

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [4.22 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the Criminal Legislation Amendment Bill 2007. The bill delivers on our counter-terrorism election commitment to increase penalties for explosives and to establish a new offence of supplying explosives. This builds upon the significant work the New South Wales Government has done in boosting the State's counter-terrorism capability. We have given our police the powers and the resources they need to detect and arrest terrorists before an attack can be carried out, ensuring unprecedented cooperation and coordination between Commonwealth and State Governments. Importantly, the bill also contains tough new measures to crack down on the manufacture of amphetamines, including banning recipes for drug manufacture, limiting the quantities of certain chemicals that can be held, and creating an offence of possessing a drug manufacture apparatus.

All of us have read with horror of the effects of the drug ice. This highly addictive form of refined methamphetamine can be manufactured in backyard chemical laboratories. The Government has acted swiftly to combat the ice scourge, including hosting the country's first leadership forum targeting ice last year. This bill strengthens our attacks on the ice plague. The bill also makes a number of miscellaneous amendments to criminal legislation, designed to improve the administration of the justice system in New South Wales.

I now turn to the detail of the bill. Schedule 1 to the bill amends the Criminal Procedure Act 1986. Items [2] to [8] amend certain pretrial disclosure requirements contained in part 3 of chapter 3 of the Act. These requirements serve to reduce delays in complex criminal trials. Items [2] and [3] make a minor amendment to make it clear that a court, when deciding whether to require pretrial disclosure, is not required to be satisfied of all the criteria that are listed in the Act as being relevant to a decision to order pretrial disclosure. It is sufficient that the court considers pretrial disclosure is warranted on the basis of one or more of the criteria. Items [4], [6] and [8] require certain notices that must be given by parties to criminal proceedings under pretrial disclosure requirements to be filed with the court in addition to being served on the other party. These amendments will make it easier for the court to manage the proceedings.

Item [5] exempts the prosecution from certain pretrial disclosure requirements in relation to matters that have already been disclosed by the prosecution in a brief of evidence served on the accused person. However, the prosecution will be required to identify the statements of those witnesses who are proposed to be called at the trial. Item [7] extends the alibi notice period in section 150 of the Act from three weeks to six weeks in order to afford police a more appropriate period within which to investigate the alibi and provide the results of the investigation to the Director of Public Prosecutions.

Item [1] amends section 6 of the Act to clarify the general principles for determining whether an offence may be dealt with on indictment or summarily. The amendment affirms that the general principle that offences with maximum penalties of two years or less should be dealt with summarily unless the offence is permitted to be dealt with on indictment under another Act, or is listed in table 1 or 2 of schedule 1 to the Act. Offences set out in schedule 1 to the Act may be dealt with on indictment if the prosecutor or the person charged makes an election for the offence to be dealt with on indictment under chapter 5 of the Act, regardless of the maximum penalty.

Item [11] makes it clear that all offences listed in schedule 1 to the Act are indictable offences, subject to the provisions of the Act that require them to be dealt with summarily in certain circumstances. Items [9] and [10] clarify that withdrawal of a matter by the prosecution does not prevent later proceedings in respect of the same matter against the same person. This amendment lays to rest any technical speculation that the withdrawal of the matter is tantamount to an acquittal and, therefore, attracts the double jeopardy principle, notwithstanding the fact that existing section 208 of the Act deems such a matter to be dismissed for the purposes of the court.

Schedule 2 to the bill amends the Criminal Appeal Act 1912 to make further provision for Crown appeals that are dealt with in the absence of the respondent. The amendments allow the Court of Criminal Appeal, if it decides to impose a sentence of imprisonment by way of full-time detention on a respondent in the respondent's absence and the respondent is not in custody, to defer specifying a commencement date for the sentence until the respondent appears before the court. This avoids the possibility that the sentence will start to run before the respondent is taken into custody. The amendments will also allow the Court of Criminal Appeal to issue a warrant for the arrest of a respondent if the respondent fails to appear before the court.

Schedule 3 to the bill amends the Crimes Act 1900. Item [1] makes further provision with respect to proof of recklessness. A minor amendment is being made for abundant clarity, to put beyond any doubt that

recklessness, when it is an element of an offence, may also be established by proof of intention or knowledge. This is in line with the Commonwealth criminal code. Implementing a 2007 Government election commitment, item [2] expands the existing offence of possessing or making explosives in section 93FA of the Act to include the act of supplying explosives. The penalty for the expanded offence is increased to three years imprisonment, which is a 50 per cent increase on the existing penalty. Police will also be able to apply for search warrants in relation to the strengthened offence, further assisting them in the ongoing fight against terrorism.

Item [3] changes a reference to the jury in a provision relating to perjury so as to recognise that the offence may also be tried summarily in the absence of a jury. The amendment will ensure that the same rules of proof will apply to all proceedings for these offences, regardless of the forum in which the offences are heard. Items [4] to [6] clarify that an accessory is liable to the same punishment to which the person would have been liable had the person been the principal offender. The amendment clarifies that it is the accessory's criminal record, not the principal offender's, which determines the maximum penalty that may be imposed.

Schedule 4 to the bill amends the Drug Misuse and Trafficking Act 1985. Items [1] to [3] create new offences of possessing instructions or recipes for drug manufacture or possessing a drug manufacture apparatus. Both offences are in similar terms to the tablet press possession offence that commenced earlier this year, with a defence available if the chemical or "recipe" is used in connection with a lawful activity or if the person concerned has a reasonable excuse for possessing it. Items [4] to [6] create a new offence of possessing a substance capable of being used to manufacture or produce a prohibited drug, to be specified or described in the regulations. The offence provides for a defence when a person can prove that he or she possessed the chemical for a purpose that was not unlawful or otherwise had a reasonable excuse. The offence will carry a maximum penalty of five years imprisonment or a fine of 1,000 penalty units but it will be possible to deal with the matter summarily in less serious cases. Because some of the precursors that will be covered by the new offence have legitimate industrial uses, item [7] creates a broad industry and lawful use defence.

In summary, the bill is another example of the Government's vigilance in ensuring that adequate laws are in place to help keep the community safe. In addition to amendments directed towards improving the efficiency and operation of the criminal justice system and the courts, the bill implements important drug law reform and election commitments regarding explosives. I commend the bill to the House.