CRIMES (SENTENCING PROCEDURE) AMENDMENT (LIFE SENTENCES) BILL 2008

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Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [4.36 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

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

Leave granted.

There are 17 inmates left in New South Wales who were sentenced to imprisonment for life prior to the 'truth-in-sentencing' reforms in the late 1980s and early 1990s. Of these, nine are inmates serving life with non-release recommendations. The remaining inmates are those remaining who have either applied for redetermination and been refused or who have not yet applied. At the time when they were sentenced, these inmates were subject to the release on licence scheme which meant that they could be released on licence after serving around 8 - 12 years. The truth in sentencing reforms meant that from 1990 onwards, offenders sentences to life imprisonment, served the rest of their life in prison. However to avoid the "life means life" provisions from having retrospective effect, the Greiner Government's reforms provided that offenders who had been sentenced to life before "Truth in Sentencing" regime could have their sentences redetermined.

Inmates serving a life sentence could therefore apply to the Supreme Court to have their sentences redetermined. Unfortunately, there was no limit on the number of times an offender could seek a redetermination. Every time they made an application, the families of the victims had to go through the stress and trauma of preparing themselves mentally, writing Victims Impact Statements, and appearing in court. And often after enduring that stress they would find that the offender would withdraw their application at the last minute The Government has brought forward this bill to address this problem. No longer will old life sentence inmates be able to repeatedly seek sentence redeterminations. The purpose of this legislation is clear, offenders should have only one opportunity for a redetermination. They should not bring an application for redetermination until they are ready to have it heard.

This bill continues to allow offenders to apply to the Supreme Court to have their life sentence redetermined, but puts a stop to multiple applications. They will now only be able to have one opportunity to apply to be re-determined. If upon an application by an inmate, the Supreme Court declines to set a non-parole period, or a fixed term sentence, then subject to appeal, that will be the end of the matter—the offender will have to serve the term of his natural life in prison.

This amendment to the Crimes (Sentencing Procedure) Act will not be retrospective. Each of the remaining offenders will be allowed one final determination, regardless of whether or not they have previously made an application. They will however only get one more chance. This strikes the right balance between protecting victims and ensuring existing court orders are respected and preventing any unfair impact. Central to the reforms in this bill is where an offender makes an application, but then wishes to withdraw it. The offender will now only be entitled to withdraw the application with the leave of the Court. If leave is granted, the Supreme Court may direct that the inmate cannot make a further application for a specified period of time and then they will only be able to withdraw with the leave of the court.

The Crown can also oppose any application by the offender to withdraw, and seek to have the redetermination application heard. The Court, when considering whether to grant leave, to withdraw, or reapply, will be required to take into account and give substantial weight to, how many previous applications have already been made and subsequently withdrawn. Importantly, the Crown, where an application is withdrawn, will be able to ask the Court to prevent the inmate from reapplying within a specified period of time.

These proposals relating to withdrawals will prevent Judge shopping and will make offenders reconsider withdrawing 'on a whim' without any real grounds, or repeatedly withdrawing their application. It is a fundamental principal of sentencing that the offender should have certainty in relation to the sentence that is to be imposed and that it be dealt with as expeditiously as possible. This is also true for victims and these proposals will allow the Court to take into account the delays and consequent hurt and anguish that is brought to bear on victims when such applications are made and not promptly brought to finality. Through this bill, the message to applicants is clear—you will have only one chance at redetermination, and you should not apply until you are ready to be heard.

I also want to put on the record that nothing in this bill allows those inmates who have already had their sentence redetermined to have any further redeterminations. Furthermore, where the Supreme Court has already ordered that an offender is not to reapply for a redetermination for a certain period, nothing in this bill allows for them to seek another redetermination before the court ordered period has expired. The legislation currently provides that upon an application for a redetermination of a sentence, the court is to have regard to all of the circumstances surrounding the offence for which the sentence was imposed, as well as a number of other factors including matters such as any reports on the

offender made by the Review Council, and any other relevant reports prepared after the offender was sentenced, that are available to the Supreme Court, the need to preserve the safety of the community, and the age of the offender at the time the offender committed the offence and also at the time the Supreme Court deals with the application.

This bill adds another additional specific factor for consideration, which the court should give substantial weight to, namely the culpability of the offender in the commission of the offence, and whether the offence was in the worst category of cases. This will ensure that the Court turns its attention to the objective features of the offence and whether it was so heinous a crime as to fall within the worst-case category. The terminology is consistent with section 61 (1) of the Crimes (Sentencing Procedure) Act, which provides for the imposition of mandatory life sentences in worst case category offences.

In this provision the Government wants to make it clear that some crimes are so terrible that, despite any progress that has been made by an offender since they have been in custody, the offender should never be released and should die in prison. Some offenders, if they were being sentenced today under 'truth in sentencing', would still deserve a life sentence. I now turn to the bill in detail:

Schedule 1 [2] restricts to one the number of further applications that an existing offender may make to the Supreme Court for a redetermination of his original life sentence. Applications made on or after 17 June 2008 (being the date of announcement of the proposal) are to be covered by the restriction. Applications made before that date, and applications that are duly withdrawn, are not to be counted. The new clause also provides that if, in disposing of an application made on or after 17 June 2008 by an existing offender for a redetermination of his or her original life sentence, the Supreme Court declines to set a specified term or a non-parole period for the sentence, the offender is to serve the existing life sentence for the term of his or her natural life.

Schedule 1 [3] amends clause 6 of schedule 1. It applies only to applications lodged before the announcement. It allows the Supreme Court, if it declines to set a specified term or a non-parole period in determining an application by an existing offender for a redetermination of his or her original life sentence, to direct that the offender may never re-apply to the Court, or may not re-apply for a specified period. If the Court makes no such direction, the clause precludes the offender from re-applying for a period of 3 years. Clause 6 will not apply to any applications made on or after the date of announcement.

Schedule 1 [4] allows an existing offender to withdraw an application to the Supreme Court for a redetermination of his or her original life sentence only with leave of the Court. The Court's decision on an application for leave to withdraw such an application is not appealable. If the Supreme Court grants leave to withdraw an application, the offender who made the application may only make a further application for a redetermination of life sentence with the leave of the Court and, if the Court so directs, may not make the further application for a specified period of time. In considering whether to grant leave to withdraw an application or to make a further application, the Supreme Court must have regard to and give substantial weight to the number of times the offender has previously withdrawn an application for a redetermination of the life sentence. If the Supreme Court refuses to grant leave to an existing offender to make a further application for a redetermination of his or her original life sentence, new clause 6A provides that the offender is to serve the existing life sentence for the term of his or her natural life.

Schedule 1 [6] allows an appeal to the Court of Criminal Appeal in relation to an application for leave to make a further application for a redetermination and a direction that an offender may not make a further application for a specified period of time.

Schedule 1 [7] allows the Court of Criminal Appeal, in allowing an appeal against a decision of the Supreme Court to refuse an application for leave to make a further application following the withdrawal of such an application, to determine the further application.

Schedule 1 [5] requires the Supreme Court, when considering an application by an existing offender for a redetermination of his or her original life sentence, to have regard to and give substantial weight to the level of culpability of the offender in the commission of the offence for which the sentence was imposed and the heinousness of the offence.

The Homicide Victims' Support Group, Victims Of Crime Assistance League (VOCAL), and enough is enough have all been consulted about and have indicated that they support the proposed changes. The Attorney General also recently met with Gary Connell and his sisters, and the Government acknowledges both the trauma they have been through and the contribution they have made to these changes. The family victims of these inmates have suffered enough. Old wounds were opened anew every time an inmate lodged an application, and the families had to relive the horrific crime, which took their loved ones from them. We are giving the victims certainty that they will only have to go through one redetermination of sentence and will not be put through the roller coaster of emotions when the offender applies but then withdraws on the eve of the hearing. Under these reforms the victims will be given certainty and will not have to suffer time and time again.

I commend the bill to the House.