

SENTENCING MATRIX BILL 1999

Committee

Resumed from an earlier stage. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

Clause 1: Short title -

Progress was reported after the clause had been partly considered.

Hon PETER FOSS: I understand substantial amendments may be made later in the debate. Perhaps we should not complete consideration of the short title until we have debated those amendments. I suspect Hon Mark Nevill would like to speak on this clause. After he speaks I will move that we defer the consideration of the clause.

Hon MARK NEVILL: Yesterday I discussed this Bill in some detail with Hon Nick Griffiths to find out the Australian Labor Party's position. We discussed divisions 1 to 4 and I said that perhaps we could retain the reporting provisions but remove the matrix. After returning to my office and ploughing through the Bill, I came to the conclusion that it would be a daunting exercise to draft the amendments in the time available - I thought the Bill would be dealt with last night.

An argument could be put to retain the reporting requirements. The courts have had the power to provide guideline judgments for a number of years but have not exercised that power. Justice Spigelman, the Chief Justice of New South Wales, produced a paper dealing with guideline judgments and their effectiveness in that State. He said that is the way to go rather than using mandatory sentences, matrixes and so on. That appears to be a reasonable path to follow. There may be a variation of opinion about the effectiveness of guideline judgments, but I am not in a position to discuss that. The courts in this State have not made use of guideline judgments, but if they had, they might have pre-empted the perceived need for this Bill.

The poor quality of statistics provided in the criminal justice area should be noted. The Legislation Committee's report refers to the statistics published by the Crime Research Centre of the University of Western Australia. Those statistics are at least two years old when they are published and, even when they are published, they are not very reliable because information is omitted. Often the aboriginality of an offender is not recorded. We should have real-time reporting of statistics - that is, the statistics should be available within a month. We should be able to see what is happening from the point of arrest to the completion of a sentence. It should be a seamless system. The Attorney General has said that he is not getting the statistics he needs from the courts. There may be a number of reasons for that. Those statistics should be provided, just as the Ministry of Justice should provide information to judges on the effectiveness of their sentencing.

During our gathering of evidence, I asked the former Chief Stipendiary Magistrate, Con Zempilas, what alternatives he had when he was sentencing people - more precisely, what drug rehabilitation courses or centres were available in Perth - and he struggled to name one. I asked him, to some effect, whether he was aware of any others, and he said, "I am a magistrate, not a priest." He did not regard what happened after he had convicted a person as any of his business or interest. It should be the business of magistrates and judges to know the effectiveness of the sentences that they hand out, and there should be reporting back. If we are not getting proper statistics from the court, we should be getting them. I am not certain that this regime, although it can be set up by regulation, will give us those proper statistics. Those statistics will need to be useful and collected in a way that is not particularly onerous for people, otherwise everyone will end up pushing paper and no-one will be doing any effective work.

It has been argued that the reporting requirements should be retained. I do not support matrix sentencing. I do not believe that we should fetter the discretion of judges to that extent. We have had some examples of ridiculous sentences. I have no doubt that the judiciary reacts to public opinion; we need look only at the Mickelberg sentence, and at the sentence that was given to Robin Greenburg from Western Women, who has probably just finished her stretch in jail now, whereas Alan Bond got seven years, which was reduced to four. I have said to members in this House previously that I believe Alan Bond should have had his passport taken off him for 25 years, and he should have been given only two years' jail but be made to wash dishes in an aged persons home for the next 10 to 15 years. That would have been at less cost to the State and would have been a more appropriate sentence for the devastating effect that he had on the life savings of many pensioners and other people. We need to start thinking about having appropriate sentences rather than just jailing people at a massive cost to the community. The cost should be to the person, and more responsibility should be placed on the person.

I am proposing that we keep the reporting requirements but scrap the matrix. That will require a change to the short title and will probably mean that the debate on clause 1 will need to be adjourned. The motion put by the

Attorney will have the effect of striking out proposed division 3, which basically is the matrix, and a consequential amendment will need to be made to rid the Bill of any matters relating to proposed division 3. There is not a lot of tangible benefit in the matrix system. We should change our focus from a law and order approach to education, community work and restriction of activities, which is what I have said should have applied in the case of Bond.

Hon Derrick Tomlinson: What about the confiscation of profits in a case like Bond?

Hon MARK NEVILL: I would support that, but the problem is that the assets probably were not in his name.

Hon Peter Foss: You could still follow them under that Bill.

Hon MARK NEVILL: I am not sure whether that can be achieved under the scope of that legislation. It seems to me that white-collar crime is not regarded as seriously as a lot of other crime. That does not mean to say that we should put people into jail. However, we have had a \$2m fraud at the Balangarri community at Turkey Creek. The Aboriginal and Torres Strait Islander Commission has put in a brief to the Federal Police. However, I am told the Federal Police will not touch the case because it is only \$2m; it must be \$5m before it will touch it.

The person who was involved in that is now working for the United Nations in Dili. That person will be back here in a couple of years. Progress will not be made in those areas until some of those crooks are nailed. At Balgo, \$450 000 was fraudulently transferred from Aboriginal and Torres Strait Islander Commission accounts to a private company. I could not get the Australian Securities and Investments Commission, or anyone else, interested in that fraud. I am getting off the track; however, it seems to me that white-collar crime is treated leniently. If a poor old working class battler gets in trouble, he gets it in the neck.

Hon PETER FOSS: I would hate Hon Mark Nevill to think that I suggested that division 3 should be deleted. I am merely providing for what would happen if it were. I entreat the House to keep division 3. However, if it does go, I do not want to be left with a Bill that must be gone through piecemeal and made up with consequential amendments. I do not agree with the proposal to delete it; however, I am a realist and I am providing for what must happen if it is deleted. I move -

That further consideration of clause 1 be postponed until after consideration of clause 8.

Question put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Part 14A inserted -

Hon PETER FOSS: I suggest that the divisions be put separately. I am in the hands of the House. I suggest that the easiest way to deal with the insertion of part 14A is to put it division by division or section by section. I suspect that by division might be the easiest way.

Division 1 -

The CHAIRMAN: I accept the advice of the Chamber. I will put the clause division by division. We are considering clause 4. The question is that division 1 of clause 4 be agreed to.

Hon N.D. GRIFFITHS: I move -

Page 4, lines 14 to 20 - That the lines be deleted.

This deals with the content of a sentencing report. It is that part of a sentencing report that lends itself to the possibility - I am not saying the certainty - of sentencing being treated as a mathematical exercise.

Hon PETER FOSS: The Sentencing Act already states in section 6 -

- (1) A sentence imposed on an offender must be commensurate with the seriousness of the offence.
- (2) The seriousness of an offence must be determined by taking into account -
 - (a) the statutory penalty for the offence;
 - (b) the circumstances of the commission of the offence;
 - (c) any aggravating factors; and
 - (d) any mitigating factors.

Then it moves on to "The sentencing process" and section 34 -

A court sentencing an offender must, if the offender is personally present in court or appearing before the court by video link under section 14A, explain to the offender, in language likely to be understood -

- (a) the effect of; and
- (b) the obligations of the offender and the consequences of not complying with them that result from,

the sentence and any order in addition to the sentence.

There is already an obligation on the court to take into account the maximum penalty, and of course the minimum penalty if there is one, and each of those mitigating and aggravating factors. It is also incumbent on the court to indicate to what degree it took those issues into account. Hon Nick Griffiths is suggesting that it needs to be put in a mathematical form.

Hon N.D. Griffiths: I referred to the possibility. I have not exaggerated in my comments, nor have I done so in the minority report, nor in my contributions to the main body of the report.

Hon PETER FOSS: I am not saying that the member is exaggerating. I do not remember using the word "exaggerate". I said that the member referred to the possibility -

Hon N.D. Griffiths: Listen to my words.

Hon PETER FOSS: The member should listen to my words, which are also carefully chosen. Hon Nick Griffiths referred to the possibility of its being put in a mathematical form. The interesting thing is that the court is already looking at a graduation of the degree of mitigating and aggravating factors, because the form that was annexed to the committee report outlines the various aggravating and mitigating factors in degrees of importance.

Hon N.D. Griffiths: That is a method. The concern is what may become a method. We are looking at the power given to the Executive in respect of making regulations.

Hon PETER FOSS: Appendix 11 states, under "Risk of Reoffending" -

- () Low risk of reoffending
- () High risk of reoffending

And under "Remorse Shown" -

- () Remorse uncertain
- () Genuine remorse exhibited
- () Demonstrated no remorse

Hon N.D. Griffiths: Those are matters of difference. I am looking at the granting of power to the Executive which may then do what I consider to be an abuse; namely, requiring a degree of mathematical precision. I know there are arguments to the contrary, but I would like the Attorney General to meet that particular argument, rather than look at the worst-case scenario.

Hon PETER FOSS: I do not have quite the same concern -

Hon N.D. Griffiths: I know the Attorney does not have the same concern.

Hon PETER FOSS: - to having it mathematically expressed. I do think it is important, if we are to get value out of the report, that the court indicates the degree to which those factors are taken into account. One cannot merely say, "Youth, age of offender, intoxication", and various other matters, without indicating how much one paid attention to it - whether one thought it was a major factor or a minor factor.

Sitting suspended from 6.00 to 7.30 pm

Hon MARK NEVILL: I listened with great interest to the debate on this amendment but I do not know if I am any the wiser after having done so. I do not necessarily agree with Hon Nick Griffiths that under proposed section 101D sentencing will become a mathematical exercise.

Hon N.D. Griffiths: I do not say it will; I said it has the potential to do so.

Hon MARK NEVILL: I stand corrected. It has the potential to become a mathematical exercise. I am not sure I understood the Attorney General's arguments that it would not be the case. The provision relates to whether a sentence is more, or less, severe. The reasons for the severity of the sentence are useful comments to have in a sentencing report. I support the retention of proposed section 101D in division 1.

Amendment put and negatived.

Hon N.D. GRIFFITHS: I move -

Page 4, lines 21 and 22 - To delete the lines.

I note what the committee agreed to on proposed paragraphs (a) and (b), and what is set out in proposed paragraph (c) goes too far.

Hon MARK NEVILL: I agree with the Deputy Leader of the Opposition. Making the proposed deletion will not preclude judges from including in a sentencing report other information that they consider relevant in reaching a decision. This is one of those catch-all provisions which appears to have been put there to cover anything that has not been thought of. If something is so important that judges are not including it in the sentencing report, perhaps the Bill should be amended to include it. This proposed paragraph is far too broad, and gives the bureaucrats a field day, while judges fill out sentencing reports instead of getting on with the job.

Hon PETER FOSS: The Government does not agree with the amendment.

Amendment put and passed.

Division 1, as amended, put and passed.

Division 2 -

Hon HELEN HODGSON: This is the division that allows an indicative sentencing method to be prescribed. I am concerned that this division, in particular proposed section 101F, still uses regulations to prescribe a method to be applied by a court to arrive at an indication of the appropriate sentence. In comments in the committee report, this aspect of the Bill was dealt with in a fairly short chapter. This in no way reflects on the work of the committee, except to say that it was expected by the Attorney General that this would initially match up with the sentences that judges are handing out at the time. I do not see how this indicative sentencing relates back to sentences judges are currently handing down, because it gives the Executive the power to set regulations for what the indicative sentence should be. My concern is that there will be a ratchetting up of sentences, which will have a serious impact on our prison system.

That is an undesirable outcome. This part of the Bill goes far beyond the reporting requirements of division 1. Division 2, which is the second step of the matrix, will result in longer sentences being handed down, and I cannot support that part of the Bill.

Hon PETER FOSS: I do not see that. The only consequence of an indicative sentence is the requirement on judges to explain why they did not follow it. The court is free to impose any sentence it likes. The essential part of this division is that judges can do whatever they like. They have no limitation on imposing a sentence, except of course the maximum prescribed by Parliament. However, if their decision is different from the indicative sentence they must explain why. This is a perfectly simple thing to do.

Hon MARK NEVILL: I do not agree with Hon Helen Hodgson. This provision will highlight sentences that are right over the top; and, presumably, they will be appealed. I find it rather ironic that the member is concerned about increasing sentences. How else shall we fill up the 750-bed Acacia Prison, which the member was instrumental in allowing to be built?

Hon N.D. GRIFFITHS: I should point out that division 2 will have no effect on the number of people in prison, nor will it increase or lower penalties, whether or not it becomes part of the law.

Hon Ken Travers: Only the Labor Party will protect the seniors of this State.

Hon N.D. GRIFFITHS: As Hon Ken Travers quite properly points out, the Labor Party has a primary interest in protecting the seniors of this State, and everybody else in this State, from the criminality that is rife in our community. I do not want to venture into the lawlessness that evidenced itself most graphically in Ora Banda recently, as a result of the failure of this Government's law and order policies. I am not interested in wasting time. Labor has never been involved in the sort of filibustering that we have seen fairly recently in the work of this committee. The reasons that we think this division is inappropriate - although, on the face of it, it is not as bad as some other parts of this Bill - are set out in the committee report. I remind the Attorney General that the minority report deals only with those areas in which it dissents from the committee report. It did not dissent from the body of the report. I will not venture into the deliberations of the committee, but there was no dissent at all in the body of the report, save for the recommendations.

Division 2 put and passed.

Division 3 -

Hon MARK NEVILL: My support for divisions 1 and 2 was predicated on my opposition to division 3, which I will vote against.

Hon PETER FOSS: I have a number of amendments on the Notice Paper to this part. It will be easier if we vote on division 3 before I move those amendments. If by some strange means it is passed, I will recommit this division after the report.

Division put and a division taken with the following result -

Ayes (14)

Hon M.J. Criddle	Hon Ray Halligan	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Muriel Patterson (<i>Teller</i>)
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	
Hon Peter Foss	Hon M.D. Nixon	Hon W.N. Stretch	

Noes (15)

Hon Kim Chance	Hon G.T. Giffard	Hon Norm Kelly	Hon Ken Travers
Hon J.A. Cowdell	Hon N.D. Griffiths	Hon Mark Nevill	Hon Giz Watson
Hon Cheryl Davenport	Hon Tom Helm	Hon J.A. Scott	Hon Bob Thomas (<i>Teller</i>)
Hon E.R.J. Dermer	Hon Helen Hodgson	Hon Tom Stephens	

Pairs

Hon Max Evans	Hon Christine Sharp
Hon N.F. Moore	Hon Ljiljana Ravlich

Division 3 thus negatived.

Division 4 -

Hon PETER FOSS: A number of amendments will be made by the Clerk; however, I wish to make one amendment consequent upon the committee report. I have handed up a written notice of the amendment. I move -

Page 17, line 6 - To delete the table.

Hon N.D. GRIFFITHS: The Attorney referred to the committee report. I know it is a committee report and it is a committee recommendation with which I disagree. I disagreed with the recommendation for the reason that the table is an absolute nonsense and it should remain in the Bill to demonstrate the absolute nonsense of the Attorney's Bill - Foss' folly No 5.

Hon MARK NEVILL: I agree with the Attorney General. I read the table and was more confused than when I started.

Amendment put and passed.

Division 4, as amended, put and passed.

Division 5 put and passed.

Clause, as amended, put and passed.

Clause 5 put and passed.

Clauses 6 to 8 put and passed.

Postponed clause 1: Short title -

Hon PETER FOSS: I move -

Page 2, line 3 - To delete "*Sentencing Matrix Act 1999*" and substitute "*Sentencing Amendment Act 2000*".

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.