

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [11.11 a.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes (Sentencing Procedure) Amendment Bill 2007. This bill is part of the Government's ongoing legal reforms to the sentencing regime in New South Wales. The New South Wales Government introduced standard minimum sentences in 2002. These reforms were aimed at, and have delivered on, the Government's commitment to promote greater transparency and consistency in sentencing while at the same time retaining judicial discretion by allowing judges to take into account the aggravating or mitigating circumstances of each individual case. The reforms also promote greater public understanding of the sentencing process. The Government committed, if re-elected, to increase standard minimum sentences for a range of new offences, including the new standard minimum of 25 years jail for the murder of a child. We also gave a commitment to introduce new aggravating factors that judges must take into account when determining sentences and to tighten the law to make it harder for a criminal to use remorse as a mitigating factor. Today we are delivering on these commitments.

I will turn now to the detail of the bill. The bill introduces standard minimum sentences for 11 serious offences. It will also increase the existing standard minimum sentence for the offence of aggravated indecent assault of a child under 10 years from five years to eight years. Item [8] will introduce a standard minimum term of 25 years imprisonment for the murder of a child. This offence will be included in the most serious category of murder that demands the harshest sentences. That category already includes those offences of murder where the victim was a police officer, emergency services worker or other public official, exercising public or community functions, and where the offence arose because of the victim's occupation. This most serious category of murder recognises the terrible loss when the victim is both a vulnerable and valuable member of the community.

Item [9] introduces standard minimum sentences for those serious offences involving personal violence that do not already attract a standard minimum sentence: reckless wounding, a minimum three years imprisonment; reckless wounding in company, a minimum four years imprisonment; reckless infliction of grievous bodily harm, a minimum four years imprisonment; and reckless infliction of grievous bodily harm in company, a minimum five years imprisonment. These new standard minimum terms send a clear message to the community that the Government will not tolerate crimes of personal violence, which are especially abhorrent when done in company. Crimes of this nature destroy lives and tear at the fabric of our community. The bill also includes standard minimum sentences for vehicle rebirthing and serious drug and firearm offences that are intended to strike at organised crime and crimes committed for profit.

Item [12] will introduce a standard minimum sentence of four years imprisonment for the offences of car and boat rebirthing. Item [11] will amend offences relating to car jacking to include boats. Item [13] will introduce a standard minimum sentence of 10 years imprisonment for cultivation, supply or possession of a large commercial quantity of prohibited plants. Item [14] will introduce the following standard minimum sentences relating to firearms offences: unauthorised possession or use of a prohibited weapon, a minimum three years imprisonment; unauthorised sale of a prohibited firearm, a minimum 10 years imprisonment; unauthorised sale of firearms on an ongoing basis, a minimum 10 years imprisonment; and unauthorised possession of three or more prohibited firearms, a minimum 10 years imprisonment.

Those involved in organised car theft rackets, cultivation and supply of large quantities of illegal drugs, and the sale or possession of firearms take criminality to a very high level. In particular, these serious offences of possession, sale and supply of firearms may lead to other crimes of ever escalating gravity, including firearms usage and ultimately crimes of violence including armed robbery and even murder. Some of the offences under the Crimes Act 1900 that may or may not involve a firearm are already included in the standard minimum sentencing scheme. Such offences include murder, conspiracy to murder and attempted murder, wounding with intent to do bodily harm or resist arrest, robbery with arms and wounding, break and enter in circumstances of aggravation and special aggravation, and car jacking in circumstances of aggravation.

A number of recent legislative and other changes have been made to introduce new car theft, drug and firearm offences to improve detection, apprehension and prosecution of those who commit these offences. These measures show a coordinated approach to these problems. Such a coordinated approach is essential. These are offences where there is a strong need for general deterrence and consistency in sentencing. Item [10] will increase the current standard minimum sentence for the offence of aggravated indecent assault of a child less than 10 years old—section 61M (2)—from five years to eight years imprisonment. The existing standard minimum sentence for aggravated indecent assault is five years imprisonment. It is important that an offence committed against a child less than 10 years old carry a higher standard minimum sentence.

I now turn to the other provisions of the bill. The bill will introduce eight new categories of aggravating factors that judges must take into account at sentencing. Item [1] enacts section 21A (2) (ca), which will aggravate those offences that involved the use of explosives, chemical or biological agents. Item [1] also enacts section 21A (2) (cb), which will aggravate any offence that involved the offender causing the victim to take, inhale or be affected by a narcotic drug, alcohol or any other intoxicating substance.

Item [2] amends section 21A (2) (d) by adding a factor of aggravation where the offender has prior convictions for offences of serious personal violence and the offender is being sentenced for an offence of that type. The definition will also capture serious sexual offences. Item [7] provides a definition of "serious personal violence", which will include all the offences carrying a maximum penalty of five years imprisonment or more listed in section 562A of the Crimes Act 1900, in which the definition of "personal violence offences" also includes sexual offences.

Item [3] enacts section 21A (2) (ea). Like the imposition of a standard minimum sentence of 25 years imprisonment for the murder of a child, this amendment is also directed at providing additional protection for children in our community. It requires the courts to give particular regard to offences that are committed in the presence of a child. Recently the Government created new offences in relation to the exposure of children to certain illicit drug activities and to the recruitment of children to participate in certain drug offences. Offences of violence that are perpetrated regardless of the presence of a child or children are particularly reprehensible. No child should be directly exposed to criminal activity of any kind, and the Government remains committed to that principle.

Item [3] also enacts section 21A (2) (eb). It will aggravate an offence that was committed within a victim's home or another person's home. This aggravating factor preserves the notion of sanctity of the home, whereby individuals are entitled to feel safe from harm of any kind. This protection should apply in any home. The courts have long recognised that it is an aggravating circumstance when victims are assaulted in their own homes. The Government takes the position that any offence committed in the home of the victim, even if it is also the home of the accused, or in the home of another person, violates that person's reasonable expectation of safety and security. However, when a crime is committed in and from the accused's own home—for example, if the offender is committing computer or fraud offences—and no other person is present, the aggravation will not apply.

Item [4] enacts section 21 (2) (ia), creating an aggravating factor where the actions of the offender represented a risk to national security. Item [4] enacts section 21A (2) (ib), which will aggravate any offence that involves a grave risk of death to other persons. These new aggravating factors are designed to thwart the actions of those who might consider wreaking havoc upon the safety of our community at large. Item [5] creates a new aggravating factor which will apply to an offence that was committed for financial gain.

I now turn to the final, however extremely important, provision of the bill. Item [6] amends the mitigating factor that is currently available to an offender if he or she has shown remorse. The amendment will ensure that remorse may be considered in mitigation of the offender's sentence only if the offender has provided evidence that he or she has accepted responsibility for his or her actions, and the offender has acknowledged any injury, loss or damage caused by his or her actions or made reparation for such injury, loss or damage, or both. It is reasonable to expect that where claims of remorse are made in mitigation there is some relevant and identifiable action by an offender demonstrating an acceptance of responsibility for his or her behaviour.

In New South Wales we believe that there is no right greater than the right to live one's life in safety, free from fear and intimidation. When this fundamental right is breached, when a person is physically injured, has their property, or worse still, their life or their dignity taken from them as a result of criminal behaviour, there is an obligation on society and government to do whatever is possible to ensure that there is reparation for, or acknowledgement of, that breach. Accordingly, we believe that victims deserve to see their perpetrators caught and subject to a sentence that reflects the gravity of the offence. We believe that victims have the right to be kept informed of how the accused will be tried and punished, and to be involved in that process, which includes the right to have validated any claim of remorse. The bill is another example of the Government delivering on its election commitments, and I commend it to the House.