

**SENTENCING LEGISLATION AMENDMENT BILL 2013**

*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)** [9.43 pm]: I move —

That the bill be now read a second time.

In accordance with an election commitment at the 2008 Western Australian state election, amendments to sections 297 and 318 of the Criminal Code were made by the Criminal Code Amendment Act 2009, which prescribed mandatory sentences for persons convicted of assaulting specific categories of public officers when the assaults resulted in either bodily harm or grievous bodily harm. These public officers were police officers; prison officers as defined in the Prisons Act 1981; security officers as defined in the Public Transport Authority Act 2003; ambulance personnel; contract workers providing court security services or custodial services under the Court Security and Custodial Services Act 1999; and contract workers performing functions under the Prisons Act 1981. Subsequently, youth custodial officers appointed under section 11(1a)(a) of the Young Offenders Act 1994 have also been included by the Criminal Code Amendment Act 2013.

It is important that these amendments function as intended—that is, they deter violent attacks on public officers and therefore provide enhanced protection to those who put themselves in harm's way in order to serve the Western Australian population.

Earlier this year a case came to light that indicated problems with the 2009 amendments; namely, that a person convicted under one of these sections can be released on parole before serving his or her mandatory minimum sentence of imprisonment. I will not discuss that individual case at length, but what matters is that we set this right so that in future people sentenced to mandatory terms of imprisonment for assaulting public officers who protect our community will serve the full mandatory minimum term before being eligible to be considered for parole. This bill will achieve this aim by providing that all adult offenders sentenced under the mandatory sentencing provisions of sections 297 and 318 will not be eligible for parole until they have served the full statutory mandatory minimum sentence or the standard non-parole period, whichever is greater. The bill further provides that if an individual is serving terms for two or more of these offences, he or she will not be eligible for parole until he or she has served the aggregate of all the statutory mandatory minimum terms of imprisonment.

The amendments in the bill will apply only to adult offenders. The parole system exists in part as an avenue to re-integrate and re-socialise offenders into the community, and it is considered particularly important to young people. There was much criticism of the decision to include persons aged between 16 and 18 years in the 2009 amendments to the Criminal Code. The Liberal–National government stands by these provisions as it considers the safety of public officers to be paramount, but it does not propose to include young people under the age of 18 in the amendments currently before the Parliament.

This bill does not offend our justice system by operating retrospectively. That is, it preserves the position of any offenders sentenced prior to these amendments so that the normal rules surrounding parole will continue to apply to them. The amendments contained in the bill will, however, apply to all adult offenders convicted under the mandatory sentencing provisions in section 297 and 318 of the Criminal Code once the bill comes into operation. These amendments to the rules of eligibility for parole for particular offences will also apply to two other offences which attract mandatory minimum terms of imprisonment and which concern the infliction of bodily or grievous bodily harm.

The Road Traffic Act 1974 was recently amended by the Road Traffic (Miscellaneous Amendments) Act 2012 to include new penalties for attempting to escape police pursuit. Section 59 of the Road Traffic Act 1974 covers dangerous driving causing death or grievous bodily harm. Section 59(4A) provides that when this offence was committed in the circumstances of aggravation referred to in section 49AB(1)(c)—that is, while escaping police pursuit—a court must sentence the offender to a term of imprisonment of at least 12 months and not suspend the term of imprisonment. Section 59A of the Road Traffic Act 1974 covers dangerous driving causing bodily harm. Section 59A(4A) provides that when this offence was committed in the circumstances of aggravation referred to in section 49AB(1)(c)—that is, while escaping police pursuit—a court must sentence the offender to a term of imprisonment of at least six months and not suspend the term of imprisonment. These are serious offences and it is important that individuals be deterred from attempting to escape police pursuit, particularly when in control of a vehicle, given the potential for injury or death to the driver or to third parties. In view of the seriousness of these offences, the bill also provides that adult offenders sentenced to mandatory terms of imprisonment under sections 59(4A) and 59A(4A) of the Road Traffic Act will not be eligible for parole until they have served the statutory mandatory minimum sentence.

This bill will ensure that adult offenders convicted of either assaulting a public officer in prescribed circumstances under the Criminal Code or dangerous driving causing death, grievous bodily harm or bodily harm when the dangerous driving occurred to escape police pursuit under the Road Traffic Act 1974, that offender must serve the mandatory minimum sentence before being eligible for parole. The bill will thus contribute to protecting those public officers most vulnerable to violent attack and deterring individuals from fleeing police pursuit and thereby harming and endangering others. The bill is consistent with the government's approach to criminal law and with community expectations.

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 agreement to which the government of this 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 table the explanatory memorandum.

[See paper 1092.]

Debate adjourned, pursuant to standing orders.