time spent on bail pending an appeal is not to count as any part of any term of imprisonment. These sections create an implied power allowing the court to restart a person's sentence in circumstances where their appeal has been dismissed. This is to ensure that the person serves the entirety of their sentence. A recent case in the Court of Criminal Appeal raised the issue of this implied power. There is no doubt that people on bail should not have this time count as part of their sentence. The Government is, therefore, amending the Criminal Appeal Act 1912 to make it clear that the Court of Criminal Appeal has the power to commence or recommence sentences in all circumstances. These amendments will relate to appeals to the High Court of Australia as well. I commend the bill to the House.