

SENTENCING AMENDMENT (ADJUSTMENT OF SENTENCES) BILL 2000

Second Reading

Resumed from 6 September.

HON N.D. GRIFFITHS (East Metropolitan) [4.01 pm]: The Australian Labor Party is keen to support the passage of this Bill, which seeks to amend the Sentencing Legislation Amendment and Repeal Act 1999. This Government has been derelict on this issue. In September 1996, as a pre-election move, the Attorney General said in a media release that he would set up a committee to deal with the truth-in-sentencing issue. Eventually, a report was handed down in March 1998. That report is referred to as the Hammond report. Eventually, after the Australian Labor Party had raised the matter on many occasions in this House, in the other place and elsewhere, legislation was introduced in the Legislative Assembly in late 1998. Eventually, the matter passed the Legislative Assembly and was brought on for debate in this House, and the legislation passed its second reading in May 1999. Eventually, we got around to the committee stage of the Bill in October 1999.

The Australian Labor Party has treated the truth-in-sentencing issue on a bipartisan basis. We have been urging the Government to act for a considerable time. The truth-in-sentencing legislation, which the House passed in late 1999, for the most part has not come into operation, and that is what this Bill is about. This Bill seeks to deal with the deficiencies in that legislation. Those deficiencies are such that the truth-in-sentencing legislation has not come into operation. This Government is not dinkum when it comes to law and order. In the dying stages of its administration, it has failed so far to pass the truth-in-sentencing legislation. The Government engages in a lot of hype, but it fails to deliver. We are very concerned that the truth-in-sentencing legislation is not up and running. We are keen to have that legislation up and running, and we do not want to delay that legislation any further. However, we hope that the people of Western Australia will note that this Government says it will do much but in the end delivers very little.

HON HELEN HODGSON (North Metropolitan) [4.04 pm]: As has been pointed out, this Bill seeks to amend the Sentencing Legislation Amendment and Repeal Act. That Act was passed last year to amend the sentencing regime, specifically by removing the provision for automatic remission. One of the reasons for the difficulties in implementing this legislation is that this House insisted on retaining a form of home detention and work release orders. I was a party to that, and I moved a number of the amendments; others were moved by the Attorney General. The drafting was undertaken by parliamentary counsel and was a prolonged process. However, in the course of that process some oversights were made that came to light only after the legislation had been implemented. I am pleased that the legislation will now be fixed so that it will work in the way this House intends; that is, with the retention of home detention and work release orders.

This Bill deals with two areas: Transitional provisions for offenders who are serving terms of imprisonment imposed before 4 November 1996; and the operation of what I will call, in shorthand, the two-thirds rule, which is that the sentence cannot be more than two-thirds of the sentence that would have been imposed under the previous regime. When we first looked at how this Bill would address the two-thirds rule, we scratched our heads and said we could see the problem, but we could not see how this new legislation would fix it. However, when we looked at the Supplementary Notice Paper that was circulated yesterday, we said, "That is much better. We can now see the way in which the fix is intended to operate." That Supplementary Notice Paper answered a number of our questions about the application of this legislation. However, it left unanswered a number of issues. The first issue is that there are a number of sentences to which the two-thirds rule will not apply. The issue about which I am most concerned, and about which I have spoken in this place previously, is the application of the two-thirds rule to the home burglary rules, commonly known as the mandatory sentencing regime.

The mandatory sentencing regime is specifically excluded from the two-thirds rule. I can see the reason for that, given the Government's policy, but I need to express at this time that we do not approve of the mandatory sentencing regime; therefore, the fact that it is not encompassed in this Bill causes us some concern. Having said that, the Bill does fix an anomaly that was raised when the new regime came into force; namely, that a juvenile would be sentenced for a longer term under that regime than would an adult for the same crime. However, this Bill fixes that anomaly in the opposite way to what we would have preferred, because it will lengthen sentences rather than shorten them.

Hon Peter Foss: It does fix it, though.

Hon HELEN HODGSON: As I said, we will need to agree to disagree on the underlying policy behind that provision, but it is important to put on record that it is contrary to our view of that issue.

Another exclusion is that the two-thirds rule will not apply to a person on a suspended sentence who has committed an offence to which section 80 of the Sentencing Act applies.

Hon Peter Foss: A further amendment to that is coming through, and I do not think the wording of that is too good either. Parliamentary counsel have said they are unhappy with the way that is worded.

Hon HELEN HODGSON: I will be interested to see that amendment, and we can examine that more closely in committee.

The Bill also contains an interesting provision that will go some way towards addressing the concerns of Hon Nick Griffiths about the time it has taken to fix this problem. It states that the Governor, which essentially means the Government, will have the power to make any regulations that are necessary to fix a problem that will prevent this regime from operating in the way that it is intended to operate. If that had been in place a year ago, perhaps the legislation would have been proclaimed and been operational sooner.

Hon Peter Foss: The result is better legislation.

Hon HELEN HODGSON: If it is better, I will be pleased to see the improvements. I place on the record that, as a general rule, the Australian Democrats do not like clauses in Bills which leave so much discretion for regulations to be made. The saving grace is that regulations are tabled in this place. Any regulations tabled in connection with this legislation will be carefully considered to ensure that they only correct an anomaly and do not go into the realm of extending the legislation or setting new laws. The Australian Democrats will support the Bill. Even though we disagree on principle with a couple of matters of policy, relating to sentencing legislation and the Criminal Code, that does not prevent us supporting this Bill, inasmuch as it will correct a problem.

HON GIZ WATSON (North Metropolitan) [4.11 pm]: The Greens (WA) will support this Bill. My only comment is that proceeding with haste often results in legislation that needs amendment. That is of concern, particularly with Bills dealing with justice and sentencing. It is unfortunate that this Bill is necessary and that the anomaly was not spotted in the original legislation.

HON PETER FOSS (East Metropolitan - Attorney General) [4.12 pm]: I thank members for their support for this Bill. I note that, as usual, Hon Nick Griffiths criticised me. He criticises me whatever I do; when I consulted I was criticised for taking too long, and when the legislation was finally introduced I was criticised for proceeding too quickly and not consulting enough.

Hon N.D. Griffiths: You have been caught short again.

Hon PETER FOSS: I am used to Hon Nick Griffiths' complaining, no matter what I do.

In response to the comments of Hon Helen Hodgson, even though the amendments relating to work release orders and home detention were introduced and slightly upset the Government's objectives, and were not a recommendation of the Hammond committee, the legislation will be better as a result of the amendments. Despite the fact that it has led to this delay, it is worthwhile to make that improvement to the legislation. The result is that the adjustment provision is better than the provision in the original Act. It has become better because once the amendments were added, a reappraisal was needed of the manner in which it had been dealt with. It has resulted in a simpler and slightly different regime, but I think it has led to a clearer and better regime. Perhaps it is not as pure in its format as the original provision, but it shows that it can be improved.

The difference between this legislation and much of the other legislation passed in this House is that we know the courts will examine the legislation several times a day. This House passes much legislation that may go through its entire life, be repealed and never receive a single consideration. However, this Bill will be considered many times a day in the courts. Some of the difficulties emerged because as soon as the Government made the amendments and referred them to the people who must put them into effect, they highlighted certain aspects. The worst course would have been to put them into effect before receiving comments from the courts, because then the problems would have appeared in the courts.

The net result shows that the legislative process works, firstly, when this Chamber makes amendments such as those, which are contrary to the recommendations of the Hammond committee. They were good recommendations, and I am glad the Legislative Council accepted them. They will result in better and more substantive legislation. Secondly, there are processes of Parliament that ensure legislation is not put into effect until we are sure it will work. Thirdly, the process of going through the legislation again can work appropriately to achieve a good result. Although it has taken time, the contributions members have made in the course of the two debates on this Bill have indicated that the process works and that, following appropriate scrutiny, the Legislative Council can pass good legislation based on good principle.

Question put and passed.

Bill read a second time.

Committee

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

Clauses 1 to 3 put and passed.

Clause 4: Section 15 amended -

Hon PETER FOSS: I move -

Page 2, after line 8 - To insert the following new subclause -

- (1) Section 15(1) is amended by deleting “consider whether the sentence it proposes would, by reason only of the new provisions, result in the offender spending more time in custody than he or she would have spent” and inserting instead -

impose a fixed term that is two thirds of the fixed term that it would have imposed

Instead of a somewhat theoretical clause, this provides a direct calculation clause which states that the automatic remission for which people would have been eligible in jail will be taken off by the judge in the court. It is a simple proposition that all members can understand.

Amendment put and passed.

Hon PETER FOSS: I move -

Page 2, line 9 - To delete “is” and insert instead -

and (3) are

Page 2, line 9 - To insert after “repealed” -

and the following subsections are inserted instead —

- (2) For the purposes of subsection (1) —
 - (a) it does not matter that the court may be proposing to suspend the fixed term under Part 11 of the *Sentencing Act 1995*; and
 - (b) a reference to imposing a fixed term includes a reference to dealing with an offender under section 80 of the *Sentencing Act 1995* in respect of a sentence of suspended imprisonment imposed under the old provisions.
- (3) Despite subsection (1), if the sentence required by that subsection would contravene section 86 of the *Sentencing Act 1995*, the court must use one of the sentencing options in section 39(2)(a) to (e) of that Act instead of sentencing the offender to imprisonment.

Amendments put and passed.

Hon PETER FOSS: I move -

Page 2, lines 17 to 20 - To delete the lines and insert instead -

- (d) a court is imposing a term under section 401(4) of *The Criminal Code*; or
- (e) a court is sentencing an offender to a term that, under the old provisions, would have been a prescribed term within the meaning of section 85 of the *Sentencing Act 1995*.

This is the amendment that has been changed in paragraph (d), which now states that a court is imposing a sentence under section 401(4) of the Criminal Code.

Amendment put and passed.

Hon PETER FOSS: I move -

Page 2, line 22 to page 3, line 9 - To delete the lines.

I am sure Hon Helen Hodgson, along with other members, will be happy to see this provision deleted, and I think it will improve the legislation.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5 put and passed.

New clause 6 -

Hon PETER FOSS: I move -

Page 6, after line 23 - To insert the following new clause -

6. Section 25 amended

After section 25(3) the following subsection is inserted -

“

- (4) The Governor may make any regulations that are necessary or convenient for preventing any doubt or difficulty from arising as to the application or operation of section 15 or for resolving any doubt or difficulty that may have arisen in that regard.

”

New clause put and passed.

Title put and passed.

Report

Bill reported, with amendments, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon Peter Foss (Attorney General), and transmitted to the Assembly.