

SENTENCING AMENDMENT BILL 2014

Introduction and First Reading

Bill introduced, on motion by **Hon Michael Mischin (Attorney General)**, and read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [5.33 pm]: I move —

That the bill be now read a second time.

The Sentencing Amendment Bill 2014 will resolve an anomaly in Western Australian sentencing legislation that has been found to affect the proper operation of laws that allow for the transfer of prisoners from interstate prisons. In Australia, a national transfer scheme allows for prisoners to transfer interstate for welfare reasons. Until recently, it was understood that prisoners who transferred under the Prisoners (Interstate Transfer) Act 1983 would stand in the same position after transfer as they did before the transfer. These prisoners would maintain their original sentences, including the set minimum parole periods, made by courts in the original jurisdiction. However, it was recently found that due to the operation of section 93(1) of the Sentencing Act 1995, the Prisoners Review Board did not have the legislative authority to grant parole to interstate prisoners in cases in which that parole period exceeded two years. This was brought to the government's attention in the case of Mr Joseph Dino Diano. Mr Diano was sentenced in Queensland on 12 May 2010 to seven years' imprisonment, with eligibility for parole from 12 May 2013. Early in 2013, Mr Diano was transferred to Western Australia under the prisoners transfer act. Mr Diano was released from custody on 15 May 2013 on the basis of his original sentence that made him eligible for parole. However, on 15 October 2013, Mr Diano was advised that his parole had been cancelled and a warrant was issued for his arrest because, on review of its decision, the Prisoners Review Board found that it did not have the authority to make a parole order relating to Mr Diano until 2015 due to the operation of section 93(1).

On 5 March 2014, the Western Australian Supreme Court of Appeal delivered its finding in the case of *Re Cock; Ex parte Diano* [2014] WASC 63 and confirmed the Prisoners Review Board's view that the operation of section 93(1) of the Sentencing Act 1995 meant that prisoners such as Mr Diano would not be eligible for parole in Western Australia despite the intent of the prisoners transfer act. Under section 26 of the Prisoners (Interstate Transfer) Act, Western Australia has accepted prisoners from other states over many years on the premise that interstate prisoners' sentences will remain the same as provided for under section 26. Until 2013, the Prisoners Review Board had continued to operate under this premise and considered the release of these prisoners at their earliest eligibility date as set by the original jurisdiction; thus, the proposed amendment to the Sentencing Act 1995 by the Sentencing Amendment Bill 2014 will match the legislation with what has been the custom and practice within Western Australia for many years.

I am informed that currently seven other interstate prisoners could be adversely affected in the same way as Mr Diano and there is therefore a need to amend the Sentencing Act 1995 to ensure that these prisoners are treated with the fairness that was meant to be afforded to them under the national transfer scheme. I have worked closely with the Minister for Corrective Services, as the minister responsible for prisons in Western Australia, to develop this bill so as to recognise the original court's sentences for these prisoners who have transferred from other states and territories. The bill before the house will ensure the smooth operation and legislative consistency between three acts: the Sentencing Act 1995, the Prisoners (Interstate Transfer) Act 1983 and the Sentence Administration Act 2003. In doing so, it will ensure that prisoners with translated sentences from other states and territories may be considered for parole eligibility at the time determined by the original court in the prisoner's original sentence.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 2003.]

Debate adjourned, pursuant to standing orders.