BAIL AMENDMENT BILL 2007

Introduction and First Reading

Bill introduced, on motion by **Mr J.A. McGinty (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.A. McGINTY (Fremantle - Attorney General) [12.32 pm]: I move -

That the bill be now read a second time.

The Bail Act 1982 provides for the procedures for bail in criminal proceedings. In 1990, a panel consisting of the then Under Secretary for Law, the then Crown Prosecutor and an experienced criminal lawyer acting as a representative of the Law Society, was established to review the operation of the act and report its findings to the then Attorney General. Submissions were received from numerous stakeholders operating within the criminal justice system, including the then Chief Justice, Chief Judge and Chief Magistrate. The panel produced a report that came to be known as the Doig report. The Doig report considered the act on a section-by-section basis noting procedural difficulties that had been highlighted since the commencement of the act. Recommendations were made that aided the efficiency of the act. The Bail Amendment Bill 2007 implements the recommendations of the Doig report as well as addressing a number of other issues that have arisen since the report. The former and present Chief Justices of the Supreme Court and the present Chief Judge of the District Court have made valuable contributions on ways to improve the Bail Act. The bill also adopts recommendations for legislative change from a report by Stamfords Advisors and Consultants. The Stamfords report, entitled "Review of Best Practice and Innovative Approaches to Bail", was commissioned by the then Department of Justice and the Western Australia Police Service and is a "ground-up" review of bail in Western Australia. The review considered the role and purpose of bail with a view of developing a best practice model for bail.

Serious offences: A number of important amendments are proposed that relate to offenders charged with serious offences. Under the act, a serious offence is defined as an offence set out in schedule 2 of the act and includes wilful murder, murder, manslaughter, serious assault, sexual penetration without consent, robbery, burglary, stalking and others.

Mr Jason David Wimbridge was convicted of a number of serious offences. In 2005, he had an extensive criminal history dating back to 1992, including two prior convictions for armed robbery, and multiple stealing and drug related convictions. In November 2004, Mr Wimbridge was released on parole, having been in prison since 1998 for a number of offences including armed robbery. While on parole, Mr Wimbridge committed a further serious offence of armed robbery of a branch of the Bendigo Bank. In August 2005, Mr Wimbridge applied for bail in relation to the Bendigo Bank robbery. The prosecution opposed bail and described Mr Wimbridge as a consistent armed robber who was a danger to the community. Magistrate Barbara Lane granted bail despite Mr Wimbridge only being entitled to bail in exceptional circumstances. The magistrate then refused to release the transcript of proceedings, including the reasons for her decision. As a result, the Director of Public Prosecutions could not identify the reasons for her decision, which affected his capacity to appeal against the decision to grant bail. As Attorney General, and together with the Minister for Police and the Commissioner for Police, I felt this was a serious matter of public interest.

Mr R.F. Johnson: And the opposition.

Mr J.A. McGINTY: And the opposition.

An application was made to the Supreme Court to obtain a copy of the transcript of proceedings. Finally, in December 2005, it took an order of the Supreme Court to force Magistrate Lane to release the transcript. However, during this time, Mr Wimbridge committed further serious offences while on bail - a violent home invasion on 5 September 2005 that involved Wimbridge cutting the homeowner's tendons with a sword as torture in an attempt to get information about the location of cash Mr Wimbridge thought he had in the house; and further, on 19 September 2005, an attempted armed robbery of a jewellery store during which time Mr Wimbridge was shot by police investigating the robbery. The case highlights the importance of having the reasons published when dangerous criminals are released into the community. The system was always intended to be open and transparent.

Schedule 1, part C, clause 3A(1) of the act provides that where an offender commits a further serious offence while on bail or parole for a serious offence, bail may be granted only if exceptional circumstances can be shown. It is important for the administration of justice and judicial accountability that the reasons for granting bail in such circumstances be clearly identified. It is proposed to make compliance with the exceptional circumstances test more stringent by amending the act to ensure that the public knows the reasons when bail is

granted to a serious offender. This was always the intention and will promote an open and transparent system. Sections 26(1) and (2) will be amended to provide that where schedule 1, part C, clause 3A(1) applies, the court must complete a bail record form and make a record of the decision and the reasons for the decision. Section 26(3) already provides that the accused and the prosecutor may request the reasons where subsection (2) applies. This amendment will also facilitate an appeal against a decision to admit a schedule 2 accused to bail.

The bill also fixes a longstanding anomaly in relation to the list of offences in schedule 2 of the act. Currently, schedule 2 does not include the offence of attempted murder. There is no valid reason that attempted murder is not included in the list, particularly given that the offence of manslaughter and other offences that carry a lesser penalty are included. Therefore, the bill includes the offence of attempted murder in schedule 2. The bill also removes the requirement that a person charged with wilful murder or murder be automatically considered for bail. The act presently requires that a person charged with murder or wilful murder be brought as soon as practicable before a judge of the Supreme Court or, in the case of a child, before a judge of the Children's Court, to be considered for bail. In the majority of cases the accused or their counsel do not seek bail but the state incurs expenses in the transfer of accused persons from remote areas of the state to Perth. However, a child must still be taken before a judge of the Children's Court for consideration of bail, irrespective of whether an application for bail has been made, although as a result of other amendments such an appearance may take place by way of video link. Further, the bill sets out that a person charged with murder or wilful murder should be kept in custody unless there are exceptional reasons why that person should not be kept in custody. This will make the decision of the full Supreme Court in Lim v Gregson [1989] WAR 1 law in Western Australia.

Improving the system: The opportunity is also taken to improve the system in relation to bail by modernising the act to allow for audiovisual links, electronic mail and user-friendly bail forms. This innovative approach will improve the efficiency of the court. It is proposed that any application for bail be heard by way of video link or, if a video link is not reasonably available, by audio link. In addition, an interstate surety may enter into an undertaking utilising video link and facsimile transmission. In relation to postage, it is a current requirement of the act that notices are sent by registered post at a cost to the courts. Much of this mail is returned to courts uncollected. The act is to be amended to allow for service by ordinary post, or electronically if this is possible. The provisions in the act that create an offence when an accused or surety fails to notify change of address are retained. A new set of forms will be designed to complement the introduction of the substantive amendments. The forms have been redesigned to incorporate feedback received from users. The bill provides for this process.

Other amendments: In addition, there are a number of structural and procedural amendments as a consequence of the Doig report and consultation with the judiciary to improve the Bail Act. The formality of entering into a bail undertaking for minor offences, for example offences under the Road Traffic Act 1974, will be removed. The bill will provide an option, for judicial officers only, to dispense with bail for minor offences. The bill will remove the current obligation of a judicial officer to consider bail afresh on every occasion that the trial is adjourned. Currently a person may not be released from custody following a grant of bail until a certificate of release is signed by one of the persons authorised to sign the certificate. That category of persons is amended to include persons in charge of a lockup or prison.

The bill will clarify the responsible authority for instituting proceedings for failure to attend court in compliance with a bail undertaking. The bill will create a formal process of appeal to the Court of Appeal from a bail decision of a judge of the District Court, Children's Court or the Supreme Court. The bill amends the act to provide that when a bail decision is made by either the District Court or the Children's Court, neither the accused nor the prosecutor can apply to the Supreme Court and ask for a review of that decision. The changes will discourage any attempt to "bail shop". Currently, unless the court considers that there is a strong likelihood that a non-custodial sentence will be imposed, or that there are exceptional reasons that the accused should not be kept in custody, a convicted accused will remain in custody while the accused awaits a sentence to be handed down. Under the bill, additional factors, such as the offender's bail history on the relevant charge, the likelihood of a non-custodial sentence and whether or not the offender is undergoing or has been accepted into a recognised therapeutic program will also be considered.

This bill will ensure that the act operates more effectively. The proposed amendments are considered by the chief judicial officers of the Supreme, District and Magistrates Courts to be vital to the effective administration of justice. The courts, accused, sureties and parties to bail considerations as well as the wider community will benefit from the introduction of this bill. I commend the bill to the house.

Debate adjourned, on motion by **Mr T.R. Sprigg**.