BAIL LEGISLATION AMENDMENT BILL 2016

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) [12.23 pm]: I move —

That the bill be now read a second time.

The Bail Legislation Amendment Bill 2016 amends the Bail Act 1982, the Courts and Tribunals (Electronic Processes Facilitation) Act 2013 and the Young Offenders Act 1994. The bill implements recommendations from the review of the Bail Act, during which the views of key interest groups, particularly judicial officers, were sought, and it demonstrates the government's commitment to reducing where appropriate the number of people in custody on remand, which is a part of the government's deaths in custody and Aboriginal overrepresentation in the justice system project.

In June 2009, the Western Australian State Coroner handed down his findings in relation to the death in January 2008 of Aboriginal elder the late Mr Ward while in transit in a prison van. During the inquest, the coroner heard the circumstances of Mr Ward's arrest and the reasons for the denial of bail and concluded, among other things, that Mr Ward suffered significant "deficiencies in the initial approach to bail", which led to his transportation to Kalgoorlie. In response to the coroner's findings and recommendations in relation to the Ward inquest, the former Attorney General announced a review of the Bail Act and bail processes to ensure that current processes promote efficient and effective administration of justice, while being mindful of reducing the risk that an accused will unnecessarily be remanded in custody, particularly those living in remote communities. The amendments introduced by the bill are further improvements designed to achieve those objectives.

Firstly, the bill introduces provisions aimed at reducing the transportation of children and young people from regional areas to Perth for remand in custody. It does this by ensuring that a decision by an authorised officer or justice of the peace to refuse bail for a child in a regional area who is in custody for an offence other than murder will be reviewed by a judge or magistrate as soon as practicable and before the child is transported to Perth.

Secondly, the Bail Act contains provisions designed to ensure the accused person's appearance in court when required. One such mechanism is the power of a bailing authority to require a surety who undertakes that he or she will forfeit a specified amount of money if the accused breaches bail by failing to attend court. The concept is based on the assumption that the accused person values the relationship with the surety and will modify his or her behaviour so as to protect that person from losing the amount. However, in many cases, an accused has not been released solely as a result of an inability to find a surety or one prepared to meet his or her obligations. The bill provides for an application to be made to vary the amount of, or remove, a surety condition. Thus, where a surety is set in an amount that prevents an accused person from being released on bail—for example, the amount exceeds the proposed surety's capacity to pay—it will be open for an application to be made by or on behalf of the accused for the amount of the surety to be reduced or for the surety to be removed.

Thirdly, at clause 6, the bill amends the Bail Act to make it clear that a judicial officer has the discretion to dispense with bail for simple offences and that the accused may be released on an approved notice issued in accordance with the provisions of the Criminal Procedure Act 2004 so that they can be convicted in their absence if they do not appear when required. This will prevent warrants being issued for the arrest of people who do not attend court in respect of simple offences.

Section 43(7) of the Young Offenders Act 1994 is also amended to give the Children's Court further options in the case of children—namely, to issue a fresh notice to attend or a summons. This will provide the Children's Court with an alternative to issuing a warrant to apprehend the child and bring him or her before the court. It is also consistent with the principle that detention is an option of last resort.

A number of the amendments proposed in the bill are aimed at providing additional safeguards for victims of domestic violence and victims generally. Clause 14 of this bill ensures that the existence of any prior or current violence between the accused and the proposed surety be included as a matter relevant to approval of sureties in section 39 of the Bail Act. The amendment addresses the potential for victims of domestic violence being pressured or coerced into entering into surety arrangements on behalf of their currently or formerly abusive partners. The underlying principle is that efforts should be made to ensure so far as possible that people do not enter into surety arrangements under duress.

The bill amends schedule 1, part C, clause 3 of the Bail Act to provide that in the case of a serious offence, the views, if available, of any alleged victim of the offence or any family member of a victim are to be taken into account to the extent relevant to a concern that the accused person could, if released from custody, endanger the safety of victims, other individuals or the community. The intention of the amendment is not to place a burden

on victims and subject them to further questioning, but simply to allow the police to put forward the information they have available from the victim at the time. This is particularly relevant in family violence–related offences, as the victim may be in the best position to predict the accused's likely behaviour if released on bail.

Amendments will be made to schedule 1, part C, clause 3(b) to specify additional considerations that the decision-maker must take into account when considering bail—namely, to the extent that it is practicable, the decision-maker must take into account the accused's health, including their mental health, and any cognitive impairment or disability the accused may have; any difficulties the accused might have in complying with bail conditions; and, where relevant, the capacity of the relevant community to provide support and protection to the alleged victim and the accused if released on bail.

Finally, the bill provides for amendments that either facilitate the bail process or are necessary to provide clarity on some areas that have been raised by judicial officers. Clause 12 of the bill inserts a new section 31AA that will give the courts the ability to vary bail without requiring the accused to enter into a fresh undertaking. This will allow bail to be renewed electronically through the Integrated Courts Management System. Section 51(2a) of the Bail Act provides that a breach of a protective bail condition that is a condition under clause 2(2)(c) or (d) of part D of schedule 1 of the Bail Act is a separate offence with a penalty of up to three years' imprisonment and/or a fine of up to $10 000. The distinction between protective and non-protective conditions is thus important. In order to ensure that the accused, the alleged victim, and the police have certainty in this regard, section 26 of the Bail Act will be amended to require decision-makers to clearly state which bail conditions, if any, are to be protective conditions of bail.

Clause 3A part C of schedule 1 of the Bail Act provides that a judicial officer or authorised officer shall refuse bail for an accused who commits a serious offence while on bail for another serious offence unless the accused can satisfy the court that there are exceptional reasons why bail should be granted on that second offence. A serious offence is defined by the Bail Act as an offence against section 51(2a) or an offence described in schedule 2. In the interests of comprehensiveness and consistency, clause 24 of the bill proposes to include as serious offences equivalent offences from the relevant commonwealth legislation, the commonwealth Criminal Code Act 1995.

Currently, clause 4 of part C in schedule 1 of the Bail Act does not explicitly require a decision-maker to consider a person's conviction for the offence, nor the likely penalty, and it is considered that these requirements ought to be clarified. Clause 22 of the bill thus amends clause 4 part C schedule 1 to specify that in deciding whether to grant bail to a person awaiting a sentence, the decision-maker must take into consideration that the person has been convicted of the offence and the sentence likely to be imposed.

Under the Bail Act, a prisoner serving a sentence imposed by the Supreme or District Courts can only have bail granted when the court is satisfied that exceptional circumstances exist. The requirement for exceptional circumstances does not, however, exist in relation to a decision of the Magistrates Court; rather, clause 5 part C schedule 1 of the Bail Act requires the court, when considering bail pending an appeal from a magistrate, to treat the applicant as if they had not been convicted. However, many of the offences now dealt with by the Magistrates Court are strictly indictable offences albeit with the option to be disposed of summarily. Clause 23 of the bill thus proposes to amend clause 5 part C schedule 1 of the Bail Act to explicitly permit a judicial officer considering the grant of bail pending the result of an appeal against a sentence imposed on an offender by a magistrate to take into account that the appellant has been convicted of the offence, and that a magistrate has determined an immediate sentence of imprisonment to be the appropriate penalty.

Occasionally, when an accused is on bail, and there are multiple programming hearings or directions hearings preliminary to the case being set down for its substantive hearing, the accused will have work commitments that make it inconvenient to attend these programming hearings. In such cases, the accused's legal representative will frequently ask that the accused be excused from attendance at such hearings. Clause 16 of the bill proposes an amendment to the Bail Act to enable courts to excuse the appearance of an accused, subject to conditions or otherwise, for a particular appearance but so that the provisions of the Bail Act continue to apply for future appearances. It is evident that the majority of cases that come before the courts are not in relation to offences that are regarded as of a serious nature and includes a clear over-representation of Aboriginal people. This bill seeks to provide flexibility in regard to bail for these less serious offences in order that accused persons are not unnecessarily in custody on remand when it was the decision-maker's intention that they in fact be released on bail. The bill also seeks to reduce the number of warrants of arrest issued for non-appearance for simple offences, introduces a number of amendments that provide additional safeguards for victims of domestic violence and seeks to improve the operation of the Bail Act.

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 table an explanatory memorandum.

[See paper 4299.]

Debate adjourned, pursuant to standing orders.