Bail Amendment Bill 2007 (Proof)

About this Item
Speakers - Collier Mr Barry
Business - Bill, Agreement in Principle, Motion

BAIL AMENDMENT BILL 2007

Page: 49

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [7.31 p.m.], on behalf of Mr David Campbell: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Bail Amendment Bill 2007. The bill builds on the Government's extensive reforms over the past years to strengthen our bail laws and ensure the community is properly protected while defendants are awaiting trial. New South Wales has the toughest bail laws in Australia. Over the past few years we have cracked down on repeat offenders, people who come before our courts habitually time and again. Part of those changes includes removing the presumption in favour of bail for a large number of crimes. We have also introduced presumptions against bail for crimes including drug importation, firearm offences, repeat property offences and riots, and an even more demanding exceptional circumstances test for murder and serious personal violence including sexual assault. Those types of offenders now have a much tougher time being granted bail under our rigorous system.

I now turn to the detail of the bill. The bill makes amendments to the Bail Act 1978 designed to improve the administration of the bail system in New South Wales. It implements the Government's commitment at the last election. Schedule 1 [1] to the bill adds additional firearms offences to the list of those to which a presumption against bail applies. Under section 8B of the Bail Act there is a presumption against bail for serious firearms and weapons offences. Some of those offences include the possession or use of a prohibited firearm, the unauthorised manufacture of firearms and the selling of firearms on an ongoing basis.

The bill adds two more serious firearms offences to the presumption against bail, which is dealt with in section 8B of the Bail Act 1978. Those offences include those connected with a prescribed person involved in a firearms dealing business, which is dealt with in section 44A of the Firearms Act 1996, and the offence of shortening of firearms, which is dealt with in section 62 of the Firearms Act 1996. The offences attract a maximum penalty of 14 and 10 years imprisonment respectively. Under the Firearms Act 1996 a "prescribed person" means a person who within the last 10 years has had his or her firearms dealer's licence revoked, or has been convicted of an offence prescribed by the regulations, or has had his or her application for a licence or permit refused because the person is a danger to the public, or is subject to an apprehended violence order, a firearms prohibited order or a good behaviour bond.

The shortening of a firearm is a serious offence because the modification is done in order to enhance performance or to facilitate the hiding of the weapon. Given the parallels between section 36, which deals with unregistered firearms and attracts a presumption against bail, and section 62, it is appropriate to include it in section 8B of the Bail Act. The changes are necessary in order to ensure that the legislation is consistent with regard to serious firearm offences of similar gravity. Schedule 1 [2] makes a statute law revision amendment that updates cross references to provisions of the Crimes Act 1900, which were amended by the Crimes Legislation Amendment (Gangs) Act 2006. Schedule 1 [3] limits the number of bail applications that may be made by an accused person. Currently there is no limit on the number of times an accused person with access to money who can fund ongoing legal representation can apply to the Local Court for bail.

The changes are aimed at guarding against unnecessary, repeated bail applications that serve only to inflict further anguish upon victims. Provisions already exist to limit the number of applications for bail in the Supreme Court. Those provisions will be extended to bail applications in the Local Court. Under the provisions, the court will not be able to proceed with a second bail hearing unless the applicant had no legal representation the first time an application for bail was made, or the court can be satisfied that new facts or circumstances have arisen since the previous application. The changes strike an appropriate balance between offering greater protection to victims of crime and preserving the rights of an accused to apply to a court for bail. The proviso recognises that an accused will often lack the necessary skills to present the case well and should not be prejudiced through an initial inability to obtain representation.

The changes are aimed at preventing what is known as magistrate shopping—the process of going from magistrate to magistrate, or judge to judge, with hope of obtaining a different outcome. The bill will also introduce

an obligation on legal practitioners not to make applications for bail on behalf of their clients if the application would not meet these requirements. This will ensure that lawyers act in a responsible manner in advising and representing their clients in making bail applications and will not pursue unnecessary claims. This will help guard against repetitive bail applications that have no chance of success and can greatly disturb the victim and induce worry and anxiety at the prospect of the defendant's release.

I note also that an amendment has been made to the bill to provide that an application made before an authorised justice, such as registrar, is not captured by these provisions. The New South Wales Government is committed to ensuring that the State's bail laws are the strictest in the nation, and that the people of New South Wales receive the highest standards of protection by the courts in assessing whether there is a danger of defendants reoffending while at liberty and awaiting trial. I commend the bill to the House.

Debate adjourned on motion by Mr Daryl Maguire and set down as an order of the day for a future day.