COURT JURISDICTION LEGISLATION AMENDMENT BILL 2017

Second Reading

Resumed from an earlier stage of the sitting.

MR S.A. MILLMAN (Mount Lawley) [2.57 pm]: Before the luncheon adjournment—

Mr D.J. Kelly: Cricket, lunch and adjournment.

Mr S.A. MILLMAN: The cricket is not going so well, Minister for Water, so I thought I would leave that out. Before the adjournment, I was making some brief remarks on the Court Jurisdiction Legislation Amendment Bill 2017. I started my comments by invoking a quote that I referred to previously in debate in this chamber. I will restate it, because it bears restating —

> The Rt Hon William Gladstone, conservative Prime Minister of Great Britain, once said, "Justice delayed is justice denied." To put it differently, a former Chief Justice of the United States Supreme Court, Warren Berger, made this proposition —
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> > A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people …
>
> He went on to say that inefficiency and delay will drain the judicial process of its value.

We, as a Parliament, are not entitled to sit idly by and allow significant delays in our judicial system to infest and infect the way that legal system operates. That is precisely the issue that this legislation is designed to address. By reforming, honing and developing the respective jurisdictions of the Magistrates Court, the District Court and the Supreme Court, we will free capacity in those respective courts to enable the judges sitting in those courts to deal with cases more expeditiously. I will come shortly to how we propose to do that, but first I will contextualise the problem by referring to some historical media reports. On 26 June 2015, an article appeared on the WAtoday website under the heading, "WA Supreme Court stretched to its limit, says Chief Justice Wayne Martin". It states —

> Western Australia's Supreme Court is stretched to its limit, with case work surging, but there aren't enough judges.
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> Chief Justice Wayne Martin says there has been a significant increase in demands placed upon the court in recent years, with both criminal and civil work surging, but it's at least four judges short.
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> In the three years to 2014, committals for trial have increased by 81 per cent, and committals for trial and sentence have grown by 42 per cent.
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> The additional demand has blown out the time it takes for a case to go to trial.
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> Median time to trial has steadily risen from 22.5 weeks following committal in 2011 to 30 weeks in 2014, and is expected to widen further this year to 37 weeks.
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> "These periods take no account of the time between charge and committal which has also tended to increase in recent years," Chief Justice Martin said in the court's annual review released on Friday.
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> Longer criminal trials, usually homicide cases, are now listed between 18 months and two years after an accused has been charged.

Perhaps evoking the quote from Gladstone or Chief Justice Warren Burger, His Honour the Chief Justice said —

> "Delay exacerbates the harm suffered by victims of crime by prolonging their engagement with the criminal justice process and delaying closure and vindication," Chief Justice Martin said.
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> "It is also the case that many accused are remanded in custody. Some are acquitted after more than a year in prison awaiting trial.
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> "Delays reduce the efficacy and fairness of the trial process—witnesses cannot be located or have died, and memories fade."
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> He said he had previously advised the state government of the need for more judges, but he'd only just been advised by Attorney-General Michael Mischin that vacancies left by the retirements of Justices McKechnie and Heenan would be filled in coming months.

Chief Justice Martin welcomed those appointments. That was in 2015. The problem did not abate, unfortunately, because on 23 September, 2016, Jacob Kagi, on the ABC website, published an article headed "Court trial waiting times in Western Australia continue to blow out". It reads —

> Data released by the Department of Attorney-General showed the median "time-to-trial" figure for Supreme Court criminal cases had reached 36 weeks —

This is exactly as predicted by the Chief Justice in 2015; that forecast had now come to pass —

> which is 10 weeks longer than three years ago, and eight more than the official target for the 2015–16 financial year.

The median time-to-trial figure for the District Court, which is the next court down in the court hierarchy in Western Australia, had increased to 32 weeks, which is an increase of six weeks from where it had been two years previously, and the Magistrates Court figure jumped from 18 weeks to 23 weeks in the same period. We can see that there is a significant increase in the time to trial. Another point that comes through is that, as we go down the court hierarchy, the delay is reduced. The most extreme, egregious and unjust delays are those that are taking place at the top of our judicial system, in the Supreme Court. As we go down the court hierarchy, the delays are not as exacerbated.

The question that the government is faced with is: in the absence of being able to appoint half a dozen new Supreme Court judges and half a dozen new District Court judges, is there a nuanced, sophisticated way that we can amend the jurisdiction of these courts to more properly and accurately reflect the arena in which particular legal disputes should be played out? In the explanatory memorandum and the second reading speech, the Attorney General made it clear that a historical nexus that existed between the jurisdiction of the Supreme Court and sentences that carried a maximum term of life imprisonment has now been broken by the passage earlier this year of the sentencing legislation relating to methamphetamine trafficking. As we know, if somebody is convicted now of trafficking or possessing more than 28 grams of methylamphetamine, they can be sentenced to a maximum term of life in prison. At the same time as that sentencing change was introduced into the Parliament, the District Court was invested with jurisdiction to deal with this class of cases. In my view, that was an entirely appropriate step, given the high degree of expertise possessed by our current judiciary in the District Court with criminal cases generally, and drug dealing and drug trafficking cases specifically. It is entirely appropriate that the District Court have this jurisdiction, notwithstanding the life imprisonment maximum sentence that could be imposed. From a theoretical or philosophical perspective, once that nexus is broken, it opens the opportunity to take a wider philosophical view about how else we can best realise the latent potential of our honourable District Court judges in attributing work within the hierarchy of the court system to give us the greatest efficiency. That is one of the reasons, in my opinion, this Court Jurisdiction Legislation Amendment Bill is an excellent piece of legislation. We have embraced changes prevalent in other jurisdictions on the eastern seaboard and recognised the capacity and ability of our judicial officers in the second most senior court, the District Court, and the Magistrates Court.

It also provides an update into how the jurisdiction of the Magistrates Court operates, so we now see the limit up to which proceedings can be dealt with in the Magistrates Court increase from $10 000 to $50 000. This reflects inflation and the changing value of money over time and a proper allocation of where those cases should be adjudicated. However, in effect, it does not deliver into just those courts with the best expertise—jurisdictions for dealing with those issues—it has the corollary effect of alleviating the pressure placed on the most superior court in the jurisdictional hierarchy, the Supreme Court. It frees up our Supreme Court judiciary, which is under extraordinary time and workload pressures, to focus on cases that require the extraordinarily high level of intellect, ability, legal experience and legal knowledge to deal with the cases they ought to be dealing with rather than dealing with, for example, people who set fire to rubbish bins. Because of the way the court system is structured, they are automatically obliged to go into the Supreme Court's jurisdiction. It frees up the Supreme Court's time to deal with cases such as claims of negligence for personal injuries for people suffering from asbestos-related diseases, as it does for cases made on application to go into the commercial and managed cases list—high value, high volume commercial disputes, contractual disputes, construction disputes and so forth. It frees up the court's time to deal with complicated technical and particular medical negligence cases. It does not deprive litigants of the opportunity to make an application to the Supreme Court for entry into their commercial and managed cases list if the ordinary jurisdiction of the case would be more appropriately dealt with in the District Court. For example, a plaintiff with a medical negligence claim who has a limited life expectancy can make an application, supported by an affidavit, to have their case transferred from the District Court to the Supreme Court so that it can be placed in the commercial and managed cases list and can be progressed to an expedited hearing. That example casts into stark relief what is underpinning the government's overall law reform agenda and the legislative changes that it is making in this bill. This government wants to put victims of crime back at the centre of our justice system, be they victims of criminal acts like trafficking methamphetamine, plaintiffs in personal injury cases, or people who have suffered wrongs under the law of contract. This bill is a compassionate, fair, responsible and reasonable response from this government to the problems that we are confronting at the Supreme Court. At the same time, it is reflective of, and probably constrained by, the budgetary circumstances that are facing this government.

I conclude my remarks by saying that the Court Jurisdiction Legislation Amendment Bill is a very important bill. It will provide the opportunity to make significant improvements in the operations of the Supreme Court. It will

enable cases to be allocated to the particular judicial class that is best equipped to deal with them, and it will free up capacity to ensure that the right legal arguments are adjudicated upon by the right judges, in a timely fashion. That brings me to the point at which I started. Justice delayed is justice denied. We need to do everything we can to ensure that the people of this state continue to enjoy timely access to justice. Thank you very much.

MR M.J. FOLKARD (Burns Beach) [3.11 pm]: I thank members for their time. I rise to speak in support of the Court Jurisdiction Legislation Amendment Bill 2017. The intention of this bill is to improve the efficiency of our court system. I rise to speak on this bill not as a lawyer—the fantastic people who are interpreting our current laws—but as a 27-year police veteran who is a master at applying the laws. Therein lies the difference between the two of us. We have a lot of people who interpret the laws. I am a master at applying the laws.

Our senior courts are currently tied up with matters that should be dealt with in the lower courts. There is a significant backlog in dealing with court cases. I reflect on my three decades in our judicial system. I recall that when I was a young police constable in Northam, in the Avon Valley, I investigated what was probably the ugliest case of sexual assault, attempted murder and grievous bodily harm I have ever seen. The case had occurred one evening at the local showgrounds. We did our investigation, and we apprehended and charged the offender. I recall that it took over two years to get that matter before the Supreme Court. That was over 25 years ago. Over the last 25 years, under numerous governments on both our side and the other side, that time frame has not improved. I do not get that. Surely over time we should have seen improvements and greater efficiency in service delivery in our judicial system, but we have not.

Our courts work on a hierarchal system. Arguably the most efficient courts are our Magistrates Courts. I reflect back, with a bit of humour, that the fastest and most efficient court I have ever had the privilege of witnessing was the court of Mr Con Zempilas. In the old days, on Mondays, the Perth Magistrates Court used to conduct what was known as the traffic court. This was back in the days of .08 and .05 blood alcohol levels. The coppers were very efficient in apprehending drink-drivers, and on Mondays the traffic court would be stacked with offenders. Con used to run that court like an auction. There would be at least a dozen court orderlies. He would literally auction off their penalties. He would break up the probationers. Back in those days, the mandatory punishment was a three-month suspension and a certain fine. He would auction them off and run the court like a cattle auction. It was entertaining to watch. But he would put through in excess of 150 cases within two hours on a Monday morning. If he did not do that, the Magistrates Court would have been blocked. To do it now would be impossible. He was the most efficient magistrate I have ever witnessed and I have not seen anything similar to date.

There is a significant cost to these court delays. One of the last major jobs I did before leaving the force was to deal with a violence restraining order. We were trying to get a variation hearing in place, which took more than eight months. I will not particularise the case to protect those involved, but suffice to say, one of the parties involved got so frustrated that a homicide was committed. If we do not start taking the pressure off our court processes, it will come at an absolute cost to our community. We tried to explain to complainants that it would take a long time to get a matter heard before the judiciary, and that was a reflection of the different time frames and waiting periods. In the superior court, the Supreme Court, it is two years; in the District Court it is sometimes between 12 and 18 months before matters are heard; and in the lower courts, it is not uncommon for the wait time to be between six and 12 months. When I talked to people involved in these matters, I had to advise them about delays in the process. This is a good piece of legislation. It is the first time I have seen anything in my time in the judicial system that seeks to improve court case time frames. I do not why it has taken so long. But it is a good piece of legislation.

For this legislation to occur, something novel happened. I have never known this to happen. Our Solicitor-General, our Chief Justice, our Chief Judge and the Director of Public Prosecutions got together and had a conversation. These are the people who manage our court system. I commend our Attorney General for somehow getting these people together so that they could have a conversation with this legislation being the result of that conversation. Why in God's name has it taken so long? I do not know.

I go back to the court system. It is a pyramidical system with the Supreme Court sitting on top, the District Court sitting in the middle and the Magistrates Court sitting at the bottom. The magistrates punch through the majority of the work. They deal with simple offences. I will talk a bit later about the offences that are indictable and the majority of cases that are referred to as an each-way charge. The majority of those are dealt with in the Magistrates Court. The Magistrates Court has good efficiency. The District Court is the court that deals with, for want of a better term, the bulk of criminal matters—the serious matters. They are all dealt with by indictment, but the delays are significant. These matters, which are often heard by juries, include offences such as burglaries. But the majority of the time they are dealt with in the Magistrates Court because they are an each-way charge. Then there is the Supreme Court. What determines whether a matter is heard by the Supreme Court is interesting. It is actually the sentence that triggers whether a matter goes to the Supreme Court, which is normally 15 years. That is the bottom mark of a life sentence.

I went back and dragged out my old set of statutes, which are no doubt out of date if my boss were to have a look, and went through the offences. If two armed offenders broke into a house at night and someone was inside, the sentencing regime for that particular offence carries a penalty of 20 years. Should that matter go before the Supreme Court? Probably not. We would be wasting the time of the Supreme Court with that. As I said, I dragged the statutes out and had a look. I have apprehended people for doing that. It happens today. We have a particular cadre of prolific offenders who break into houses at night-time with the intent to steal high-performance vehicles. Guess what? That offence could trigger a trip to the Supreme Court, which is not appropriate. The District Court should be where that offence sits; that is appropriate. What other offences trigger a trip to the Supreme Court these days? These are offences that should sit there—murder; manslaughter; attempted unlawful killing; procuring an assisted suicide, which is interesting as I did not think of that; and preventing childbirth. They are the five general matters that go forward to the Supreme Court. I note that in the Attorney General's preamble, he mentioned our Supreme Court moving towards what is referred to as a homicide court. Over east, particularly in Victoria, that is a fair reflection.

Coming back to our District Court, this bill also seeks to move offences like criminal damage by fire, which in layman's terms is known as arson. I reflect on the member for Mount Lawley's comments about setting fire to a wheelie bin and whether that should go to the Supreme Court. The elements of that offence mean that it probably could. As a supervising officer of constables, one way we got around that was to charge that person with criminal damage by fire and to bring out the fact that someone had set fire to a bin. That way we could get the matter dealt with in either the Magistrates Court or the District Court and not waste the time of the Supreme Court.

One other thing this bill seeks to do is to move threats to kill, which is currently the domain of the District Court, by turning it into an each-way charge so that it can be dealt with in the Magistrates Court. In my experience, threats to kill normally relate to domestic violence incidents. One thing I found over the years was that the longer court processes go on for with domestic violence offences, the more animosity builds within the relationship. Anything that can shorten that process has got to be a good thing. I note that the Director of Public Prosecutions said that bringing that stuff down so that it can be dealt with in the Magistrates Court will enable the expedition of domestic violence hearings. That is a good thing. We need to do anything we can to expedite the processes for domestic violence offences and to get people out of the court processes and to start moving on. The complainants—the victims—get so scared that they have to go to court, because it is such a long time away. The longer it draws out, the more animosity grows between the partners. No-one wins when it is like that. I look at the kids and I see in their eyes the distress that the parents are going through. As I said, anything that can expedite that process has got to be a good thing.

Another thing that will be taken back to the District Court is armed robbery offences, which is good. Assault with intent to rob will also be moved to the District Court. That is a good thing. I will give an example. In the trade, we refer to some robberies as soft robberies, which is when an offender will corner some person walking down the street, throw them up against a wall, grab their wallet and run off. In the trade, we would refer to that as a "soft rob" because it was a person. The violence is aimed at a person and because it is a person, they are referred to as a soft target—they are easy to get to et cetera. A normal robbery, which happened a lot in my day but has dropped away a lot now, involved someone with the old shotgun going in through the front door of a financial institution. Having served a bit time with our old armed robbery squad, chasing those offenders, I know they were serious crooks, and putting those people up before the Supreme Court was probably appropriate. Armed hold-ups on banks are a thing of the past; we do not see too many of them. I cannot remember any in the last five years or so of my service, and that is a good thing. I think it is appropriate to bring that down to the District Court.

There is another thing in this bill and I think whoever came up with it is brilliant. The bottom line that triggers matters such as property offences going to the District Court has been moved. I refer to offences such as burglary, fraud, stealing et cetera. They normally sit at a figure of $10 000. To put some sense to this, I will tell a story about one of the jobs I did many years ago when I was running an inquiry team in Warwick. We had a complaint about kids buying and selling cannabis at the local shopping centre. So, as diligent coppers, we went down and sat near the shopping centre, and sure enough grabbed a couple of kids doing the old buy and sell. We sat them down and had a quiet chat to them. One of the sellers identified a particular address where he had been buying his cannabis. Being diligent officers, we drew up the search warrant and went straight around to the address. In went the door, and sure enough we found our dealer. Great—happy days! We did an investigation in the house and looked at what was going on. Good coppers do not necessarily look at where the first dealer is; they want to look at who is supplying that particular dealer. We went through the house and managed to find a couple of phones, we found a couple of notebooks and we continued on.

[Interruption.]

The ACTING SPEAKER: Perhaps the member might like to investigate where the pinging is coming from.

Mr J.N. Carey: It sounds like it is someone's phone.

Mr M.J. FOLKARD: We have a good diligent investigator here; look at that! Happy days! Is that the offending instrument or what?

To cut a long story short, we identified a second address and went around, kicked the door in and got inside. We did not find too much cannabis, but what we did find—this will get a bit of a laugh—was 130 —

[Quorum formed.]

Mr M.J. FOLKARD: Inside the address, we found 130 different remote controls for TVs et cetera, but not one of them fitted any of the infrastructure that the gentleman had inside his house. On the outside of the house we found a case. Inside that case was about 3.5 kilos of jewellery, and a handgun. We were on the right money. We did not get the cannabis but we found the associated property.

[Member's time extended.]

Mr M.J. FOLKARD: Inside the suitcase was approximately three to five kilos of individual pieces of jewellery. What does that look like? When it was laid out on a trestle table, it took about six tables to break it down into individual pieces. I had to get a qualified jeweller to value it. There were approximately 400 separate items of jewellery. It was valued at $10 000. We took it through. Under the current rules, its value triggered this matter going to the District Court. This matter probably did not, but anyway. When everyone was together on court day, the defence counsel asked whether the charge could be amended. When I asked what he meant by that, he said, "If you take it down to $9 999 my client will plead guilty." The conversation was had with the prosecutor. I said, "Okay, that is fine, as long as the magistrate gets to look at the file and the photo of the property we seized at the house." He agreed, and we did it. The young fellow got three years in prison with no parole. We had a good win. This legislation raises the lower threshold. It goes from $10 000 up to $50 000 so that matters can be dealt with more efficiently in the Magistrates Court, which is a good thing. If we improve the efficiencies of our courts, people will start thinking that our courts actually mean something. The delays and backlogs are eating into the credibility of our current system. I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.