BAIL AMENDMENT BILL 2022

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

Second Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [5.05 pm]: I move —

That the bill be now read a second time.

In late 2020, the McGowan government committed to examine the operation of the Bail Act 1982 and identify ways to better respond to bail applications for adults accused of sexual offences against children. I recognise the traumatic effect that the release on bail of alleged abusers can have on their victims and I believe it is critical that we emphasise the importance of, and seek to mitigate, this trauma whenever we can. This is especially the case when the alleged victim is a child. That is what the Bail Amendment Bill 2022 seeks to achieve. Some in the community have called for a mandatory denial of bail for adults accused of sexual offences against children. I remind members that the very foundation of our justice system is the presumption of innocence. The Bail Act operates in general to preserve this principle, while allowing the bail decision-maker to consider the risks should an accused person be released. A presumption against or mandatory denial of bail is an extraordinary step with wideranging ramifications for not only the justice system, but also the remand population of our prisons, so much so that even for alleged murder there is no mandatory denial of bail. In drafting this bill, the government has had to balance these principles with the desire to improve protections for child victims. I now turn to its provisions in more detail.

Firstly, the bill will delete the definition of "serious offence" from section 6A of the Bail Act. Section 6A permits an authorised officer—a police officer or a justice; that is, a justice of the peace—to allow an accused person to be released without bail and served with a summons or court hearing notice for a simple offence or an indictable offence that is not serious for the purposes of the definition. The definition in section 6A refers to an indictable offence attracting a penalty of imprisonment for five years or more or life. However, there are some child sexual offences that could attract penalties of less than five years' imprisonment, such as indecent dealing with a child over 13 and under 16 years of age. To avoid the possibility of a person accused with such an offence from being released without bail by an authorised officer or justice, the bill will delete the definition of "serious offence" from section 6A of the Bail Act. This means that the definition of serious offence at section 3 will apply. This amendment will also provide for consistency of the definition of this term in the Bail Act. It bears noting that section 6A(4) remains in force and the decision-maker will continue to consider matters listed there before being able to issue a summons for any offences that do not fall under the definition of serious offence. These are matters such as whether the accused would endanger another person's safety or property or would interfere with witnesses. I will talk more about serious offences shortly.

Secondly, the bill will provide for a bail decision to be deferred for up to 30 days to allow a bail decision-maker to consider what, if any, bail conditions should be imposed to enhance the protection of an alleged victim of an offence, where that offence is a sexual offence and the alleged victim is under 18 years of age when the case for bail is to be considered—put simply, a sexual offence against a child victim. This builds on reforms previously introduced by the McGowan Labor government in the Family Violence Legislation Reform Act 2020, which allowed for a similar deferral of bail to consider conditions to protect alleged victims where they are in a family relationship with the accused.

Thirdly, and most importantly, the bill will give extensive guidance to bail decision-makers when considering bail. Those considerations include having regard to the conduct of the accused towards the alleged victim and their family members since the time the offence was alleged to have been committed, to allow a bail decision-maker to determine whether there is a pattern of behaviour, such as grooming, controlling or coercive conduct; and extending this consideration to the conduct of the accused towards victims and family members of victims of offences they have been convicted of in the past—again, to examine the accused's behaviour and assist in the development of a risk profile to inform the decision as to whether they should be released on bail.

I note that these new considerations will extend to any offence, not just child sexual offences. This bill will introduce new bail considerations particular to child sexual offences, and I will talk to those considerations now.

Part C of schedule 1 to the Bail Act outlines the manner in which the jurisdiction to grant bail is to be exercised. Clause 1 provides that among the matters a judicial or authorised officer must have regard to is the consideration of whether, if an accused is not kept in custody, they may fail to appear in court in accordance with a bail undertaking; or commit an offence; or endanger the safety, welfare, or property of any person; or interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

New clause 3AA in the bill provides that in turning their minds to the question of whether an accused will endanger the safety, welfare or property of any person if not kept in custody, where the offence is a sexual offence against a child victim, a bail decision-maker must have regard to the following matters: the age of the child victim; the age of the accused; whether the child victim is in a family relationship with the accused; the importance of safety, continuity, security and stability in the child victim's living arrangements and family and community relationships; and the physical and emotional wellbeing of the child victim.

It is important to note that bail decisions can be made by both judicial officers and authorised officers. Most commonly, authorised officers are police officers. The Western Australia Police Force was consulted throughout the drafting of this bill and has indicated its support for it.

At the time when a police officer may be required to consider bail, they may not have comprehensive information before them in respect of every new bail consideration, particularly matters such as the child victim's physical and emotional wellbeing or detailed information about their living arrangements, family and community relationships. Bail decision-makers exercise the jurisdiction, and when applicable, must consider the new bail considerations, with the information they have to hand. This is where section 9 of the Bail Act, which I spoke to earlier, comes in—allowing a bail decision-maker to defer consideration of bail for up to 30 days in order to specifically consider what, if any, bail conditions could be imposed to enhance the protection of a child victim of a sexual offence. This ability to defer consideration of bail does not limit an accused's right to be brought before a court as soon as is practicable.

Additionally, the bill will introduce an express provision for elevating the voices of child victims, where they have raised concerns for their safety and welfare if the accused is not kept in custody. New clause 3AB provides that where a bail decision-maker is considering bail for an accused charged with a sexual offence against a child, and the child victim or a family member or police officer investigating the offence informs the prosecutor that the victim has expressed a concern about their safety and welfare if the accused is not kept in custody, the prosecutor must inform the bail decision-maker of that concern and the reasons for it, so far as practicable. The bail decision-maker must have regard to that information. The introduction of these new bail considerations will ensure that concerns specific to child victims of alleged sexual offences are front of mind for bail decision-makers.

The bill will also amend clause 4 of part C, schedule 1, which deals with bail after conviction for persons awaiting sentence. This amendment will require a bail decision-maker to exercise their discretion to grant bail in these circumstances having regard to the fact that the accused has been convicted of the offence and the probable method of dealing with them for that offence and any pending offence. This is in addition to the pre-existing considerations under clause 1, some of which I have already spoken to and other matters the decision-maker considers relevant.

Finally, the bill will expand the list of serious offences in schedule 2 of the Bail Act to include a range of serious offences on the WA and commonwealth statute books, including WA child sexual offences not previously captured and commonwealth offences such as murder. Members will recall that I spoke earlier about the deletion of the section 6A definition of serious offence; this will result in a single definition for this term as set out in section 3 of the Bail Act. A serious offence is an offence listed in schedule 2 or an offence against section 51(2a)—a failure to comply with a condition of a bail undertaking. When an accused person who is already on bail or an early release order for a serious offence is charged with committing a second serious offence, a presumption against bail being granted to that accused person applies under clause 3A of part C, schedule 1 to the Bail Act. This means that the bail decision-maker must be satisfied that there are exceptional reasons why the accused should not be kept in custody.

I know the Western Australian community has been waiting for this bill. I also know that some will feel that it does not go far enough. This bill has been subject to extensive consultation with the subject matter expert stakeholders to ensure the right balance is struck between elevating the voices and concerns of child victims of sexual abuse and maintaining the precepts of our justice system. I hope that this bill will go some way towards addressing these complex issues.

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 1504.]

Debate adjourned, pursuant to standing orders.